

ZONING BOARD OF APPEALS MINUTES OF SEPTEMBER 8, 2015

Meeting called to order by Chairperson Gerl at 5:00 p.m. in the 1st Floor Conference Room, Suite 108, City Hall Plaza.

ROLL CALL:

PRESENT: Ken Bargender, Ed Gerl, Richard Kenyon, Robert Lewerenz, Dean Markwardt, 1st Alternate Todd Zieglmeier and 2nd Alternate Adam Wegner

ALSO PRESENT: Zoning Administrator Schroeder, City Attorney Wolfgram, Mayor Meyer, Planning and Economic Development Director Angell, Building Services Supervisor Pokorny, City Administrator Barg, Tim Feeley, Chris Richardson, Layton Anderson, Eric LeJeune, Dan Kirschnik, Jim Colburn, Teresa Derfus, Daniel Ramsey, Donald Schreiber, Narayana Murali, Susan Turney, Jerard Jensen and Deputy Clerk Panzer

Mayor Meyer by duty of statute appointed Ed Gerl as Chairman for the Zoning Board of Appeals at the Common Council meeting of April 21, 2015.

ZB15-01 Motion by Gerl, second by Kenyon to move agenda item #3, Election of Vice Chairman down to follow agenda item #5, Appeal by Ministry Health Care, Inc. and Saint Joseph's Hospital of Marshfield, Inc. All Ayes.

Motion carried

ZB15-02 Motion by Markwardt, second by Bargender to approve the minutes of October 14, 2014 as submitted. All Ayes.

Motion carried.

Deputy Clerk read the appeal of Ministry Health Care, Inc. and Saint Joseph's Hospital of Marshfield, Inc. appealing a code interpretation by the City of Marshfield Zoning Administrator that prior to issuing building permits to Marshfield Clinic to remodel the 2nd and 4th floor of the East Wing located at 1001 North Oak Avenue, Marshfield Clinic should have received a conditional use permit. The Appellant references Section 18-166 which states "Development in the Absence or Expiration of a Campus Master Plan: In the absence of an approved CMP [Campus Master Plan], or within an expired CMP, any development within the Campus Development zoning district shall be regulated as a conditional use." The Appellant believes that because no Campus Master Plan exists, the zoning interpretation to not require a conditional use permit and issue the building permits was contrary to the City's Ordinance, Wisconsin Statutes Chapters 62 and 68 and the City's interpretation also violates the Appellants' constitutional rights to substantive due process and equal protection.

General Zoning Background

On January 1, 2013 the City of Marshfield repealed and replaced the City of Marshfield Zoning Code, which is Chapter 18 of the Municipal Code, and all of the zoning classifications. With completely new zoning classifications or districts, the City also needed to conduct a City wide rezoning. One of the new zoning districts that were adopted was "CD" Campus Development. The intent of this district is to recognize the presence of large scale facilities that may be made up of several properties and often times multiple owners that all share a similar use. A group of these properties is viewed by the City as a "Campus".

There are currently four campuses that are recognized by the City of Marshfield. The Airport Campus, the Fairgrounds Campus – *made up of the City owned and Central Wisconsin State Fair Association owned properties*, the Educational Campus – *made up of the UW-Marshfield/Wood County and Mid-State Technical College*, and the Medical Campus – *made up of Ministry Saint Joseph's Hospital and Marshfield Clinic*.

In addition to recognizing the presence of a large scale facility, the “CD” Campus Development district is also intended to coordinate the growth of these campuses with surrounding neighborhoods and community as a whole, recognize the sharing of resources between properties, balance the ability for a campus to evolve and the public benefit associated with such development, and also encourage the preparation and adoption of Campus Master Plan.

A Campus Master Plan is basically to establish full conforming zoning status to the campus, facilitate predictable campus development, and enable nearby property owners, residents and the community to understand short-term development proposals, impacts and mitigation strategies within the context of long-term development possibilities.

Of these four campuses, the Airport is the only campus that has an approved and adopted Campus Master Plan.

Analysis

Marshfield Clinic applied for two separate building permits earlier this summer for interior remodels of the 2nd and 4th floor in the East Wing located at 1001 North Oak Avenue. Because the proposed remodels were existing land uses, “large scale indoor institutional”, and because the remodels did not expand the facility or require additional parking, staff did not require conditional use permit.

The City of Marshfield Zoning Code addresses the “CD” Campus Development zoning district twice in the code. The first is under Section 18-42, the “Campus Development Zoning District” and the second is under Section 18-166, the “Process to Establish Campus Development Zoning.” Once under each said Section, the Zoning Code refers to development within the Campus Development district, prior to Campus adopting a Campus Master Plan as described as follows:

- *Section 18-42(4) of the Zoning Code states “Interim Campus Development Zoning. The following shall apply to properties zoned Campus Development prior to the adoption of a Campus Master Plan.*
 - (a) All existing land uses, structures, paved areas, and lots are legal conforming, consistent with Article V.*
 - (b) All future land uses, structures, and paved areas shall be regulated as conditional uses per the requirements of Section 18-161.*
 - (c) All future development is exempt from the requirements of Section 18-114 Group and Large Developments.”*
- *Section 18-166(3) of the Zoning Code states “Development in the Absence or Expiration of a Campus Master Plan: In the absence of an approved CMP, or within an expired CMP, any development within the Campus Development zoning district shall be regulated as a conditional use.”*

The Appellant appeal references the second bullet point above, Section 18-166(3) which states “any development within the Campus Development zoning district shall be regulated as a conditional use” prior to the adoption of a Campus Master Plan. As described in the Appellants appeal, Ministry feels that by not requiring a conditional use permit that this Section in the Zoning Code was misinterpreted by the Zoning Administrator and therefore the building permit for the remodel work for Marshfield Clinic should not have been granted.

The interpretation by the Zoning Administrator to not require a conditional use permit for the interior remodel of the 2nd and 4th floor of the Marshfield Clinic East Wing was based on Section 18-42(4)(a) which states prior to a Campus Master Plan, all existing land uses, structures, paved areas, and lots are legal conforming. The interior remodels were not a change in land uses by our Zoning Code, there were no structural additions to the building, and it did not affect the required parking for the facility. Staff has continuously interpreted the code to mean physical structural expansions or changes in land use. For example a change in land use would be

converting a clinic or large scale indoor institutional use to a car dealership or a manufacturing facility.

According to the Assessor's records, since the adoption of the new zoning code in 2013, the East Wing property (parcel 33-03233) has had 7 interior remodel permits and 2 heating permits. The primary property owned by the Appellant (parcel 33-03228) has had 10 interior remodel permits, 8 heating permits, and 1 roofing permit since the adoption of the current Zoning Code. If these interior remodels and other improvements were considered "development" by the Appellants definition, all of these permits should have gotten approval from the City Plan Commission and Common Council through a resolution.

In addition, the intent of the district is to facilitate large scale facilities and coordinate their futures with the surrounding neighborhood and community. Staff believes that without a change in land use, no structural additions, and no additional needs for parking that the surrounding physical neighborhood would not be affected except during the temporary reconstruction of these floors.

Statement of Facts

1. The aggrieved and interested persons or the Appellant is Ministry Health Care, Inc. and Saint Joseph's Hospital of Marshfield, Inc.
2. The Appellant is appealing the interpretation of the Zoning Administrator to not require a conditional use prior to approval of the building permits for Marshfield Clinic.
3. The subject property is located at 1001 North Oak Avenue.
4. This property is zoned "CD" Campus Development District.
5. The Appellant is located within the same Medical Campus as the Marshfield Clinic.
6. The Marshfield Clinic does not have and has never had an approved Campus Master Plan.

Applicable Ordinance Section(s)

1. Section 18-42(1) of the Municipal Code states "Intent [of the "CD" Campus Development Zoning District]. This district is intended to recognize the presence and importance of large-scale governmental, office, educational, medical, and research and development facilities in the City; to facilitate their development; and to coordinate their futures with those of their neighbors and the community as a whole. This district is also intended to:
 - a. Permit appropriate campus growth, while minimizing adverse impacts associated with modifications, infill development, and/or expansion;
 - b. Recognize the sharing of parking, green space, and other efficiencies that come with integrated campus planning and development;
 - c. Balance the ability of a campus to evolve and the public benefits associated with such development, with the need to protect the livability and vitality of nearby properties and neighborhoods; and,
 - d. Encourage the preparation of campus master plans that establish full conforming zoning status, facilitate predictable campus development, and enable nearby property owners, residents and the community to understand short-term development proposals, impacts and mitigation strategies within the context of long-term development possibilities."
2. Section 18-42(2) of the Municipal Code states "See Section 18-166 for the process to establish Campus Development Zoning."

3. Section 18-42(4) of the Municipal Code states “Interim Campus Development Zoning. The following shall apply to properties zoned Campus Development prior to the adoption of a Campus Master Plan.
 - a. All existing land uses, structures, paved areas, and lots are legal conforming, consistent with Article V.
 - b. All future land uses, structures, and paved areas shall be regulated as conditional uses per the requirements of Section 18-161.
 - c. All future development is exempt from the requirements of Section 18-114 Group and Large Developments.”
4. Section 18-166(3) of the Municipal Code states “Development in the Absence or Expiration of a Campus Master Plan: In the absence of an approved CMP, or within an expired CMP, any development within the Campus Development zoning district shall be regulated as a conditional use.”

Zoning Board of Appeals Options

The Zoning Board can make one of the following determinations and must include the grounds of the determination:

1. Affirm the Zoning Administrator’s decision, with any exceptions, conditions, or modifications, based on findings and justification of the Zoning Board.
2. Reverse the decision of the Zoning Administrator, based in findings and justification of the Zoning Board.
3. Table the request for further study.

Tim Feeley, representative for Ministry Health Care and Saint Joseph’s Hospital presented the appellants’ case.

Ministry Health Care and Saint Joseph’s Hospital’s two main arguments:

- The Zoning Administrator did not construe the new construction occurring at the Marshfield Clinic as a development as it is stated in 18-166. We believe the language of 18-166 is clear and unambiguous and should have been applied as written, not how it was interpreted but what the language says.
- To the extent that it is being interpreted; otherwise we believe it is unconstitutionally vague. The language used in the code is “*any development*”. “*Any*” means “*all*”. Outside of those two words there is no definition of what development means. It could be construed or interpreted to mean a new use, not a new use, an existing structure, a new structure. He believes the Wisconsin Supreme Court would hold that this language is vague per some of the decisions that they have made. An ordinance just like a statute that is passed by our legislature or even the federal government has to provide criteria to be applied in interpreting and or applying to that ordinance. By just saying new development and leaving that up to the discretion of the Zoning Administrator is unconstitutionally vague if the language isn’t clear.

Tim Feeley referred to Section 18-166 of the Municipal Code. Subsection 3 of Section 18-166 is very clear; that in the absence of a Campus Master Plan, the ordinance says any development shall be regulated as a conditional use. Wisconsin Law states that when you are applying the language of a law, a statute, an ordinance; if the language is clear and unambiguous it is improper to resort to anything other than the dictionary to get the plain meaning of the word. “Any” is basically defined as “all” in any dictionary and Merriam-Webster’s dictionary defines development as: the act or process of growing or causing something to grow or become larger or more advanced, the act or process of creating something over a period of time, or the state of being created or made more advanced. We believe that under any of those definitions of the word “development” the construction that is occurring on the second and fourth floor with respect to the skilled nursing beds and/or the acute care inpatient beds meet the definition of what would be defined as the development. So we believe that applying the language as written meaning any development in the absence of

a Campus Master Plan shall be regulated by conditional use, and that a conditional use permit application and the conditional use process should have been followed other than just issuing a building permit that gave the public no opportunity for any input.

First, Section 18-42, the general ordinance that describes what a Campus Development district is; says all existing land uses, existing structures, paved areas, and lots that are preexisting as of the date that the ordinance is enacted and we believe that it is an error to construe that language to mean that it is consistent with what a development is. Part of the Zoning Administrator's argument is that because 18-42 refers to existing structures, existing paved areas, existing land uses; we can assume that when 18-166 talks about any development it means something other than those existing uses and paved areas and what not. We believe that is an erroneous conclusion because throughout the ordinance when the Common Council enacted and adopted the ordinance it used both those examples; existing uses, paved areas, and lots. It also used in other places the word development. A good example, is 18-42 (4)(c). If the Zoning Administrator relies on Section 18-42 (4)(a) all existing land uses, structures, paved areas, and lots are legal conforming, consistent with Article V as of the date of the enactment of the new ordinance; in subsection c, the Council adopted language in that same section that used even broader terminology. It says all future development. So if it meant all future development was supposed to be the same thing as future uses, structures, and paved areas it would have used the same language. There would have been no reason for the Council to enact language. The word development which is much broader than just saying existing uses, paved areas, land uses and lots. It didn't do that. Wisconsin law would say we have to presume the Council knew what it was doing when it enacted the ordinance and when it used the language that it did for a reason. And we think it did so for a reason. We believe the Council used development in 18-166 for the specific reason that they wanted it to be broader.

Second, Section 18-42 is a general ordinance. It sets forth the general requirements; what a Campus Development District is and what type of uses are permitted in that specific zoning district as opposed to 18-166 which is much more specific, much more in depth, that specifically goes through the process that an applicant is required to follow to get Campus Master Plan approval; everything that needs to be submitted, the conditional use process, the public hearing process that occurs before the plan is adopted; and he believes that the law in Wisconsin is that when you are looking at two different laws the more specific controls over the general. Section 18-166 is much more specific, it uses the broader terminology which we have to presume the Council knew what it was doing when it picked the language that it did and 18-166 (3) says in the absence of an approved Campus Master Plan any development shall be regulated by a conditional use.

Third, with respect to the same argument, under the interpretation of the Zoning Administrator and the definition; this is a new way of use. This is a new, separate use that pre-exists the adoption of the ordinance. It requires new state licensing. It is not a use that occurred on that campus prior to this date. For the same reason that we believe that if we were building a medical clinic on our property in an existing building, or a daycare center or a CBRF if we wanted to develop a new model even though it would be within the existing four walls, we would fully expect the City to require a conditional use permit. Why is that? Because, when you look at the whole Campus Master Plan and the intent of that ordinance; first of all we know the City encourages the plan, and you can't make somebody within the zoning district adopt a plan. You encourage it and when a plan is adopted, you go through a process that requires staff review, Zoning Administrator review, Plan Commission review and Plan Commission approval, public hearings and then finally review and adoption by the Common Council. After that lengthy process, there is an expedited process as long as the development that you propose is consistent with the Master Plan that was passed and approved by the Common Council. He believes that the City used the words "new development" in 18-166, because one of the stated intents of the ordinance is that you want to balance the expansion of the proposed business with consistency with public benefits and neighbors. That is one of the stated intents of the ordinance. How do you do that if the public doesn't get any input into the process and you just issue a building permit? If there is a radiation vault going into that building the people that live around that area are going to want to know about that. By just issuing the building permit, public gets no input into the process. In fact, similar to Ministry, we found out about it after the fact as well. We didn't have any notice of it either. He believes that is the reason why the Council included the language "any development"

in 18-166, because whether you went through the Campus Master Plan process and all those steps which included the conditional use, public hearings, public hearing before the Council or you don't have a Campus Master Plan, you have to go through the conditional use process. The ordinance says in which case you get public input on both ends. He believes that is important, because it is consistent with the language and intent of the ordinance and specifically the zoning description.

The other argument that we have with respect to the interpretation by the Zoning Administrator is that we believe the ordinance is unconstitutionally vague in the manner in which it is being applied if you believe development means something or whatever it means to the Zoning Administrator. Under Wisconsin law, when there is a standard set forth in an ordinance; courts have found the ordinance unconstitutional if it doesn't provide a guiding criteria to the Administrator or public officials that apply the ordinance and courts require that. The issue isn't whether or not it has been consistently applied or it hasn't been consistently applied, but the way the ordinance is written. It could be applied based on the discretion of whoever happens to interpret it at any given time. The next Zoning Administrator looking at that language which simply says any development could construe that to not apply to new construction, to construction outside of the existing walls, to any new uses. You could just as easily apply the language as it is written in that ordinance to come to an opposite result than the Zoning Administrator did in this case and why is that? Because again if the Council would have said any development except existing uses, except existing paved areas, except existing lots, except existing medical uses, then there would have been standards with respect to okay what does that mean; development. Does it mean new or does it mean not new? Does it mean outside walls or does it mean new walls? Does it mean a medical use or can it be any use as long as it is consistent with the theme of the campus? Outside of standards like that it can be applied different ways by different people depending on how their discretion is exercised and that is the definition of unconstitutionally vague. Ministry just applied for and is going through the application process now for an additional mobile imaging dock on its campus. It already has that use. It will require an expansion to part of the building, but the use is already in existence. We are just adding another dock. We could just as easily look at that ordinance and say no conditional use permit should be required. But it is being required and we understand that and we are complying with that process. But in the way that it gives discretion to the Zoning Administrator it can be applied discriminatorily and again that is the definition of a law that is unconstitutionally vague.

Tim Feeley distributed a handout with two court cases. Humble Oil case by the Wisconsin Supreme Court and the Guse case by the Wisconsin Court of Appeals both of which he believes make pretty clear that under the analysis of the courts in those cases this ordinance too would be found unconstitutionally vague if it is going to be continued to be applied in the manner that it has been to date.

We believe this is a new use and a conditional use permit should still have been required.

Chris Richardson, Architect with FreemanWhite, said he has been working in hospitals and healthcare for 35 years and FreemanWhite was asked to review this situation in terms of what is being done and make comment on it based on whether we saw it as a substantially different use. Currently, the second and fourth floors are being used as outpatient facilities and that is substantially different in our view in all practices of healthcare from using them as any kind of inpatient facility whether it is skilled nursing or whether it is acute care.

Chris Richardson distributed some of the plans and explained that the work being done is what is called a gut and renovate. Everything is really being removed within the framework of the building itself and being rebuilt, so essentially the only thing that is not being reconfigured is the exterior walls. The fourth floor is going to be identified as skilled nursing and an interesting aspect of that is that one of the functions that is not currently in the building today is a dietary kitchen to provide food service for inpatients which is of course a new use. This actually adds that function to the building. The requirements for supporting inpatients are much different than outpatients. There are different codes, different statutes, and different levels of safety that are required. There are different staffing requirements and certainly different licensure on the part of the State. He gave an example of converting a daycare or day school to a boarding school. There is a substantial difference in the level of

safety and support and the kind of construction too. In this situation, we are going from an area ambulatory standard where the occupants are assumed to have more or less the ability to save themselves or exit themselves from the facility. When you go into a skilled nursing or acute care the occupants are assumed to require the assistance of the staff to save themselves. They are assumed to be incapacitated according to codes, so from that standpoint, as healthcare architects we see that there is a substantial difference in use whether that qualifies as a new development; that is something the Board of Appeals needs to determine and decide in terms of agreeing with the law and of the codes, but we certainly see this as a substantially different use in terms of how the building is going to function.

Tim Freely emphasized that the acute care beds for all practical purposes are inpatient hospital beds, so the second floor will in effect need to be approved as a hospital. The Clinic has never had a hospital on campus. The fourth floor will need to be licensed separately by the State of Wisconsin as well as the skilled nursing facility. The Clinic has never had a skilled nursing facility on their property. To say these are not new uses or even more significant not a development, something that is being created is inconsistent with the City's ordinance.

Kenyon asked if the campus designation for Ministry Health Care and the Marshfield Clinic was considered a medical complex as far as the zoning goes.

Zoning Administrator Schroeder said normally it would be looked at as one campus similar to the Fairgrounds how there are different entities. We look at it as one full campus. Up until recently, both parties have always kind of gotten along. He is not sure how we would look at a campus moving forward. He wasn't around to write the code, but he believes the intent of it was for the two parties to develop a Campus Master Plan together.

Markwardt asked if it was the expectation that Ministry Health Care and the Marshfield Clinic would develop a common campus development master plan or would they each develop their own master plans that would exist side by side.

Planning and Economic Development Director Angell said at the time in which we were rewriting the zoning code and we were looking at the Campus Master Plan, we were looking at it as a Medical Campus (two entities, one campus with common services). It was at that time that we were hopeful that the two could come together and develop one master plan based upon infrastructure, traffic flow and all of that in that area however; we also recognized that we couldn't require them to come together so they could still submit separate campus plans for the properties in which they control in that general area thereby even though it is a campus zoning district each entity could develop their own separate plan and still move forward that way.

Lewerenz asked Chris Richardson if the construction of the building would have to be any different than it is now for the purpose of acute care under the class it is currently designated as.

Chris Richardson said he doesn't have personal knowledge of how the building was constructed. We do understand in talking with the folks with Saint Joseph's Hospital that they understand the building was built to accommodate hospital or institutional occupancy. What we don't have is the original life safety plans that indicate what classification it was originally constructed as in terms of the occupant, so it could be retrofitted to accommodate the requirements for institutional or a hospital but it would definitely require additional costs because then essentially if it was built at all to hospital grade initially and it was classified as a clinic that would affect the cost of all your receptacles, switches and the way you wire things.

Lewerenz said the cost would be up to them. The fact is that the building probably is useable for the use.

Chris Richardson said yes, it could be.

Dan Kirschnik from Marshfield Clinic, Assistant Legal Counsel said the Clinic was built to hospital standards.

Chairperson Gerl asked Zoning Administrator Schroeder how he determined or decided the work being done for both parties with the prior permits that were issued needed just building permits and not conditional uses.

Zoning Administrator Schroeder explained that in the instance of the mobile tech docking example that Tim Feeley brought up, that was an additional structure that increased the footprint of that building. It decreased the setback from the property line. That type of permit would have to get a conditional use. This remodel was obviously at a larger scale of an entire floor, but it could be argued that to their definition; development could mean hanging a coat rack up in a room or just repainting one room. He still doesn't think it was the intent of the code as it is interpreted to require all those things to come back for a conditional use permit.

Kenyon stated that the Zoning Administrator gave the hospital ten interior permits, eight heating permits and one roofing permit without conditional use. He asked Tim Feeley if he believed that he was wrong in not doing a point of order and demanding a conditional use for the hospital's 19 permits. And the clinic had seven interior permits and two heating permits and you didn't cry boo on those. So are you saying that any development means any and every improvement; is that basically your argument?

Tim Feeley said that is true and that is a very good point. He believes there were things that were done on both sides that applying the ordinance as written should have required a conditional use. If you take the interpretation that the Zoning Administrator has with respect to existing land uses, I can probably guarantee that every one of those whatever they were heating permits or application permits didn't involve a new use. The hospital didn't build a clinic. The hospital didn't build anything that required state approval or that required additional or separate state licensing or that was something that didn't exist on that campus before. That is different than what we are talking about today. The Zoning Administrator made the best point in terms of our argument in saying that construing our definition of development could mean hanging a coat rack or painting the walls and that actually is the just of the whole issue. The ordinance doesn't provide any guidance as to what is development that should be excluded from the conditional use permit process and what should not. It could have been handled to be clear so that whether Sam Schroeder interprets it or ten years down the road there is another Zoning Administrator or whatever the future holds. The language isn't written in a manner that it is going to guarantee consistently, because whoever interprets that language can interpret it different because there is no criteria to apply in terms of what is a development. It says any development and to me that seems pretty clear. Any means all. Development means something that wasn't there before. Did we do wrong in the past or did the clinic do wrong in the past? Maybe, nobody challenged it. Theoretically, the way the ordinance is written this is what it means and this is how it should be applied.

Markwardt asked what the Clinic's Mission Statement was.

Susan Turney, CEO for Marshfield Clinic Health System, said the Clinic's purpose really is to serve our communities for generations and to be innovative in care that will be provided at a lower cost. We are here to enrich lives. We are very committed to this community. We are celebrating our 100th birthday and we have most of our assets for the whole system in the City of Marshfield. We are here to stay. We have made that commitment to the community. We have met with the community leaders on multiple occasions to express that in great detail. We hope that we can move through this process and get a satisfactory outcome because we would be very disappointed if we could not move forward with our plans as we have outlined them to the City. It is very important that we move fast on our timeline, because right now we have situations where our patients could potentially be at risk for care in this community.

Dan Kirschnik from Marshfield Clinic said he believes the City did get it right in how they interpreted the zoning ordinance. This isn't a new development and he believes that is demonstrated by the fact that the building is not expanding in any fashion and parking is not expanding in any fashion. The use within the building is remaining the same as it was before we applied for these building permits. We applied for these building permits in good faith. The goal in applying for these permits and moving forward with this

construction work is really to lower the cost of care while improving quality of care. That is what this is geared towards. The appellants talk about acute care and skilled nursing facility and yes those are the proposed uses that we are talking about but those are also uses that have been in existence within this building for as long as construction last occurred. We have acute care that has been provided in the past on the first floor of this facility. All we will be doing is providing acute care on a different floor of this facility. Relative to the skilled nursing facility, you are talking about rehabilitative care, recovery care. We already do that. That is a service provided within this structure, so it is not changing. The appellant also brought up the fact that state licensing is required for the skilled nursing facility as well as the acute care on the second floor. That is true. There are regulations that come into play but they are not relevant to what we are doing from a land use perspective in that building and we will deal with those regulations appropriately. There is no impact on the neighbors and what we decide to do within the building relative to the allowed and permitted use within that building is really our own business.

Bargender asked what the criteria is in the City of Marshfield to obtain a conditional use permit and what the definition of a condition use permit is.

Zoning Administrator Schroeder said the purpose of the conditional use procedure is to provide regulations which govern the procedure and requirements for the review and approval or denial of the proposed conditional use permit.

Planning and Economic Development Director Angell said that is a long section of the code. Is your question specifically who can apply? When do they apply?

Bargender asked for the definition of a conditional use permit.

Zoning Administrator Schroeder said a conditional use is a development in which would not generally be appropriate within the district that might be allowed in certain locations within the district if specific requirements are met. He referenced Section 18-161 (6) and listed the criteria that he uses to review conditional use applications:

- Is it in harmony with the recommendations of the Comprehensive Plan?
- Will it result in substantial or undue adverse impact on nearby properties, character of the neighborhood?
- Maintains a desired consistency of land uses, land use intensity. The land use impacts as relevant to the environs of the subject property.
- Located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities or services.
- The potential public benefit outweighs any and all potential adverse impacts of the proposed conditional use.

Zoning Administrator Schroeder said it is up to the Plan commission to approve or deny a conditional use request.

Markwardt felt the need for a conditional use permit has to do with exterior alterations or additions to an existing building. It also has to do with a drastic alteration of the use of the building which is what is Mr. Feeley implied by suggesting that, but that isn't the fact of the case. So far the proposal doesn't seem to have anything to do with the exterior impact because there are no significant exterior changes being made. The footprint is the same. Apparently the entrances, exits and parking will remain the same, which is why the Zoning Administrator entered the conclusion that he did. The only thing that was raised during Mr. Feeley's comments that caused me some concern was something about a radiation vault which if there is one that would be a part of the altered use of the facility and might mean some sort of exposure to neighbors. Is there some concern about leaking radiation perhaps from this new facility?

Jim Colburn, Director of Facilities and Property for the Marshfield Clinic said there is no radiation producing devices in the remodeling. It is all inpatient care. It is beds and support for those beds. No diagnostic or treatment facilities.

Markwardt said he looked up the description of the Zoning Board of Appeals as it exists in our new code and it reads in Section 18-156 (7) the concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination for which an appeal has been requested. He asked for some clarification of that.

Zoning Administrator Schroeder said he did review that and ran it by our City Attorney and we would need four out of five votes to reverse the interpretation.

Chairperson Gerl declared the public hearing closed.

Deliberations were held.

ZB15-03 Motion by Markwardt, second by Kenyon to deny the appeal of Ministry Health Care, Inc. and Saint Joseph's Hospital of Marshfield, Inc., based on the following findings of fact:

1. The decision that was made by City staff was appropriate given that the development that is being done in no way will impact negatively the neighborhood or the community.
2. There is not a significant change in use of the facility in question. The use continues to be health care and in a broad sense that is exactly what it will continue to be used for.

All Ayes.

Motion carried

Chairperson Gerl asked for nominations for Vice Chairman.

Rich Kenyon nominated Robert Lewerenz.

ZB15-04 Motion by Bargender, second by Markwardt to close nominations. All Ayes.

Motion carried

Chairperson Gerl declared nominations closed.

ZB15-05 Motion by Bargender, second by Gerl to elect Robert Lewerenz as Vice Chairman. All Ayes.

Motion carried

Motion by Kenyon, second by Lewerenz to adjourn at 6:08 p.m.

Motion carried

Lori A. Panzer
Deputy City Clerk