



**VILLAGE OF SHOREWOOD
BOARD OF APPEALS MINUTES**

June 11, 2019

1. Call to Order

Mr. Paulson called the meeting to order at 5:32 p.m.

2. Roll Call

Members present: Adam Burns, Michael Paulson, Jon Toutenhoofd and Karen Tidwall. A quorum was noted present. April Toy joined at 5:34 p.m.

Others present: Village Attorney Nathan Bayer, Building Inspector Justin Burris, and Deputy Village Clerk Diane De Windt-Hall, Building Inspector Justin Burris.

3. Statement of Public Notice

Deputy Village Clerk Diane De Windt-Hall stated that the meeting had been posted and noticed according to law.

4. Approval of July 10, 2018 Minutes

Mr. Burns moved, seconded by Ms. Tidwall, to approve the minutes of the July 10, 2018 meeting. Motion carried 4-0.

5. Approval of November 13, 2018 minutes

Mr. Burns moved, seconded by Ms. Tidwall, to approve the minutes of the November 13, 2018 meeting. Motion carried 4-0.

- 6.** Mr. Paulson outlined procedures for the meeting. The Village Attorney will outline the legal standards involved for the Board of Appeals (BOA) procedure. Mr. Paulson summarized the BOA's procedures. The BoA essentially acts like a court. We have to follow state law and the Village's zoning ordinance but we are a creature of state statutes. We can't change or ignore any part of the zoning ordinance or state laws that apply to us. We must apply as written. We can only grant a variance or, in this case, an appeal of the applicant supplies evidence and the evidence shows that it meets all of the legal standards for granting that variance or appeal. The Village attorney will describe what the specific legal standards are. He procedure is informal, but we have to follow law and procedures. All witnesses will be sworn in. The hearing will be open in any of the matters, by Village staff describing the application and ing the reason that the decision was made and then members will ask questions of staff to insure complete record and then opened to the applicant and any witnesses who want to testify to provide evidence about why they believe they meet the legal standard for the appeal. Members of the board can ask questions of any of the witnesses. When all questions have been answered, the hearing will be closed. Then the Board will discuss this matter and at that time decide the matter. A decision will be made tonight in open session. After the meeting Village staff will take the appropriate action to implement the Board's decision and provide the necessary documentation. The Board's decision can be appealed by starting action with Milwaukee County Circuit Court within 30 days after this decision. The meeting is recorded and if necessary that may be used as part of the judicial review.

Mr. Bayer reviewed the standards by which we must decide the first matter, the appeal of the issuance of a beekeeping ordinance. Of the three cases being heard, one will be a de novo review applying standards established in the bee keeping ordinance, one is a request for a variance and one is for a special exception. Mr. Bayer distributed copies of Chapter 192 of the Village Code which contains 192-16 [Residential beekeeping permits and practices](#) and provided some background on how we reached this point. A few years ago Shorewood passed a beekeeping ordinance. Now the process is that an applicant will fill out some paperwork and submit it to the Planning Director and as part of the process all neighbors must be notified. Neighbors within a certain amount of feet are able to weigh in on whether a license should be granted. Ultimately, the decision to grant or not to grant is with the Planning Director pursuant to Part B of the ordinance. The case pending before the Board there was an

objection and the Planning Director evaluated the objection and decided to issue the permit. The neighbor now appeals that decision to the BOA. Under Article 10, Chapter 535, of the Village code “Appeals can be taken from . . . any other Village Code provisions . . . by any person aggrieved by any officer, department, board, commission or bureau of the Village.” So the BOA does have jurisdiction over this. Now the statute that gives the Board power says that you stand in the shoes of the agency that issued the permit and the overriding concern should be the health, welfare and safety of the community. The specific criteria to apply to this de novo review –192-16(f) this is your first time reviewing and you are standing in shoes of Planning Director when he granted the permit—a permit of keeping honeybee hives on premises is to be permitted granted the following requirements are met, i.e. number of hives, volume, limited to specific type, all addressed and included in the packet and were evaluated by the Planning Director when making his decision to grant. Keep in mind the criteria to be apply when listening to the objections tonight and remember that the overarching concern should be the health, safety and welfare of the community.

Board of Appeals members had no questions of the Village Attorney.

7. Public Hearing: Neighbor’s appeal of the issuance of a Beekeeping License to License Holder Daniel Burkholder, owner of residential property at 1828 E Kenmore Place.

Mr. Paulson opened the Public Hearing at 5:42 p.m. He noted that members of the audience who wished to speak to the actual “consideration of the item” that will be taken up next could wait until then to testify, they did not have to do so in the Public Hearing.

Mr. Paulson closed the Public Hearing at 5:43 p.m.

8. Consideration of Neighbor’s appeal of the issuance of a Beekeeping License to License Holder Daniel Burkholder, owner of residential property at 1828 E Kenmore Place.

Mr. Justin Burriss, Village of Shorewood, Building Inspector was sworn in.

On April 22, the Village Planning & Development Department (PD&D) received a BOA application from the property owner Karen Owecki, 1824 E Kenmore Pl., appeal the issuance of a beekeeping license to Daniel Burkholder, 1828 E Kenmore Pl. The packet contains the ordinance pertaining to the issuance of the beekeeping license, similar to the information Atty. Bayer distributed, just an easier format. The beekeeping license was issued finding that the applicant met all requirements as outlined in Village Ordinance and that any objections provided by the appellant were either unfounded in fact or unsubstantiated by documentation. The three points that the application addressed: Physical limitations, Claim that location was too close to property line or sidewalk and Kenmore is heavily traveled and the location of the hive would be unsuitable to the backyard was unsubstantiated—met Village criteria; unnecessary hardship—limited use of backyard for entertainment, neighbor allergic, pond in backyard is water source—no documentation of neighbor’s allergic reaction to bees and allergy is not sufficient grounds—no information that death would result to anyone, also honeybees die when they sting and are not aggressive unlike wasps, hornets, etc., there is not a size requirement for the waer source, a birdbath is typical for a backyard beehive. Ordinance does not state that if the neighbor’s water source is larger than the beekeeper’s water source that they have to match it. It simply states they have to have a water source; depreciation of property value/increased insurance rate—no documentation provided; granting the variance would harm the public interest—public interest was not harmed in issuing the beekeeping permit; the Village Board amended Ordinance No. 2058 in 2016 to allow for residents to keep bees due to their importance in our eco-system. The packet includes pictures, license application, approval letter, documentation of education of the applicant, pictures and aerials of the location of hives. Mr. Paulson noted that the packet items will be made part of the public record.

There were no questions from the Board.

Ms. Karen Owecki, 1824 E Kenmore Place was sworn in.

Ms. Owecki commented that she had made a big speech about the bees at the Village Board meeting in March. Did her due diligence trying to look up information regarding this situation and that she asked

questions and sought advice to about the decision. Stated she was somewhat confused because she was told coming here for the appeals would not overturn the application but legal told her that that is not necessarily the case. Felt that the process, that because Justin is a beekeeper, that it was difficult to get her points/issue across. As a result, she felt that instead of being comforted, she was leery. She commented that Justin was showing pictures of his bee swarm. She has pond, she entertains and gardens. This situation with the major water source in her backyard, she is concerned. No reassurance from the Village or the neighbor that the bees wouldn't be in her yard. She was unaware that she needed to provide supporting documentation, although she did call Powers Realty and another realtor, spoke to her insurance company during this process. Fly away barrier should be installed; no barrier seen. If the application will not be overturned, then she would like in this process of obtaining this beekeeping license really needs to be more detailed, provide more guidelines for example, how many people needed to oppose an application, it should identify radius; location – no fly away barrier installed and being told it is not needed because the house is the barrier, what is the distance from the house; Commented that the place next door is an AirBnB. During the process she wasn't informed when, how many, where and include a time line; this needs to be improved. Questions: What if there is a new queen bee? Who will know? Who will inform residents? Behavior of the bees was questioned. Will the hive be removed if there is an incident? If the decision is to uphold the granting of the license, please give reassurance to those who are fearful—like herself, neighbors, passers-by.

Mr. Paulson asked if the bees were in place. She doesn't walk that way anymore. She doesn't walk east on Kenmore anymore.

Mr. Dan Burkholder, 1828 E Kemore Place was sworn in.

Mr. Burkholder indicated that this has been a difficult process as it has caused a rift in their friendship. They had been friends for the past five (5) years. He noted that the bees are in place as of May 13. This was not communicated to Karen because they are speaking at this point. Mr. Burkholder took beekeeping classes from the University of Wisconsin-Milwaukee Extension in 2017, which includes a season of teaming up to take care of a beehive. He did not move forward in 2018, because of Karen's concerns, rather he chose to have a beehive at Kohl farm which didn't survive the winter. This spring he did an application. He has a huge garden, cherry trees planted wanted a pollinator around. There is a new homeowner on the other side who is agreeable. In 2018 the bees were moved farther away from Karen's property. He agreed to check the water source daily and he agreed to work out any issues that might arise so Ms. Oweki could enjoy her backyard.

Mr. Paulson asked how many bees in the hive? Mr. Burkholder responded they are sold by the pound, so he purchased three (3) pounds of bees, there are about 10,000-12,000 bees and the hive can grow to about 30,000-40,000 bees. Berker bees live for about 30 days, leave the hive the last 5-7 days of their lives. The vast majority of the bees stay in the hive and perform their job—cleaning the hive, making honey, taking care of the brood, etc. So you won't have 30,000 bees swarming out of the hives; and travel less than 1-1/2 miles from the hive.

Ms. Tidwall asked if he had read Chapter 192 and whether he was aware of the criteria set in place to revoke a beekeeping license? Mr. Burkholder responded he has read the chapter and is aware of the criteria for revocation. He noted that the woman behind him has a daughter who is allergic and she has to have an Epipen; she also signed the waiver. Ms Tidwall asked if this is the same neighbor Ms. Owecki was referencing? Mr. Burkholder responded that that neighbor lives across the street and is not required to sign the waiver.

Mr. Burris noted as clarification: His signature is not on the certificate. Yes, he does keep bees. He does not issue the beekeeping license so there is no conflict of interest. He stated that he had shown Ms. Owecki the picture of his children interacting with his hive to illustrate the lack of threat.

Ms. Owecki stated that her neighbor was asked to be with her when signed the appeal application. When she passed it to her to sign, she was told her signature was not needed. Also, the first year she was approached about this there were two objections because the neighbor on the other side had objected. This neighbor is no longer there; the house was sold.

Mr. Tootenhoofd wanted to confirm that Planning and Development staff had reviewed the issuance of the license. Mr. Burris noted that all the plans were provided to Planning and Development Department (PD&D), reviewed and the license was issued.

Mr. Burns asked is there an inspection after approval? Mr. Burris replied Yes they confirm that the plan that was approved by PD&D is what was actually implemented.

Attorney Bayer noted that §192-16(c) were it talks about notification of adjoining neighbors and site plan, answers the question of what is required, before it is considered. It says before an issuance or renewal an applicant shall furnish to the Village an application, including written proof, a site plan, etc. before the criteria is evaluated by staff.

Attorney Bayer noted that since this is a de novo review that the Board should affirm the issuance of the permit or revoke the issuance of the permit.

Mr. Paulson moved, seconded by Mr. Burns that the Board of Appeals reaffirm the permit issuance to Daniel Burkholder at 1828 E Kenmore Place of a beekeeping license.

Mr. Burns stated that steps have been taken in accordance with §192-16. Noted that in §192-13 there is a mechanism in place to address issues if the bees cause unhealthy conditions or interfere with normal use and enjoyment.

Ms. Tidwall concurred with Mr. Burns and that §192-16(h) allows the revocation if there are problems related to health and safety issues. Also, for the record, there was no other opposition today to testify in objection, no realtor regarding depreciation; no AirBnB owner present with comments.

Mr. Paulson stated that the steps outlined in the ordinance and explicit standards have been met. Also notes Ms. Owecki's concern and fear of the uncertainty of something new in her neighborhood. He too would be concerned and wanting to understand, but the Village by adopting the beekeeping ordinance and setting the standards established that if those standards are met, we should proceed unless and until there are negative consequences, recognizing that some neighbors will be concerned and even fearful. The Village has made that public policy determination so until there is a negative adverse impact to the neighbors, he is help that communication can be reestablished so these issues would be able to be worked out.

With all members voting aye, the motion carried 5-0 on a roll call vote.

9. **Public Hearing: Appeal of the denial by the Village Building Inspector to replace a roof that exceeds the maximum height per the Zoning Chapter, at commercial property, 4600-10 N. Wilson Dr.**

Mr. Paulson opened the Public Hearing at 6:19 p.m. Attorney Bayer clarified that the Public Hearing portion is for the public who are not direct parties involved.

Mr. Paulson closed the Public Hearing at 6:20 p.m.

10. **Consideration of the appeal of the denial by the Village Building Inspector to replace a roof that exceeds the maximum height per the Zoning Chapter, at commercial property, 4600-10 N. Wilson Dr.**

Mr. Burris was reminded that he was still under oath. Mr. Burris noted that the Planning and Development Department received a Plan Review application on May 14 from property owner Karademas Management proposing to replace the commercial flat roof with a gable roof at 4600-10 N Wilson Dr. The Plan Review application was denied because the proposed roof exceeds the allowable height in that zoning district. A Board of Appeals application was submitted on May 17.

As a reminder, this same matter was heard by the BOA on May 16, 2017 where a variance was granted, the minutes are included in the packet. No action was taken on the permit within six months so it

expired and we are back to review it again.

Mr. Paulson asked if there was any change from the previous application for which the variance was granted? Mr. Burris responded that in terms of the height of the roof, no; they are the exact same elevation as previously. Mr. Paulson asked the applicant if there was any change in height. The response was "No."

Ms. Leah Kilner, representing Karademas Management, 4600-10 N Wilson Dr., was sworn in.

Mr. Paulson reminded Ms. Kilmer that we are only discussing the roof height, not any of the other issues, and the real issue is it any different height than was granted in 2017. Ms. Kilner replied there is no difference in the height. Mr. Paulson invited the Board to ask any questions given that the prior variance was granted and it was only delayed where no action was taken. It's not to preclude us from reviewing those issues, but it seems it was already granted once and there is no change to circumstances in that respect.

Attorney Bayer noted that it expired because the ordinance that indicates that if work is not started within six months you have to reapply. Ms. Kilner responded that they were not able to start the work due to weather and changes to the design.

Mr. Paulson said that they would take administrative notice of the prior record and incorporate it into this record as to the application and action of the BoA on the prior variance request.

Motion

Mr. Paulson moved, seconded by Mr. Burns to grant this height variance in accord with the prior approval in 2017 on an identical application, seconded by Mr. Burns. Motion approved unanimously by a roll call vote. Variance granted and staff will issue the appropriate permit which will start another six (6) month timeline.

11. Public Hearing: Appeal of the denial by the Village Building Inspector to modify and expand the legal non-conforming building, a commercial property 4600-10 N Wilson Dr.

Mr. Paulson opened the Public Hearing at 6:25 p.m.

Mr. Paulson closed the Public Hearing at 6:26 p.m.

12. Consideration of appeal of the denial by the Village Building Inspector to modify and expand the legal non-conforming building, a commercial property 4600-10 N Wilson Dr.

Attorney Bayer reviewed the legal standards to abide by. Chapter 535 is the zoning chapter in Village Code. Chapter 535-34 deals with nonconforming structures. We have an existing non-conforming structure that encourages into the setback requirement. When there is a request to increase the nonconformance, the code says that we evaluate this under a special exception. Chapter 535-34 - Special exceptions.

(1)

Subject to the provisions of applicable state law, the Board of Appeals, upon application as required herein, may grant a special exception to the provisions of Subsection **A** hereof after considering:

(a)

The effect the granting of the exception will have on the appearance and character of applicant's property, adjacent properties and neighboring properties.

(b)

The effect the granting of the exception will have on the value of applicant's property, adjacent properties and neighboring properties.

(c)

Whether the granting of the exception will serve the public interest in improving and preserving the value of the property.

(d)

Such other matters as the Board of Appeals deems relevant and material.

Attorney Bayer clarified that there is a request to go further into the setback and that is a matter within the jurisdiction of the BOA. A portion of the proposal will go past the lot line and encroach upon the right-of-way of the Village. That does not fall into the jurisdiction of the BoA. The Village Board would be the only entity who could grant an easement or special exception to encroach upon the public right-of-way. The decision before the BoA tonight, is whether to grant a special exception so that it can encroach further upon the set back, but the decision to go beyond the lot line and encroach on the public right-of-way is solely for the Village Board to determine, the BoA does not have that authority.

Mr. Burris stated that on May 14, 2019, the same plan was reviewed for the extension of the front façade of the building. The Plan Review application was denied because it increases the nonconformity and extends into the public right-of-way. The property owner submitted the appeal on May 17, 2019. The property is located in the B-5 mixed use commercial and river districts. The B-2 District allows for apartment use on the first floor, as areas under this classification are characterized by a high concentration of established apartment buildings. This zone differs only in the building bulk and setback requirements meant to preserve the characteristics of this area.

Mr. Burris noted the following under the Village zoning code section 535-21 E (6) Setback:

- (6) Setback, minimum:
- (a) Fifteen feet on Idlewild.
- (b) Three feet on Wilson.**
- (c) Three feet all others.

Also, the southernmost corner on the West elevation of the building is currently 2.56' East of the property line on Wilson Drive, making the building legal non-conforming. The proposed expansion of the front façade would place the southernmost corner beyond the property line, and into the Public Right of Way 1.27' feet as detailed in the attached survey.

In addition to granting the special exception, there would be another process of the Village Board to consider granting the extension into the right-of-way. Plan review application, BoA application, maps and pictures of the proposed development were included in the packet. As a point of clarification, this has been reviewed and approved by the Design Review Board; however, they don't have authority to grant any exceptions.

Mr. Paulson clarified that the jurisdiction of the BoA ends at the lot line; the BoA can grant exception to build up to the lot line, but not beyond. The Design Review Board was the aesthetic and architectural review of the design without regard to impact on setbacks or intrusion into right-of-way.

Ms. Kilner acknowledged that there is not much to do because they need to go beyond the lot line. Mr. Paulson stated that they still need special exception to get up to the lot line from the BoA. Grandfathered into the fact that you are already within 3' of the lot line, but to go further into the lot line would require a special exception. Attorney Bayer noted that if there was any way that the design would not require going 1-1/2' into the public right-of-way that that might help their request. Mr. Paulson clarified that they would still need the special exception to get "up to" the lot line which is the request today and BoA can grant. So for the record, what specifically is being proposed to go at least "up to" the lot line?

Mr. Ramesh Pujara, architect for this project, was sworn in.

Mr. Pujara noted that there are three (3) situations: the west elevation by the beauty salon. When considering the second phase the balcony and architectural façade renovation, they are not moving anything on the west, it is grandfather. On the south face the sidewalk that is over the property is 7'4" and we made it 7'2-1/2" wide; on east face we are not making any changes. This building was built in 1937 and these renovations will definitely make the building look nice. Feels they are meeting all the fire rating requirements. The balcony will be totally noncombustible construction and fire proofed. The

brick arches are more than 3-hour fire rated.

Ms. Tidwall asked when speaking about moving up, the plans indicate that you want to go up to and beyond the lot. Mr. Pujara stated there is no change to the plan. Ms. Tidwall asked where is it that you want to go up to? Mr. Burris directed attention to the survey on page 72 of the packet; it's on an angled street and the fabric awning that rests on the building, they want to build a covered structure off the face of the building. On page 70, the proposed addition on the southwest corner cuts across the property line. When you look at both views (pages 70 and 72), they are coming directly off of the south side of the building which is the front of the building. Mr. Pujara reiterated that the west face will be the same with the new proposed balcony; they will not be encroaching any more than what has been grandfathered. To make any changes to meet with the new requirements would require tearing down the west wall (beauty salon side). Mr. Burns clarified that they would be building towards the parking lot side. Mr. Paulson stated that the balconies extend toward the parking lot, not the back where the residents are. One corner of the balconies is what extends. Mr. Pujara, the west end will be flush with the west wall. Mr. Paulson because of the angle of the street and the angle of lot line it extends into the setback and potential over the lot line. Mr. Pujara the balcony diagonally to reach the setbacks. The southwest corner is cut diagonally, so we proposed that we are willing to cut back the balcony to match the current building lot line to meet the requirements we are discussing. Ms. Tidwall asked if it would then match the legal nonconformance. Mr. Pujara what we have right now with the existing building that is exactly what it would be.

Mr. Burris because it is on an angle street, when you come off the south face, there is a complete encroachment of the full corner of the building that sits entirely in the setback area. As it is proposed one corner will sit entirely in the setback.

Mr. Pujara, they will cutback the balcony so that it will be exactly what the building line is now.

Ms. Tidwall perhaps the plans that were reviewed before could be altered consistent with what was explained. Mr. Pujara noted that this would be a disadvantage from the owner standpoint, the apartment unit on the corner would have a reduced square footage of balcony and the tenant may want to be the same as the other units.

Mr. Tootenhoofd asked about the corner into the 3' setback asked how much does it encroach on the sidewalk area? Mr. Burris noted that it would not go onto the sidewalk, it would be in the public right of way. The property line starts 1-1/2' from the sidewalk.

Mr. Paulson asked for clarification on what exactly is being requested. that they need a special exception and Village Board approval to build into the public right-of-way

Mr. Henrique Guerrero, Construction Maintenance, Karademas Properties, was sworn in. He wanted to clarify that just the little corner on the southwest parking lot is what crosses the property line. That is all that is being requested. They need approval to do it this way because right now the property line falls at an angle and even the sidewalk crosses the property line so that is what the column section of the balcony is going to be seated on.

Attorney Bayer asked if this body grants a special exception that allows you to build to the property line but no further, would that be of any use to you at all? Mr. Guerrero replied no because they would need to cut the balcony at an angle to follow the property line and the owner does not want to cut the balcony because it would change the look. Attorney Bayer noted that they could withdraw and resubmit, but acknowledged that they might want to be able to go to the Village Board to say I have the special exception to build up to the property line now I want to discuss about the overhanging balcony which might be 6' into the right-of-way. Mr. Guerrero noted that it is more than the balcony that will overhang because they now have columns which creates the walkway/breezeway and then the decks for the balconies.

Mr. Paulson stated in order to build the balcony as designed you will be putting a post into the public right-of-way short of the sidewalk (2.7' into the sidewalk).

Mr. Burris directed attention to page 72 of the packet. The west elevation from Wilson Dr. across the face of the building, you can see the covered area and some corner of that will be in the right-of-way.

Mr. Paulson since it is not clear if you are going to ask the Village to go into the right-of-way, but that it may provide you some flexibility if we grant a special exception up to the lot line, it sounds like there is some value to them if the BOA would grant a special exception so you can take time to decide your next steps. Whether to move forward with the Village to ask to go into the right of way or for an easement.

Ms. Kilner noted that the building is extremely ugly, old and has a flat roof. There are 16 studio apartments and the store fronts below. The owner's vision by doing this and not cutting off the balcony, if they must cut it off, they can't go forward and would result in \$8,000 worth of bills and leaks. If they can move forward without cutting off the balcony, the results would be beautiful. Would need a special circumstance.

Mr. Paulson summarized their need: for them to proceed the way they want to they would need both a special exception and Village Board approval to build into the public right-of-way. Therefore, there request for a special exception is still valid and before the BOA to make a decision. It is a necessary step for them to proceed.

Motion

Mr. Paulson moved, seconded by Mr. Tootenhoofd, to grant the request for a special exception for the property at 4600-10 N. Wilson to increase the legal nonconformance of this commercial property up to, but not exceeding, the lot line on the southwest corner of the structure. With all members voting aye, the motion carried 5-0 on a roll call vote. The special exception was granted and you will hear from staff.

13. Adjournment – Ms. Tidwall moved, seconded by Mr. Burns to adjourn at 6:59 p.m. Motion carried 5-0.

Respectfully submitted,

Diane DeWindt-Hall
Deputy Village Clerk