



BOARD OF APPEALS
Tuesday, February 4, 2016; 6:00 PM
MINUTES

Present: Chairman Reitz; Members Ashmore, Massey, Clancy; Deputy Clerk Fochs; City Attorney Sajdak; Community Development Director Tollefson; Court Reporter Jennifer Steidtmann, Gramann Reporting; and interested public

Also Present: Peter Young, American Dental Partners, Inc. Director of Regional Operations, Attorney Louis B. Butler, Jr. and Attorney Bill Scott of Gonzalez Saggio & Harlan LLP

All parties appearing before the Board of Appeals were sworn.
A complete transcript of the proceedings can be made available upon request.

The meeting was called to order at 6:00 PM.

1. Approve meeting minutes of January 5, 2016

Moved by Member Ashmore, seconded by Member Massey to approve the meeting minutes of January 5, 2016.

The motion passed by voice acclamation 4/0.

2. Hear evidence concerning; debate, deliberate and decide the request of:

Applicant(s): American Dental Partners of Wisconsin LLC dba Forward Dental Mequon
Owner: Mequon Town Center LLC

Appeal: Appeal of the Planning Commission's decision on December 7, 2015, for a building and site plan amendment by American Dental Partners of Wisconsin LLC dba Forward Dental Mequon for the property located at 6048 W. Mequon Road.

Documents submitted by the appellant February 2, 2016 were submitted into record.

Director Tollefson stated that this is an appeal of the December 7, 2015 Planning Commission decision for a waiver to the site and building plan approvals.

Attorney Butler outlined the issues of the appeal: 1) challenging the need for a variance at all based on the ordinance that addresses windows; there is no regulation nor prohibition with respect to blinds in the ordinance; 2) architectural plans submitted specified placement of interior window blinds in all exterior windows except as otherwise noted; 3) architectural plans were approved by the City and the State; 4) the buildout costs and potential construction costs to comply will create an unreasonable hardship; and 5) violation of patient confidentiality and privacy constitutes a hardship as well.

Mr. Young stated that American Dental Partners LLC has been accredited since 2000 and their goal is to protect the health and welfare of their patients. The language around patient privacy indicates that the organization ensures its facilities provide exam rooms, dressing rooms and reception areas that are constructed and maintained in a matter that ensures patient

privacy during interviews, examination and consultation. Practical considerations for needing blinds are the sunshine makes examinations difficult, the computer screens unviewable, and the heat from the windows could cause materials to light-cure too quickly. When the occupancy permit was received they were surprised since everything they'd done to-date was in accordance with the building permit and the approvals received from the City. There was never any issue with the use of the blinds until they filed for a variance in December 2015. Blinds were used when the patients were in the chair from June 2015 until December 2015. Only after the appeal was filed were the City citations issued. Total cost to build the practice was \$715,000 and the approximate cost to redo the layout would be \$550,000. HIPPA mandates patient privacy and their practice has many safeguards in place to ensure absolute privacy.

Director Tollefson stated that privacy rules, regulations and obligations of the tenant are their burden and are not the City's requirement. The fact that it is a permitted use does not exempt them from design standards. They could have chosen another site in the development. The PUD approval, the development agreement, building and site plan approvals, architectural plans, and building permits are all reviewed by Community Development to ensure synergy between Planning Commission's recommendations and the ultimate buildout. Per their Development Agreement they are required to implement all of the rules and regulations, including the PUD regulations, that were established from the onset. Miscommunications between the developer and the tenant are not the responsibility of the City. Design guidelines specifically address windows. They must be transparent, it outlines the percentage of windows per building frontage, and percentage limitation on the coverage of windows facing public spaces. The spirit and intent of this Town Center neighborhood is to be pedestrian oriented, walkable neighborhood of mixed use that generates vitality and gathering at the street level. Allowing a tenant to block off their windows is a violation of the spirit and intent of those policies.

The Board requested more details about the conversations with the developer. One of the requirements of the development agreement was to have an operable, front door facing Mequon Road. The tenant desired the door to be facing the parking lot. A compromise was reached between the City and the developer to eliminate a direct front door, and replace it with a centralized door with a small lobby that would provide an interior door into the tenant's space. The developer needed to go forward understanding that with the floor plan coupled with the requirements already documented as part of the project approval, there would be no blocking of the windows.

Mr. Young, although not part of the discussion relocating the front door, stated the company prefers the operatory in the windows and does not have a bearing on the appeal. Director Tollefson added that relocating the front door does not negate the requirement to meet certain building and design standards.

The Board questioned the reaction of the tenant when they received the occupancy permit dated June 17, 2015 with the condition that no window coverings could be used. Mr. Young confirmed he did not have any further discussions with either the City or the developer about that requirement and they did not make any appeal at that time. To the best of his knowledge, no one in his organization knew they could not have window coverings or they would not have proceeded in ordering blinds.

Director Tollefson stated that blinds or window skins are not regulated by building code, electrical code, HVAC code, or plumbing code and therefore were not reviewed by the building inspector. The Planning Division completed their building code review and

identified there were blinds at that time and they made a condition of approval on the occupancy certificate which was subsequently signed by the applicant.

Attorney Scott argued that the City approved and certified the building plans that clearly showed window blinds in all exterior windows. Director Tollefson restated that blinds are not a construction component nor a substantial construction element. The building inspector would not inspect blinds. In addition, there was a catchall condition of approval granting by Planning Commission and Common Council which gave staff the ability to add conditions at any point in the process to ensure that all the policies and standards of the zoning district were in compliance.

Exhibits A-1 (architectural design plans) and A-2 (building inspection documents) from American Dental Partners LLC were submitted into record.

Mr. Young stated there is a tacit admission by staff that there is no regulation regarding blinds. If there is no regulation there is no authority to impose this condition in the first instance. If the Board does think the ordinance regulates blinds then the appellant believes a variance would be justified based on the unreasonable hardship that would be placed upon the dental practice and all patients.

Director Tollefson clarified that this is not a question of a variance. The case is an appeal of the Planning Commission's December 7, 2015 decision. This zoning district specifically expresses the Planning Commission has the ability to grant waivers to any of the standards within the zoning district. Whether the ordinance expressly states "blinds" or not the PUD required the full spirit and intent of those policies.

Member Massey questioned both staff and appellant on why the intent and purpose of Mequon Code 58-301(a) would be supported or not supported by the window blinds. Director Tollefson argued that blinds would not "activate" the street. We want to activate the pedestrians, promote natural surveillance, minimize the uncomfortableness of pedestrians, maintain high design standards and maintain the pedestrian character. Mr. Young stated that they want to meet the intent of the standard, however, he noted that the sidewalk on Mequon Road is considerably narrower than the sidewalk on Cedarburg Road so comparisons cannot be made between businesses on the east side of Town Center, and their blinds would only be closed when there are patients utilizing the exam rooms.

Moved by Member Massey, seconded by Chair Reitz to subpoena Assistant Director of Community Development Jac Zader, Blair Williams of WiRed Development, Dan Kinney of American Dental Partners of Wisconsin LLC, Matt Mehring of Anderson/Ashton construction group, Martin Schoenknecht, Mequon Building Inspector and any other person who was negotiating the buildouts on behalf of American Dental Partners of Wisconsin LLC.

The motion passed by voice acclamation 4/0.

Discussion ensued on other opportunities available to American Dental Partners. Staff contends that the interior floor plan could be modified to create a private room to serve their patients. The appellant contends that opting for a second level office space is cost prohibitive at this point and flipping the floor plan would cost approximately \$550,000, a definite hardship. Also lightly tinted windows would not solve the privacy issue.

Design guidelines for the Town Center were created in December 2005. This zoning district was built upon those design guidelines and was created in 2007. Town Center is the only

zoning district in the zoning code that actually dictates materials to be used, percentage points of windows on the first and second floor and specific design standards.

Attorney Sajdak asked Attorney Butler if he reviewed the Schneider vs. Waukesha decision in preparation for this hearing. He had not and agreed to provide an argument to the Board in a timely fashion as to the distinction between that decision and the Outagamie County decision.

Moved by Chairman Reitz, seconded by Member Ashmore to suspend the hearing to a yet-to-be-determined date. Deputy City Clerk will work with all Board members and all witnesses to find a mutually agreed upon date.

Motion passed by roll call vote 4/0:
Favor: Ashmore, Massey, Reitz, Clancy
Opposed: None

3. Adjourn

There was a motion and a second to adjourn at 7:45 PM.

Respectfully submitted,
CITY OF MEQUON BOARD OF APPEALS
Kathy Andrykowski, Administrative Secretary
Approved 02-29-16