

May 24, 2021

Via email only

Sara Bruckman, Clerk
Village of Shorewood
Nathan Bayer, Attorney
Village of Shorewood
3930 North Murray Avenue
Shorewood, WI 53211

Re: Special Exception Challenge; 2418-2428 East Capitol Drive.

Dear Ms. Bruckman and Attorney Bayer:

Regarding the remand of the Special Exception matter:

1. Plan Commission Remand Hearing – Schedule.

Though Village representatives have needlessly created considerable confusion regarding how and when it will happen, the remand hearing has apparently been set for June 1st. That is far too soon and improper under the Village's ordinances. Moreover, setting a hearing for the day after Memorial Day is an obvious intentional act by the Village designed to minimize resident participation. It is perhaps the worst day to choose for a meeting on a contested controversial matter and contributes to the growing feeling by appellants and many others that the Village leaders and staff have a bias in favor of the project despite its inconsistency with the intent and plain language of the ordinances and Section 535-51 in particular.

There is no reason the special exception being sought should be given favored status by forcing a quick decision on the issue. Especially if it is to the detriment of Village residents being able to form reasonable judgements based on accurate verifiable data provided by the applicant. Information supporting these types of permits must be submitted 4 weeks in advance of the Plan Commission hearing pursuant to the Village's express requirements and practice. Special exceptions are considered conditional uses under statute. *See Wis. Stats. § 62.23(7)(de)* and conditional uses may only be granted after proper review. As explained by the Village Code:

Due to their varying design and operational characteristics, and potentially deleterious neighborhood impact, conditional uses, as identified within

individual zoning districts in the Village Code, ***require a transparent, public review process on a case-by-case basis in order to determine whether or not they will be compatible with surrounding uses and development patterns.***

See Ord. § 535-23(A)

We are asking that the Village reschedule the remand hearing to a date later in June that complies with its own ordinances and state statute.

2. *Plan Commission Remand Hearing – Process.*

The hearing on remand must comport with required due process for all parties involved. Adequate notice and the ability to evaluate and challenge factual assertions is required pursuant to Chap. 7 of the Village ordinances, Chap 68 of the State statutes and applicable law. This is made more important given that the BOA has determined that it does not have the power to conduct a de novo review of Plan Commission determinations.

Given the above, and because we assume that the Applicant may be intending to rely on additional factual information, that information must be submitted 4 weeks before any future Plan Commission meeting and should also be served on undersigned at that time. The neighbors and members of Appellant are entitled to review the information as part of preparing for the remand hearing. Failure to do so precludes submitting new information on the record at the remand hearing. Appellant also must be allowed to ask questions of the Village staff and the Applicant and its representatives. This is a contested matter and should be treated as such.

3. *Recusals.*

It appears that some presumptive/recently seated members of the Plan Commission may have already predetermined their position and how they will vote on the Special Exception. These members must recuse themselves. I trust you are evaluating this, will take the appropriate steps and clearly indicate the basis for your position.

4. *Lack of Notice.*

The Village was required to provide notice of this matter to all property owners within 200 feet of the proposed development. That did not happen and expressly violates Ord. § 535-25 and the spirit and intent of the zoning code. The lack of notice is perhaps the most undermining and problematic issue for many neighbors and members of Appellant. The ordinances require a transparent process and yet the Village is interpreting its own ordinances in a way so as to avoid transparency. The lack of notice in advance of the initial February hearings on this matter voids this current application. The process should be restarted if it is to go forward at all with a proper complete application that provides the information

necessary from the applicant to allow for review of the conditional use/special exception standards in state law and Ord. § 535-51.

5. BOA decision.

Please provide a copy of the written memorialized decision of the BOA. We are also requesting a copy of audio tape of the April 27, 2021 and May 4, 2021 hearings of the BOA. See Ord. § 535-51(E).

Very truly yours,

Electronically signed by Joseph R. Cincotta

Joseph R. Cincotta

Cc: Dan Walsh
Attorney Derek Taylor