

**City of Oconomowoc
Zoning Board of Appeals Minutes – June 2, 2010**

The Deputy Clerk called the meeting to order at 6:36 pm. Due to the absence of the chairman, motion by Mielke to nominate Gross as Chairman pro tem; second by Gross. Motion carried 3-0.

Public Hearing – 6:30 PM: The hearing was held at the request of Glen Cochrane (property owner) and Paul Grzeszczak who are requesting a zoning interpretation of the building setback requirement for the SI; Suburban Industrial District. Create A Pack Foods, located at 1730 Executive Drive, is requesting a building addition abutting a residentially zoned property. Section 17.105(3)(g)4.b.D. of the City Zoning Ordinance requires buildings with a residential side lot line in the SI zoning district to maintain a 25' building setback, and add ½ foot of building setback for every foot of maximum building height over 10 feet. The Board will be asked to review and possibly overturn an interpretation made by the City Planning Department that the building addition for Create A Pack Foods shall meet a minimum side yard setback of 35' feet to an adjacent residential property.

Gallo gave a power point presentation and explained the property in question, Create A Pack Foods, is requesting to add a 18,000 sf addition on the north side of their building and 25' from the a Town of Summit residential lot. Currently there is a parking lot where the addition is to be located along with a vegetative screen between Create A Pack and the residence. The question is whether the City can enforce a setback on a property that is not located within the City limits. Gallo showed a survey map of the property, along with photos of the existing building and an aerial of the location which shows the current building with its proximity to the Town of Summit residence. He explained the zoning code states a business in the SI, Suburban Industrial District must adhere to a more intense setback when located next to a residential zoning district. Staff believes the rules and restrictions of this section of the code apply to the applicant.

Rosek arrived at 6:45 pm and took over the duties of Chairman. He then opened the public hearing and swore in all interested persons who wished to speak. Katherine Reuter Goetzke, 36933 Valley Road, spoke in objection to the building addition. She is the owner of the residence next to Create A Pack and stated there is no sun in the wintertime because it is blocked by the building. She added she has lived there 50 years, and her property value will go down if the addition is allowed.

Paul Grzeszczak of Briohn Design Group explained staff reviewed their addition request in April. It was brought up at that time whether the addition would be allowed because of the question of jurisdiction. The owner of Create A Pack wants the addition as an extension of their 30' tall building. Grzeszczak questioned if the members had received an opinion letter from the City Attorney, which Gallo noted was distributed to members prior to the meeting. Rosek announced he would call a recess following the public hearing to allow time for the members to read the letter. Grzeszczak repeated it comes down to jurisdiction, and it is his belief the code applies only to situations within the corporate limits. There is nothing specific addressing the use of the code on properties outside the City limits. Previously in 1999, the current warehouse building was constructed and nothing was brought up at that time about a special setback requirement. He also didn't feel that the code addresses "light" or "air" which Gallo brought up when arriving at his decision. In addition, he looked at the Town's 2030 Comprehensive Plan and this particular Summit property is shown as being zoned industrial. While he realizes this look into the future is not binding, the Town of Summit Planner raised no issues with this building request and added they would not do the same for a City residence if the roles were reversed.

Mike Byrne of Briohn Design Group added this would be the last addition they would be able to put on the property. He believes City Code is strictly for properties in the City and not for imposing on another community. There were no additional comments. The hearing closed at 6:57 pm.

Chairman Rosek called the meeting to order at 6:57 pm and the Deputy Clerk confirmed appropriate notice had been given.

Members Present: John Gross, Bonnie Goodson, Matthew Rosek (6:45 pm) and Bill Mielke (left at 7 pm)

Members Excused: Bill Paton

Staff Present: Gallo and Dehnert

Others Present: Brenda Young, Court Reporter

3. Approve Minutes of March 15, 2010: Motion by Mielke to approve the March 15, 2010 minutes; second by Goodson. Motion carried 4-0.

Chairman Rosek called a recess at 7 pm in order to allow the member's time to read Attorney Chapman's opinion on this matter. Mielke left due to a prior engagement. Rosek called the meeting back to order at 7:06 pm.

4. Consider/act on the request of Glen Cochrane and Paul Grzeszczak, for a zoning interpretation of the SI District in order to construct a building addition at 1730 Executive Drive:

Gallo explained the zoning ordinance applies to all parcels in the City. The property in question is zoned SI, Suburban Industrial which has specific setback requirements. The normal side yard setback is 25'; however, when it abuts a residential zoning district, the setback is increased. The code does not specifically clarify what rules apply when a property is not in the City limits. His interpretation was that the building addition abuts a residential property though the code is not clear. The applicant applied for an interpretation of the SI District in the Zoning code. Gallo noted granting a variance is not an option because their request would not be considered a hardship as the addition could be placed in a different location on the property. He then referred to the Zoning Handbook and said there are specific standards which apply before an interpretation can be granted. In addition, the City Attorney's opinion has been provided in the form of a memo handed out to the members prior to the meeting.

Rosek inquired about the number of similar properties in the City. Gallo noted this situation is unique and there are probably only a handful of similar situations as most of the City's boundaries are separated by roadways. Rosek then questioned what the Town's side yard requirements are and Grzeszczak stated it was 10'. Gallo added he did not see anything in the public record of any objection by the Summit property owner when the current building was built. Rosek questioned if Create A Pack would consider adding more screening along the length of the existing building as an additional buffer, which Grzeszczak said could be done. Rosek noted the big issue was when the property was originally zoned for industrial use, was the Town's residential zoning taken into consideration at that time. He didn't believe the building was bad looking and that adding plantings was a reasonable request. Gross didn't think the code applies to extraterritorial properties as it would then give extraterritorial zoning rights to the Town. Rosek pointed out the Town could end up ultimately changing the zoning on the residential property in question. Goodson thought it would set precedence for any other properties facing a similar situation. Gross felt there was ambiguity in the code noting it was too bad there wasn't a better record on file for the 1999 Create A Pack addition. Rosek didn't think the City's concerns should go beyond City borders as it is outside of our jurisdiction. He agreed with the City Attorney's opinion, noting that the property in question is surrounded by other industrial developments. Rosek then reviewed the Scope of Jurisdiction, Context and Subject Matter from Gallo's power point presentation to determine if the ordinance is truly ambiguous.

Motion by Rosek to reject the interpretation of the Zoning Administrator and require Create A Pack to maintain a 25' setback because the abutting property is located outside the jurisdictional limits of the City of Oconomowoc; second by Goodson. Motion carried 3-0.

No further discussion or action was taken. Motion by Gross to adjourn the meeting of the Zoning Board of Appeals; second by Rosek. Motion carried 3-0. The meeting adjourned at 7:27 pm.

Chris Dehnert, Deputy City Clerk