

Oneida County Board of Adjustment
March 8, 2016
9:00 a.m.
County Board Room, Second Floor
Oneida County Courthouse, Rhinelander WI 54501

Chairman Harland Lee called the meeting to order at 9:00 a.m. in accordance with the Wisconsin Open Meeting Law. We are in the Oneida County Courthouse, the County Board Room to hear Appeal #15-011 of Marshfield Clinic. The meeting has been properly posted in accordance with the Wisconsin Open Meeting Laws and we are handicapped accessible.

Approve the agenda. Motion by Guy Hansen, second by Bob Rossi to approve the agenda as posted. With all members present voting “aye”, the motion carried.

Chairman Lee introduced the members of the Board of Adjustment, Attorney Koopman and Julie Petraitis to the audience.

Other County staff present: Karl Jennrich, Zoning Director and Brian Desmond, Corporation Counsel.

Guests present: See Sign in sheet

Chairman Harland Lee stated that this is a public hearing and will be held in accordance with Wisconsin open meeting law and will be tape-recorded and sworn testimony will be transcribed. This is an administrative hearing and is not a judicial proceeding; therefore, the rules of civil procedure and evidence are not of concern to the Board. Witnesses are not sequestered and there is no cross-examination.

Secretary Phil Albert read the notice of public hearing for Appeal No. 15-011 of Marshfield Clinic, owners, to appeal the denial of a Conditional Use Permit for the addition to an existing building for a 12-bed skilled nursing facility. The property is located at 9601 Townline Road, further described as part NW NW, Section 11, T39N, R6E, PIN MI 2173, Town of Minocqua, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on February 23 and March 1, 2016; and was posted on the Oneida County Courthouse bulletin board on February 16, 2016. Mr. Albert provided the proof of publication; and noted that the media was properly notified.

The Oneida County Board of Adjustment Rules of Procedure, Section 178.05(12), Chapter 17, Oneida County Code of Ordinance, provide that a timely appeal shall stay all proceedings and furtherance of the action appealed from, unless such stay would cause imminent peril to life or property.

The Board of Adjustment will conduct an onsite inspection of the property involved in this appeal beginning at approximately 10 am on March 7, 2016. Pertinent property boundaries

and locations of existing and proposed structures shall be clearly identified. A representative or the appellant must be present. The inspection shall be open to the public.

Copies of appeals and related documents are available for public inspection during normal business hours at the Planning and Zoning Office, Oneida County Courthouse, Rhinelander, WI 54501. The Oneida County Zoning and Shoreland Protection Ordinance is available on the Internet at <http://ww.co.oneida.wi.gov/>.

Secretary Albert stated that all media outlets were notified of the public hearing and the onsite inspection was conducted at approximately 10:00 – 10:20 a.m. on March 7, 2016 at the proposed nursing facility site located at the rear parking lot of the existing Minocqua Marshfield Clinic.

Secretary Albert stated that in terms of observation the property boundaries were adequately marked by cones. The site visit summary and pictures of the proposed site are provided as Exhibit A. An overhead site map provided by Duke Cook of Marshfield Clinic building services, shows a shadow of the proposed facility.

Motion by Phil Albert, second by Guy Hansen that all documents received by members of the Oneida County Board of Adjustment be made part of the record for Appeal #15-011, of Marshfield Clinic, to include but not limited to position papers and rebuttals submitted by both Marshfield Clinic and Howard Young Ministry Center; documents generated by Oneida County Planning and Zoning Committee and general Counsel; all letters from private citizens, pro or con, to the requested CUP and all documents generated by Attorney Koopman to include listings of case law cited by the various interested parties. With all members present voting “aye”, the motion carried.

Chairman Lee stated that the procedure for the hearing will be first hearing the Appellant’s side (Marshfield Clinic), second will be the opposition side (Howard Young Medical Clinic and Oneida County). Following that there will be public testimony. Following that will be the Appellant’s rebuttal and then the opposition’s rebuttals and finally the Appellant’s closing statement. The hearing will then be closed to any further testimony. The Board will then go into discussion and decide the outcome. A roll call vote will be made on the decision. Following that another motion will be made to provide time for the printed decision to be done. As you can imagine this is going to be lengthy and it will take extra time to do that so we need to have that motion in effect to provide for that time to get that done. Following that will be a motion to adjourn. Throughout all of this, this is an open public hearing; you can remain after I close the hearing. If you want to leave you can but if you want to stay for the decision you are welcome to do that. With that being said, we will begin with Mr. Kirschnik.

Mr. Kirschnik, representing Marshfield Clinic, gave his opening statement followed by statements by Scott Polenz, Dr. Mike Shars, Dr. Bill Melms, and Dave Kimball, Architect for Marshfield Clinic.

Mr. Feeley, representing Howard Young Medical Center, gave his opening statement followed by statements from Deb Karow and Sandy Anderson.

Brian Desmond, Corporation Counsel for Oneida County gave his opening statements followed by a statement from Zoning Director, Karl Jennrich.

Chairman Lee opened the public portion of the public hearing.

Tom Handrick spoke.

Joe Simonich spoke.

Kevin Krueger spoke.

Mike Gibbons spoke.

12:00 p.m. Chairman Lee called a recess until 1:15 p.m.

1:15 p.m. Chairman Lee reconvened the public hearing.

Scott Polenz began the rebuttal for Marshfield Clinic followed by statements from Mr. Kirschnik, and Dr. Dan Maher.

Sandy Anderson began the rebuttal for Howard Young Medical Center followed by statements from Mr. Feeley.

Mr. Kirschnik gave his closing statements.

Mr. Desmond stated he had no follow-up closing statements and that the County concurs with Mr. Feeley.

Mr. Lee closed the public portion of the public hearing.

The Board discussed the Appeal before them.

Mr. Bloom doesn't feel the CUP application meets Standards one and two of the nine General Standards of approval.

Mr. Hansen agrees with Mr. Bloom.

Mr. Rossi agrees that Standard number one and number two are not met.

Mr. Lee feels the two organizations should work together.

Motion by Phil Albert, second by _____ to deny appeal 15-011 based on not meeting Standard one (1) and two (2) of the nine (9) standards contained in Oneida County Ordinance, Section 9.42 (e).

Mr. Lee ruled the motion out of order and suggested that the Board go through all nine (9) Standards. The Board agreed.

Standards of Approval beginning with number nine (9) to number one (1):

9. Adequate measures have been or will be taken to prevent and control water pollution, including sedimentation, erosion and runoff.

Mr. Bloom: Met

Mr. Hansen: Met with conditions

Mr. Albert: Met

Mr. Lee: Met

Mr. Rossi: Met

8. The conditional use does not violate shoreland or floodplain regulations governing the site.

Mr. Bloom: Met

Mr. Hansen: Met

Mr. Albert: Met

Mr. Lee: Met

Mr. Rossi: Met

7. The conditional use shall conform to all applicable regulations of the district in which it is located.

Mr. Bloom: Met

Mr. Hansen: Met with conditions

Mr. Albert: Met with conditions

Mr. Lee: Met with conditions

Mr. Rossi: Met with conditions

6. Adequate measures have been or will be taken to provide ingress and egress so as to minimize traffic congestion in the public streets.

Mr. Bloom: Met

Mr. Hansen: Met

Mr. Albert: Met

Mr. Lee: Met

Mr. Rossi: Met

5. Adequate utilities, access roads, drainage and other necessary site improvements have been or will be provided for the conditional use.

Mr. Bloom: Met
Mr. Hansen: Met
Mr. Albert: Met
Mr. Lee: Met
Mr. Rossi: Met

4. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Mr. Bloom: Met
Mr. Hansen: Met
Mr. Albert: Met
Mr. Lee: Met
Mr. Rossi: Met

3. The proposed conditional use is compatible with the use of adjacent land and any adopted local plans for the area.

Mr. Bloom: Met
Mr. Hansen: Met
Mr. Albert: Met
Mr. Lee: Met
Mr. Rossi: Met

2. The uses, values and enjoyment of neighboring property shall not be substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.

Mr. Bloom: Not met because if it was to go through it will affect/diminish the value of neighboring property, namely Howard Young.

Mr. Hansen: Agreed

Mr. Albert: Not met based on any business or businesses that have been evaluated in the past the operating revenue, when you're considering the appraisal of a property the operating revenue is typically a significant factor in any multiplier that you use to evaluate the business. As I would see it if there is diminished revenue by Howard Young and the Hospital that can affect the, in a foreseeable manner, it will impair or diminish the value of that property.

Mr. Lee: So you say that it is not met.

Mr. Albert: Correct.

Mr. Lee: I guess in my view I'm not sure, I look at this as neighboring property meaning the homes and so forth in the area and whatever value they have lost because the Clinic has been built there years ago has already been established. I guess I would feel that it was met.

Mr. Rossi: Not met for some of the other reasons but it also would affect neighboring residences if that folded. A lot of people moved up there because there is a facility for health care that is immediately in their neighborhood and that is why a lot of them bought up there. I say it's not met.

Mr. Lee: Okay. We have a four (4) to one (1) and the "not met's" have it. Now we are on to the final one. I would indicate we're ready for your motion if you want to make it.

1. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

Mr. Bloom: Not met for previous stated reasons.

Mr. Hansen: Not met.

Mr. Albert: Not met based on the General Welfare of the Community.

Mr. Lee: I agree that it is not met, also and I think this is supported by all of the testimony that we have and some of the cases that we have reviewed, legal cases, and I think the supporting documentation is there so I feel that it was not met.

Mr. Rossi: I also say it is not met.

Motion by Phil Albert, second by Bob Rossi to have the Oneida County Board of Adjustment deny Appeal 15-011 based on not meeting the General Standards one and two of the nine standards contained in the Oneida County Ordinance, Section 9.42 E. On roll call vote: Mr. Rossi, "aye"; Mr. Albert, "aye"; Mr. Hansen, "aye"; Mr. Bloom, "aye"; and Mr. Lee, "aye". The appeal is denied.

Motion by Harland Lee, second by Guy Hansen that the Decision by ready no later than the 21st of March, 2016. With all members present voting "aye", the motion carried.

2:15 p.m. - The meeting was adjourned on a motion by Bob Rossi and second by Guy Hansen; and all members voting aye.