

**MINUTES OF THE WHITEFISH BAY
BOARD OF APPEALS
Tuesday, February 13th, 2024**

A meeting of the Whitefish Bay Board of Appeals was held in the Whitefish Bay Village Hall, 5300 North Marlborough Drive, Whitefish Bay, Wisconsin on Tuesday, February 13th.

Pursuant to law, written notice of this meeting was published on the official Village website and posted on the three public bulletin boards.

Present were: Acting Chairperson – Andy Hunt. Members – Michael Kelley, Colin Daly, Ari Kasper, and Kimberly Novak Finningan. Village Attorney Chris Jaekels. Joel Oestreich, Building Inspector. Vivien Dolan, Secretary of BOA.

The meeting was called to order at 6:15 pm.

Colin Daly made a motion for Andy Hunt to be elected Chairperson Pro Tempore. Michael Kelley seconded. A vote was taken and the motion was upheld (5-0).

1. 4800-4818 N Santa Monica Blvd. – Spoerl Commercial

Request for Appeal of an Administrative Decision for an Architectural Review Commission submittal that was denied on 12/21/2023. Brian Spoerl, the developer, and Tom Gartner, the developer's legal counsellor, were present to explain the request while the Board reviewed the submittal. Joel Oestreich described the case's history with the Architectural Review Commission (ARC), highlighting dates, when and why the case was tabled, and the denial. David Domres, the acting chair for both ARC meetings, explained how ARC assessed the proposal, noting the lack of design guidelines in place for commercial developments and explaining ARC's reasoning for the decisions at each meeting. Chris Jaekels and Joel Oestreich clarified the authority of the Board of Appeals to act as the Architectural Review Commission in this case. Chris Jaekels elaborated that while two sets of plans were provided in the BOA submittal – the plans that were denied at the ARC meeting (dated 11/2023), and plans with new changes made following the denial (dated 1/2024) – only the

initial 11/23 plans denied at the ARC meeting would be considered for the appeal.

Tom Gartner explained the proposed development and reviewed the ARC meetings, describing how the second meeting following the initial tabling of the plans focused on parking and had limited discussion of the changes that had been made to the plans. Tom Gartner reviewed what a court would use as criteria for assessing the case, arguing two standards of focus: that the decision was arbitrary, and that ARC was not following the correct theory of law in assessing the project. Chris Jaekels affirmed these criteria and a court review as the correct approach. Tom Gartner recounted that ARC stated the proposed development "still doesn't feel like Whitefish Bay," but did not offer explanation of what was meant by the statement and how to modify the design accordingly. He cited the uniqueness of the area which contains a mix of residential and commercial buildings, and highlighted the aesthetic similarities between the proposed development and recently approved and built multi-family residences. With regard to ARC's parking related commentary, Tom Gartner described how the area is zoned commercial, and that the parking abides by the zoning code's minimum parking requirements. He further argued that requiring underground parking would be beyond the purview of ARC. He furthered that the only way to have underground parking would be to completely redesign the project with a larger footprint, and that redesigning could prohibit the development from happening.

Chris Jaekels explained the authority under which BOA acts in an Appeal of Administrative Decision case where the decision was made by ARC, elaborating that BOA puts themselves in the position of ARC and holds the authority to replace the decision. Chris Jaekels also specified that in this case, the funding of the project is not germane to the discussion.

Kimberly Novak Finnigan asked Brian Spoerl if there was a substantial change to the plans between the two ARC meetings, and Brian Spoerl referenced exhibits in the submittal, describing how his team responded to ARC's commentary and suggestions. Kimberly Novak Finningan inquired as to whether the parking was addressed in the re-submitted plans, and Brian Spoerl explained that the project had to be designed around the need for 27 parking stalls for 17 residential units.

Neighbors in Attendance: Alec Nummela – 4834 N Santa Monica Blvd, Brad Rosenquist – 4876 N Berkeley Blvd, John Runnoe – 4840 N Santa Monica Blvd, Chris Erickson – 5141 N Marlborough Dr, Kathryn Lomasney – 5775 N Shoreland Ave, Mary Van Volkinburg – 5509 N

Berkley Blvd, **Kevin Whaley** – 722 E Lake View Ave, **Leslie Spencer Herrera** – 649 E Lake View Ave, **Melissa Ugland** – 5525 N Kent Ave, **Steve Nersesian** – 4811 N Berkeley Blvd, **Kristen Schiestle** – 4857 N Berkeley Blvd, **Teig Whaley-Smith** – 4800 W Lisbon Ave, **Margaret Daun** – 901 N 9th St, **Jim Mathey** – 901 N 9th St, and **Dynasty Cesare** were present and commented on the case.

Letters of Communication were received from: **Brent Arnold** – 5813 N Bay Ridge Ave, **Joy Carter** – 902 E Meadow Pl, **Penny Egan** – 5541 N Shoreland Ave, **Jean Erickson** – 4876 N Sheffield Ave, **Bryna Goeckner** – 5842 N Bay Ridge Ave, **Andrew Gorzalski** – 4786 N Ardmore Ave, **James Kogutkiewicz** – 5328 N Lydell Ave, **Caroline Ladd** – 425 E Henry Clay St #24, **Leah Murphy** – 5481 N Danbury Rd, **Janet Quail** – 6112 N Lydell Ave, **Paige Styler** – 4918 N Idlewild Ave, **Charlotte Supple** – 5943 N Lake Dr, **Theresa Tobin** – 5008 N Lake Dr, **Jim Trainor** – 722 E Carlisle Ave, **Mary Trainor** – 722 E Carlisle Ave, **Melissa Ugland** – 5255 N Kent Ave, **Bridgette Wells** – 5328 N Lydell Ave, **Femi Akinmoladun** – 3960 N 24th Pl, **Antoinette Blackwell** – 3940 W Lisbon Ave, **Sue Blaustein** – 3415 N Booth St – **Meg Bruzan** – 3239 N 8th St, **David Emanuelle Castillo** – 710 W Mitchell St #801, **Lynn Charnitz** – 1219 N Jackson St #201, **Lo Cross** – 8647 N 52nd St, **Jodi Delfosse** – 3267 N Newhall St, **Janet Dietert** – 904 E Pearson St #503, **Tom Herbstreich** – 6737 N Santa Monica Blvd, **Mandi McAllister** – 2219 E Bennett Ave, **Deanna Richardson** – 7048 W Lima St, **Rebecca Salawdeh** – 8700 Jackson Park Blvd, **Lynn Shaw** – 1236 N 55th St, **Mo Simmons** – 1417 N Wauwatosia Ave #201, **Lester Smith** – 2769 N Dr. Martin Luther King Jr. Dr #101, **Rose Steitz** – 3161 N Dr. Martin Luther King Jr. Dr #4012, and **Beth Van Gorp** – 2212 N 58th St.

Following public comments, Colin Daly made a motion to overturn the Architectural Review Commission's decision to deny the plans. Michael Kelley seconded. Discussion continued in closed session.

Michael Kelley requested that Brian Spoerl summarize the changes between the plans that were denied at ARC and the updated plans that were submitted for BOA, and Brian Spoerl reviewed the changes to windows, colors, and materials. Ari Kasper argued that while the standard ARC had to evaluate this case was poor, ARC's decisions felt

arbitrary and capricious. Ari Kasper further inquired as to why the proposal was rejected when the applicant was abiding by the zoning code.

Per Andy Hunt's request, Joel Oestreich spoke to parking concerns and confirmed that the developer will have to abide by capacity and screening regulations. Discussion was held regarding the options of approving the 11/23 plans that were initially denied, the 1/24 plans that were updated and submitted for the BOA appeal, or approving the initially denied 11/23 plans with conditions that would tie in design changes from the newest plans.

Ari Kasper made a motion to amend Colin Daly's motion to be the following: Overturn the Architectural Review Commission's decision to deny the 11/23 plans with the condition that two windows on the north façade and a fence be added in accordance with what is indicated in the 1/24 plans. Following further discussion, Ari Kasper withdrew the motion and returned to Colin Daly's original motion.

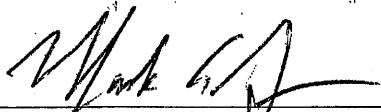
A vote was taken and the motion was upheld. (4-1; Ari Kasper: yea, Michael Kelley: yea, Andy Hunt: yea, Kimberly Novak Finnigan: nay, Colin Daly: yea).

The BOA meeting minutes from December 12th, 2023 were reviewed. Michael Kelley made a motion to approve the minutes. Ari Kasper seconded. A vote was taken and the motion was unanimously upheld. (3-0)

The BOA meeting minutes from January 9th, 2024 were reviewed. Michael Kelley made a motion to approve the minutes. Kimberly Novak Finnigan seconded. A vote was taken and the motion was unanimously upheld. (3-0)

With no other matters to discuss, Michael Kelley made a motion to adjourn. Ari Kasper seconded. A vote was taken and the motion was unanimously upheld. (5-0)

The meeting adjourned at 8:39 p.m.



Mark Johnson - Chairman of BOA



Vivien Dolan - Secretary-BOA