

**Board of Zoning Appeals
of the City of Onalaska**
Thursday, August 18, 2016
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1 The meeting of the Board of Zoning Appeals was called to order at 6:30 p.m. on Thursday,
2 August 18, 2016. It was noted that the meeting had been announced and posted at City Hall.

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4 Roll call was taken, with the following members present: Craig Breitsprecher, Brent Larson,
5 Kristen Odegaard, Ald. Bob Muth

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7 Also Present: Deputy City Clerk JoAnn Marcon, Interim Land Use and Development Director
8 Katie Aspenson

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10 Excused Absence: Robert Wehrenberg

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12 **Item 2 – Approval of minutes from the previous meeting**

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14 Motion by Craig, second by Brent, to approve the minutes from the previous meeting as printed
15 and on file in the City Clerk’s Office.

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17 On voice vote, motion carried.

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19 **Item 3 – Public Input (limited to 3 minutes per individual)**

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21 Ald. Muth called three times for anyone wishing to provide public input and closed that portion
22 of the meeting.

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24 **Consideration and possible action on the following items:**

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26 **Item 4 – Public Hearing approximately 6:30 p.m. (or immediately following the public**
27 **input) – Request for variance filed by Benjamin Thorud, on behalf of CT Real Estate LLC,**
28 **803 Deerwood Street, Holmen, WI 54636, for the purpose of converting existing**
29 **commercial space into four (4) efficiency apartments, for a waiver from the requirement**
30 **45% green space standard required for buildings with eight (8) units, and a waiver to allow**
31 **a nonconforming structure/use to increase its nonconformity by not providing the required**
32 **green space and not coming into conformance with the United Development Ordinance for**
33 **the property located at 544 2nd Avenue North, Onalaska, WI 54650 (Parcel #18-668-0)**

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35 Ald. Muth reviewed the Order of Business for Public Hearing per Development Review
36 Procedures Appeal, Section 13-8-42 (g), Order of Business:

37
38 General Hearing:

- 39
40 • Statement of the nature of the case by the chairperson (Ald. Muth).
41 • Appellate side of the case (Applicant).
42 • Questions from the Board of Zoning Appeals members.

Reviewed 8/22/16 by Katie Aspenson

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- 43 • Land Use and Development Director’s side (Katie).
- 44 • Questions from the Board of Zoning Appeals members.
- 45 • Statements from interested persons such as neighbors or abutting land owners.
- 46 • Questions from the Board of Zoning Appeals members.
- 47 • Appellate rebuttal.

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49 Ald. Muth invited the applicant to approach the microphone.

50

51 **Ben Thorud**
52 **803 Deerwood Street**
53 **Holmen**

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55 “The first thing is, what you read was accurate at the time that I did submit it. Katie did some
56 field work for the city. The field work, mine and hers, both indicate that we in fact are
57 conforming and not nonconforming. Currently I would like to bring to the fact that the property
58 has 35.6 percent green space, and that would be conforming. So the two variances that I’m
59 hopeful you would approve for us are, one, adding multifamily and two, making a variance to
60 allow 35.6 percent green space instead of the required 45 [percent]. I did take a moment to write
61 seven reasons why I thought this request of variance was valid, and I know you all had a chance
62 to read it. I don’t want to waste your time. If you would like me to go over them one at a time
63 I’d be happy to, or since you’ve all read them I’d be happy to answer any questions – whatever
64 you all prefer.”

65

66 Ald. Muth said he had no questions.

67

68 Craig told Ben he understands what has been submitted and that he has no questions related to
69 the information that is presented.

70

71 Brent referred to the second page of an email Ben sent to Katie and noted it states he wants to
72 add 2,400 square feet of green space. Brent then referred to the document Ben had submitted to
73 board members and noted it states 1,428 square feet of green space would be added.

74

75 Ben reiterated he was nonconforming when he first filed the request, noting that aerial views and
76 estimates were utilized based off the aerial views. Ben noted that upon further field work it was
77 discovered that the property has 35.6 percent green space versus the estimated 25 percent the
78 aerial map showed. Ben said the building currently has three levels, with the top level containing
79 four efficiency units. The ground level has commercial space that is currently vacant. The
80 bottom has three therapeutic massage tenants. Ben said he hopes to have the ground level mirror
81 the upper level.

82

83 Brent noted he had visited the site earlier Thursday and said there was one automobile in the

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84 parking lot. Brent said he has a question regarding the number of stalls that would be removed,
85 noting one document states that eight stalls would be removed, while the information Ben has
86 submitted states “all but eight of the spaces” would be eliminated. Brent asked Ben if there are
87 challenges related to parking.

88
89 Ben showed the board an aerial photograph of the property and noted the crossed-out sections
90 represent the approximate amount of space that would need to be removed in order to reach the
91 45-percent compliance. Ben said the tenants were asked not to park in the lot this week, noting
92 that new rocks and trees were placed on one side of the building. Ben noted that two tenants are
93 over-the-road truck drivers, and he also said it is his understanding that the massage therapists
94 typically do not open their business until noon.

95
96 As there were no further questions from board members, Ald. Muth invited Katie to make her
97 presentation.

98

99 Katie highlighted the following points from the staff report:

100

- 101 • The property has three levels. The top level contains four efficiency apartments. Both
102 the main and lower levels are for commercial use.
- 103 • Existing residences are outright permitted in the B-2 District. The four efficiency
104 apartments meet the intent of the Zoning Code.
- 105 • Multifamily structures that have four units are required to provide 35 percent green space
106 on site for use by the residents.
- 107 • The applicant is requesting to add four apartments on the main level. The apartments
108 would replace the commercial use. This would require an increase of slightly less than
109 10 percent of green space to reach 45 percent. The applicant is asking to waive the
110 additional amount.
- 111 • The property is conforming with city standards at this time.
- 112 • The two sections of the Zoning Code from which the variance is being requested are
113 Section 13-2-12(a)(37), which states: “*Existing residences shall comply with all the*
114 *provisions of the R-4 Residential District (45 percent green space required for eight*
115 *units,*” and Section 13-2-12(a), which lists permitted uses in the B-2 District (allowing
116 additional residential units is not a permitted use). This is why a variance is needed.
- 117 • The Comprehensive Plan’s Future Land Use Plan identifies this area as “Downtown
118 Mixed Use District.” The intent of this future land use district is to have pedestrian-
119 focused development with a mix of uses, including residential, personal services,
120 commercial, institutional and civic uses. Multiple-story, mixed-use buildings that include
121 high-quality architecture, signage, lighting and streetscape amenities are strongly
122 encouraged.

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124 Katie addressed the following criteria set forth in Section 13-8-44 as follows:

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1. Some sort of hardship to the property owner (or intended use) due to geographical consideration.

Katie said staff does not believe the criteria for Variance Request No. 1 (45 percent green space required for eight units) has been met. Katie said staff believes the land itself is not providing a hardship to this particular property. Katie reiterated that 35.6 percent of the existing site is green space and said the ordinance requires a minimum of 45 percent to serve the additional units. This totals 6,861 square feet, and an additional 1,428 square feet would be required to conform with city ordinances. Katie said Ben has stated that the only way to provide the additional green space is to remove a portion of the existing parking lot, which currently appears to have 24 parking spaces served by commercial and by tenants. Eight parking stalls likely would be eliminated, reducing the total to 16 parking spaces.

Katie said Ben had provided the following list of reasons for not providing 45 percent green space for building residents:

- Refuse/recycling containers would need to be relocated in providing the green space, which would occupy a smaller space and become more visible. This area is currently shielded in the rear of the building.
- Snowplowing and removal would become more of an issue for tenants in a smaller lot as there would be not as much room for removal activities. The stalls likely would be filled by tenants.
- The efficiency apartments are 350 square feet, and the applicant has a policy not to rent to individuals who would occupy the space with more than one person.
- The applicant does not see more than eight individuals as tenants of the multifamily units. This would be less than the average four-unit apartment building with one- and two-bedroom units. With this logic and making the assumption that green space requirements are assuming multiple individuals live in a unit, there essentially will be the same occupancy number as a four-unit building with a 35-percent green space requirement.

The green space requirement is based on the number of units in the building and not the number of occupants, and it has been enforced for all new multifamily buildings. City staff is unaware of a similar mixed-use situation where a developer has wanted to increase the number of dwelling units in a building and not provide the required green space. Other than the reduction in parking spaces, staff is unaware of other geographical hardships.

Katie said staff does not believe the criteria for Variance Request No. 2 (allowing additional residential units is not a permitted use) has been met. Katie noted that the Unified Development Code does not allow properties in a B-2 District to add residential units to a development. Katie said the property owner has discovered that a mix of uses works well at this site, and he is proposing to convert 1,500 square feet of commercial space to residential units as it would be the

Reviewed 8/22/16 by Katie Aspenson

167 highest and best use of the property. Katie said there is no physiological hardship associated
168 with allowing additional residential units.

169

170 **2. Uniqueness of the situation.**

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172 Katie said staff does not believe the criteria for Variance Request No. 1 has been met. Katie said
173 that to the best of staff's knowledge there has not been another redevelopment project where a
174 property owner proposed to convert commercial space into multifamily apartments. Staff has
175 found a variety of other mixed-use properties (commercial/residential) in the near vicinity of the
176 property in question that have little or no green space on site. These properties are considered
177 nonconforming structures because they do not meet the minimum green space requirements and
178 would be required to provide minimum green space allotments on site if they were to add
179 residential units.

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181 Katie said staff does not believe the criteria for Variance Request No. 2 has been met. Katie said
182 the property in question is an existing mixed-use development and the UDC currently does not
183 allow for an increase in residential units – only commercial space. An existing mixed-use
184 development in a commercial district could convert residential units into commercial space as an
185 outright permitted action. No zoning permits would be required. However, the inverse is not
186 allowed. This in turn causes issues for redevelopment potential on site and for the property
187 owner to fully utilize the site. This scenario applies to any existing mixed-use development in
188 the city and is not unique to the property.

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190 **3. Whether or not the variation is based exclusively upon a desire to increase value or
191 income potential.**

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193 Katie said staff believes the criteria for both Variance Request No. 1 and No. 2 has been met.
194 Katie said according to the applicant, the existing commercial space has been available for rent
195 and has remained vacant. Prospective tenants have noted the current construction on State Trunk
196 Highway 35 as a deterrent to renting. In the letter from the applicant, the applicant has noted the
197 number of improvements made to the property in the last year. The applicant intends to continue
198 improving the property. The property owner has determined that the site may be better suited for
199 additional residential dwelling units. The only way to provide the additional green space would
200 be to reduce parking space which, according to the property owner, would not be desirable for
201 the tenants or the businesses on site.

202

203 **4. Detrimental to Public Welfare or injurious to other property owners.**

204

205 Katie said staff believes the criteria for both Variance Request No. 1 and No. 2 has been met.
206 Katie said the property currently has 35.6 percent green space on site, and it is located within less
207 than a quarter mile of Community Park. The request to allow four efficiency apartments is an
208 extension of the current use of the building and would not require any exterior changes to the

209 property. The conversion of commercial to residential may modify existing traffic patterns in the
210 neighborhood, which could be more conducive to the residential surroundings. Katie said it is
211 staff's opinion that the requested variances will not be detrimental to adjacent properties or the
212 public welfare due to the noted reasons.

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214 **5. Purpose of the variation would not undermine the spirit of the Zoning Code.**

215

216 Katie said staff believes the criteria for both Variance Request No. 1 and No. 2 has been met.

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218 Katie said staff recommends denial of the two proposed variances because all five criteria have
219 not been met for each request. However, Katie said staff recommends the following Conditions
220 of Approval if the Board of Zoning Appeals approves the variance:

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- 222 1) Property owner to obtain a Building Permit and State Plan Approvals as needed prior to
223 construction activities.
- 224 2) Any omissions of any conditions not listed shall not release the property owner/developer
225 from abiding by the city's Unified Development Code requirements.
- 226 3) All conditions run with the land and are binding upon the property owner and all heirs,
227 successors and assigns. The sale or transfer of all or any portion of the property does not
228 relieve the original property owner from meeting any conditions.

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230 Katie welcomed questions from board members.

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232 As there were no questions, Ald. Muth welcomed statements from interested persons such as
233 neighbors or abutting landowners.

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235 Ald. Muth noted there were no neighbors or abutting landowners in attendance and welcomed
236 questions from the board members.

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238 As there were no questions from board members, Ald. Muth welcomed comment from Ben.

239

240 Ben thanked Katie for being forthright with the process and then stated, "We're not doing this
241 for any other reason than it's going to cost us quite a bit of money to do. Do know that we are
242 conforming, but do know that this is a request for a variation. I would only ask that when you're
243 considering the decision ... From my understanding, in 90 days the variance may not be needed
244 because of some of the planning coming down the pipeline. If it's good in 90 days and no one is
245 on the runway behind us looking for variances I'm not sure it would set a precedent. I would just
246 ask you to consider that, and the fact that we are conforming today with the 35.6 percent green
247 space."

248

249 Katie addressed Ben's 90-day reference, stating that when this project came forward "it raised a
250 pretty important flag in [the city's] Zoning Code where adding residential units to a commercial

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251 zoning district was not allowed.” Katie said the city believes mixed-use development is “very
252 important” in the city. Katie said, “I was unable to find any way of letting this gentleman
253 develop his property without a variance. In doing our research while writing the staff report, we
254 noted that there are other properties in the near vicinity as stated that have the same issue.
255 Granted, they’re not coming forward today or tomorrow to do additional development or
256 conversion of commercial to residential, but they could. And if we truly believe that we want
257 our commercial areas which are typically in our downtown to be multilevel, mixed-use
258 development, we are looking at changing our Zoning Code. There will be a public hearing [on
259 August 23] by the Plan Commission, and this is something they will be considering. As the
260 language is written today, knowing that it could change within the next 90 days, we are
261 proposing that the Plan Commission and the Common Council consider a recommendation that
262 adding residential uses to specific commercial uses would be a Conditional Use Permit. It would
263 be looked at on a case-by-case basis, which the majority of our potentially more controversial or
264 potentially more impactful development can do. Following that, we’re also looking to allow the
265 Plan Commission, on a case-by-case basis, to review these development proposals and have an
266 opportunity to determine the amount of green space that will be needed. The R-4 standards of
267 35, 40 and 45 percent on a graduated scale would not necessarily apply. We would be looking at
268 the neighborhood area, such as the fact that Community Park is within a quarter-mile. But again,
269 it would be on its individual basis and be considered as there are some sites that have no green
270 space today at all, and what is the best use for the city overall.

271
272 That is going to be moving forward, potentially, depending on what happens at the next meeting.
273 There is potentially another opportunity for the applicant to come forward again to a different
274 body within the city and make the exact same request through the use of a Conditional Use
275 Permit where they would not need to meet all five of the standards of criteria because that does
276 not exist for Conditional Use Permits.”

277
278 Ald. Muth called three times for anyone wishing to speak in support of the variance and closed
279 that portion of the meeting.

280
281 Ald. Muth called three times for anyone wishing to speak in opposition to the variance and
282 closed that portion of the meeting.

283
284 Ald. Muth referenced Section 13-8-43, “Decision and Disposition of Cases – Item D: Vote
285 Required,” and read the following: “*All orders or decisions of the Board of Appeals granting a
286 variance, exception or conditional use, or reversing any action or order of the administrator
287 require the affirmative vote of four members.*”

288
289 Ald. Muth read Section 13-8-44, Section E:

290
291 “Action of the board of appeals standards, for the board to grant a variance, it must find that:

292

- 293 1. Denial of variance may result in hardship to the property owner due to physiographical
294 consideration. There must be exceptional, extraordinary, or unusual circumstances or
295 conditions applying to the lot or parcel structure use or intended use that do not apply
296 generally to other properties or uses in the same district. The granting of the variance
297 would not be of so general or recurrent nature as to suggest that the zoning code should
298 be changed.
299
- 300 2. The conditions upon which a petition for a variation is based are unique to the property
301 for which variation is being sought and that such variance is necessary for the
302 preservation and enjoyment of substantial property rights possessed by other properties of
303 the same district and same vicinity.
304
- 305 3. The purpose of the variation is not based exclusively upon a desire to increase the value
306 or income potential of the property.
307
- 308 4. The granting of the variation will not be detrimental to the public welfare or injurious to
309 the other property or improvements to the neighborhood in which the property is located.
310
- 311 5. A proposed variation will not undermine the spirit and general and specific purposes of
312 the zoning code, specifically the standards of Section 13-1-6.”
313

314 Craig thanked Ben for everything he has brought forth and complimented him for doing his
315 research. Craig said, “But what comes into play here beyond just the ordinances and what’s
316 required there are also the statutes and the recommendations and the five criteria. Some of the
317 additional information you brought forward, for example, there were several other properties that
318 exhibit similar characteristics. Those can’t be part of our consideration for this variance, and
319 that’s said right in state statute. Although it makes perfect sense logically, leave it to the state to
320 say, ‘It doesn’t make any difference.’ With that being said, I think your day will come. We
321 already have preliminary Plan Commission packages, and I think you’ll be able to do this at
322 some point in time. But based on the facts here, there’s nothing here that tells me the property
323 can no longer be used for its appropriate uses as provided under the zone which it is classified at
324 this time. There’s really not a grounds on which I can support a variance at this time.”
325

326 Motion by Craig, second by Brent, to deny a request for variance filed by Benjamin Thorud, on
327 behalf of CT Real Estate LLC, 803 Deerwood Street, Holmen, WI 54636, for the purpose of
328 converting existing commercial space into four (4) efficiency apartments, for a waiver from the
329 requirement 45% green space standard required for buildings with eight (8) units, for the
330 property located at 544 2nd Avenue North, Onalaska, WI 54650.
331

332 Ald. Muth told Ben he thinks what he is doing is “a great idea.” Ald. Muth said he does not want
333 to see the property vacant and stated he believes “it will fit with the neighborhood.” However,
334 Ald. Muth also said he believes Craig’s explanation was very thorough.

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336 Craig noted he also sits on the Plan Commission and said, “As that’s brought forward I can see a
337 reason why we need to reevaluate that.”

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339 On roll call vote: Ald. Bob Muth – aye, Craig Breitsprecher – aye, Brent Larson – aye, Kristen
340 Odegaard – aye. Motion carried unanimously to deny the request.

341
342 **Adjournment**

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344 Motion by Craig, second by Kristen, to adjourn at 7:04 p.m.

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346 On voice vote, motion carried.

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349 Recorded by:

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351 Kirk Bey