ZONING BOARD OF APPEALS MINUTES OF MARCH 22, 2016

Meeting called to order by Chairperson Gerl at 5:03 p.m. in the 1st Floor Conference Room, Suite 108, City Hall Plaza.

PRESENT: Ed Gerl, Richard Kenyon, Robert Lewerenz, Dean Markwardt and 2nd Alternate Adam Wegner

Excused: Ken Bargender

ALSO PRESENT: Zoning Administrator Schroeder, Bill Schofield, David Johnson, Joe Fonti and Deputy Clerk Panzer

ZB16-05 Motion by Markwardt, second by Lewerenz to approve the minutes of February 9, 2016 as submitted. All Ayes.
Motion carried.

Deputy Clerk read the variance request of Joe Fonti representing the Marshfield Mall, to increase the maximum building coverage of a lot, to allow a building addition located at 503 East Ives Street. Section 18-35(7) states that the maximum building coverage of a lot for nonresidential uses is 40 percent in properties zoned "CMU" Community Mixed Use. The existing development currently exceeds the maximum lot coverage allowance, approximately covering 47 percent of the lot. The proposed addition will increase the lot coverage by approximately 6 percent. This addition would bring the total lot coverage to roughly 53 percent, which would be an approximate variance of 13 percent.

Background
The Marshfield Mall with the address 503 West Ives Street is currently located across three separate parcels: 33-03216BA, 33-03216, and 33-03216C. The exact history of how this structure came to be about at its existing condition being located across three properties is unknown. The ownership of these three properties is made up of multiple parties, which restrict all of the properties from being combined into one lot. Malls 4 U owns the property furthest to the west, parcel 33-03216BA and a group of individuals own the other two parcels, 33-03216 and 33-03216C; however, to add to the confusion Malls 4 U, has a current land lease in place with the group of individuals who own the other two properties giving them rights to the property.

With plans to bring a new tenant into the Mall, the Applicant is currently working on constructing an addition approximately 25,000 square feet near the southeast corner of the Mall site. The location of the addition is proposed to be constructed across two properties, parcels 33-03216 and 33-03216C. In order to meet the standards of the Building Code and the Zoning Code, these two properties must be combined into one lot/tax parcel.

Further reviewing the project, even if the two parcels, 33-03216 and 33-03216C are combined into one lot, the proposed addition would still increase the building lot coverage further past the maximum building lot coverage for the "CMU" Community Mixed Use Zoning District. This leaves the Mall with two options: 1.) Transfer the ownership of all the properties under one party which would allow all three lots to be combined and meet the maximum building lot coverage or 2.) Get a variance to grant a waiver from the maximum building lot coverage requirement.

Analysis
Discussing these options described above, the Applicant has explained that option 1 is simply not possible or at all feasible because they cannot force a group of owners to sell them their property. This leaves us with the second option of requesting a variance to allow the project to move forward.

Section 18-35(7) states that the maximum building coverage of a lot for nonresidential uses is 40 percent in properties zoned "CMU" Community Mixed Use. Viewing the parcels, 33-03216 and 33-03216C, as one lot, the existing development currently exceeds the maximum lot coverage allowance by approximately 7 percent, covering 47 percent of the lot. This makes the existing lot a legal nonconforming situation. The proposed addition would increase the lot coverage by approximately 6 percent, bringing the final lot coverage to roughly 53 percent, which is approximately a 13 percent variance.

Although the proposed development simply cannot meet the zoning code requirements, it can be taken into account that the Marshfield Mall is one site and functions as one development. If we were to take into account the third parcel, 33-03216BA, even though it is technically located on a separate lot, the existing development and proposed development would meet the minimum lot coverage. Using the information provided by the Assessor Department the total area of all three lots is 861,515 square feet. The existing building footprint of the Mall is 282,454 square feet. The proposed addition, per the state approval and the plan set is 25,584 square feet, for a total proposed square footage of 308,038 square feet. Using these figures the Mall site, including all three parcels, has a building coverage of 35.8 percent, which is under the maximum allowable building coverage of 40 percent.

Statement of Facts

1. The subject property is 503 E Ives Street.
2. The Marshfield Mall is currently located across three separate parcels: 33-03216BA, 33-03216, and 33-03216C.
3. The Applicant is Joe Fonti, part owner of Malls4U representing the Marshfield Mall.
4. Mall4U, LLC is the property owner of parcel 33-03216BA.
5. The property owners of parcels 33-03216 and 33-03216C are a group of individuals including:
   a. Ted and Shirley Cichonski – 50%
   b. Anderson Connor – 10%
   c. Thelma Connor – 10%
   d. Kathryn Kent Connor – 10%
   e. Daniel Rupar – 10%
   f. Anderson Connor, Jr. – 10%
6. To meet building and zoning code requirements, parcels 33-03216 and 33-03216C are required to be combined.
7. The existing development already exceeds the 40 percent maximum building lot coverage by approximately 7 percent.
8. The proposed addition will increase the building coverage for this lot by approximately 6 percent, for a total building coverage of 53 percent.

Applicable Ordinance Section(s)

1. Section 18-35(7) requires a maximum building coverage of a lot for nonresidential uses in the "CMU" Community Mixed Use zoning district is 40 percent.

Variance Criteria (Section 18-165(6)(a))

The Zoning Board of Appeals shall review all variance requests against the standards provided under Wisconsin Statutes and applicable case law. To qualify for a variance, an applicant would have the burden of proof to demonstrate that the variance criteria are met. The following are the criteria and the Applicants response:

(How will the variance not be contrary to the public interest?) *"The variance will not harm the public, in fact the variance will serve the best interest of the people of Marshfield. The variance will result in promoting economic growth in the City of Marshfield by adding a national retailer in the Mall."*

(Will substantial justice be done by granting the variance?) *"The granting of the variance will promote substantial justice. Marshfield citizens look at the Mall land and buildings as one shopping complex, the fact that the land is owned by different property owners should not impinge on the best use of this land to increase the square feet of buildings at this Mall complex. The overall Mall complex building currently occupy 30.4% of the land area of the Mall complex and with the proposed 25,000 square foot addition, the buildings would total 33.3% of the land area."*

(Is the variance needed so that the spirit of the ordinance is observed?) *"The Mall buildings are in an unusual placement in relation to the land that is owned by Malls 4 U, LLC and the Ground Lessor's, the Connor's and Cichonski's. This same building configuration has existed since 1979 and since 1979 the Connor's and Cichonski's have owned 11 acres of the Mall complex and various Mall owners have owned the 8.78 acres that make up tax parcel 33-03216BA."*

(Due to special conditions, will a literal enforcement of the provisions of the zoning ordinance result in unnecessary hardship?) *"The ordinance does result in undue hardship to the Mall property owners and will result in land locking the Mall from any further development of the Mall property. The Mall which comprises almost 20 acres could not bring the proposed national retailer that would greatly benefit the Mall and the other stores in the mall. The Mall is viewed as an entire complex and only 33.3% of the land that comprises the Mall complex would be occupied by buildings*

Although making a determination to grant a variance is based on whether it meets all the criteria described under our local ordinance, state statutes, and case law, there are multiple justifications as why the criterion is met: no harm to public interest, viewing the lot as one site meets the intent of the code, the unique property boundaries splitting the building with multiple owners was existing, and there is no reasonable additional uses without such approval.

In addition to the criteria listed above which are stated in our Municipal Zoning Code that reflects Wisconsin State Statute, case law has historically viewed unique property limitations as an additional variance criterion, separate from the hardship requirement. As described above being an existing property splitting the current building with multiple interests could arguably be a unique property limitation specific to this property.

<u>Zoning Board of Appeals Options</u>

1. To grant the variance.
2. To deny the variance.
3. Table the request for further study.

Chairperson Gerl opened the public hearing.

Comments: None

Chairperson Gerl declared the public hearing closed.

ZB16-06 Motion by Lewerenz, second by Kenyon to grant the variance request of Joe Fonti representing the Marshfield Mall, to increase the maximum building coverage of a lot, to allow the building addition located at 503 East Ives Street for the following reasons:

- Granting this variance will result in promoting economic growth for the City of Marshfield.
- Bringing in a national retailer will promote a substantial justice to the Marshfield citizens.
- Nobody knows why the property is split up or why it all got this way, but as long as all parties have long term agreements it should be looked at as one property and that follows the spirt of the ordinance.

The proposed building addition will increase the lot coverage by approximately 6 percent. This addition would bring the total lot coverage to roughly 53 percent, which would be an approximate variance of 13 percent.

All Ayes.
Motion carried

Motion by Kenyon, second by Markwardt to adjourn at 5:34 p.m.
Motion carried

Lori A. Panzer
Deputy City Clerk