



City of Racine

City Hall
730 Washington Ave.
Racine, WI 53403
www.cityofracine.org

Meeting Minutes - Draft

Board of Zoning Appeals

Wednesday, March 24, 2021

5:00 PM

Virtual

Call To Order

Chair Hefel called the meeting to order at 5:06 p.m.

PRESENT - 5: Hefel, Jung, Austin, Peete, and Martinez

EXCUSED - 1: Mason

Approval of Minutes for February 10, 2021 Meeting

A motion was made by Jung, seconded by Peete, to approve the minutes of the February 10, 2021 Meeting. The motion PASSED by a Voice Vote.

PUBLIC HEARING

0213-21

Subject: Consideration of an appeal of the City Engineer's decision related to storm water management as required by Municipal Code Sec. 98-404(a)(2)(b) for a site at 5019 Washington Avenue. The site is proposed to be developed as a Discount Tire Store, and would be built as approved in Common Council Resolution Number 1137-19.

Attachments: [Staff Recommendation](#)
[Applicant Submittal](#)

Pete Eggert, Civil Engineer, introduced the request and explained that the City ordinance states that if a site is developed with one (1) or more acres of land and one (1) or more acres of hard surface, the ordinance requires stormwater management and maintenance. He stated that what is unique about the site is that there was 14,000 square feet that has been paved by others. He stated that the applicant is under the impression that the property does not count towards the acreage, however, the ordinance states that it does. He stated that while the development is only 36,000 square feet, 16,000 square feet was disturbed a couple of years ago that brought the total to more than one (1) acre. He stated that the applicant is appealing that decision and explained the attached memo created by staff.

Jung asked for highlight of the main objections for the application to the main exemptions of the ordinance.

Jeff Hintz, Associate Planner, showed the area of the request and stated the project was approved through a conditional use permit by the Planning Commission and an extension was also granted.

Eggert stated that the site used to be home to the Marcus Movie Theater and the new portion is the Towne Bank. The location of the proposed Discount Tire was also shown.

Eggert explained there was an asphalt driveway that was put in by others, however, per the ordinance, it has to be included on the particular site. He stated it is a unique situation in that a portion of the site was put in by a different party, however, Staff is abiding by the City's ordinance.

Hintz showed the Discount Tire site plan that was approved.

Eggert explained that the reason the code is written the way it is to include the entire development is because if it were not, then developers may develop sites under an acre each time to avoid the requirements.

Chair Hefel asked if the paved portion + the existing driveway = allowed amount of pavement they can have.

Alder Jung asked about the steps to be taken in order to meet the ordinance regarding water runoff and what the recommendation would be to the applicant in order to meet the ordinance requirements. He asked what had been done in the past regarding these types of projects.

Eggert stated that as far as meeting the requirements, the applicant would have to bury a chamber so stormwater would by gravity drop in there and would sit there so the solids filter out and as the chamber would fill it would rise to a certain elevation and fall into the storm sewer. He stated it is the developer's choice how they would like to manage the stormwater, however, this is just an example.

Eggert and Ara Molitor, Engineer, stated that if the development were less than an acre then the developer would not have to do anything.

Chair Hefel asked if it would be possible to modify plans to reduce the amount of pavement at the site.

Eggert stated that is the applicant's decision, but they could possibly reduce parking spaces and put in more green space.

Hintz explained the minimum amount of parking required for the site. He stated some of the parking may be able to be reduced due to the nature of the business.

Chair Hefel opened the public hearing at 5:26 p.m.

Chair Hefel swore in the following speakers for the applicant:

Jeff Yersin, Senior Project Engineer, raSmith.

Yersin described the request and showed the site prior to it being developed. He stated the site was approximately 1.23 acres with 7,200 square feet of greenspace. Yersin showed the proposed site with 8,000 square feet of greenspace and explained that the development would have 700 square feet less of impervious area.

Yersin showed the disturbed area exhibit and stated that when a development is over one (1) acre of disturbed area then that is when municipalities and the Wisconsin

Department of Natural Resources kick in. He showed that the purple area is new disturbance and the areas presented in the greenish blue color is maintenance which is an overlay of the existing site. He explained that the project is not disturbing the soil and there is .27 acres of maintenance and .9 acres of disturbed area which puts the project under the one (1) acre of disturbed area.

Yersin showed the City's ordinance and explained the issue being appealed. He stated that he has done a hundred stormwater reports and wrote Kenosha County's stormwater ordinance. He explained that he feels the Applicability portion – Section 98-404 (a) of the ordinance does not apply to their project. He gave an example of if the project were over an acre, then you would go to section 2 and the exemption requirements. He stated the size of the existing parking lot is being decreased and the City is taking exemption requirement and using it for something that should not be used for.

Yersin explained the exemptions in section 2 and stated they are under one (1) acre of disturbance and that is why they are seeking not to do stormwater management. He stated it is \$100,000 requirement for their client and that the codes are generally written the same way in Southeastern Wisconsin. Yerin explained he spoke to the WDNR and they stated that their project is under an acre so stormwater management is not required.

Chair Hefel swore in Todd Mosher, raSmith.

Mosher stated he represented Discount Tire and that the project has been put off due to COVID and that the plan is to open in the Spring, if possible. He stated that staff is stating their development is over an acre because the disturbance is cumulative per the ordinance, however, nothing to that effect can be found in the City's ordinance. Yersin reviewed the ordinance requirements and feels either they are an acre and apply to section 1 or if they are more than an acre they would be exempt to what it says under 2 a. He stated they would need to review the ordinance to see where it is written that it is a cumulative requirement.

Austin asked about 2.b. – the portion of the ordinance that was highlighted. He stated in total they were more than an acre. When applicant used cumulative that is the word that made sense – 2.b. if it said "cumulatively" over one acre it requires a stormwater drain.

In response to Austin, Yersin stated 2.b. is an exemption requirement – the idea is that you do not have to do stormwater management on a small site on a really big parcel. He stated staff is pulling out a section that he does not believe is the correct usage.

Austin stated if it is exempt if it is less than one acre then the opposite means it is not exempt if greater than one acre.

Mosher stated everything under section 2 are all possible exemptions to not doing stormwater management. If the development falls under section 1, they are more than an acre of disturbance. He feels that the disturbance for this project is less than an acre and the previous development should not count.

Jung asked if the city's position is looking at section 2.b. cumulative as more than an acre so does apply, while the applicant is looking at 2.a. with the position that stormwater management does not apply.

Eggert explained that the ordinance is based on the WDNR and that the City Attorney agrees with Staff's position.

Eggert stated the item does not apply – b. post construction less than 10 percent.

Yersin stated they were looking for section 2.a.

Mosher clarified that section 2.b. was not their position and section 2.a. of the ordinance does not reference cumulative amount.

In response to Austin, Eggert stated that they are increasing the parking lot.

Yersin explained that the previous Marcus theater was removed as part of the bank project – historically what it is view the site as to what it is viewed historically not currently

In response to Austin, Mosher stated that the parking lot was removed as Phase I of the redevelopment.

Yersin – bank is .9 acres – SW for all of it not just their possible

Jung ordinance definition previous use of the site or redevelopment to current condition of the land – 2 a.

Hintz explained that the rule was found in Chapter 98 of the municipal code and deferred to Eggert and Molitor.

Matt Sadowski, Planning Manager, explained that it is not out of the ordinary when dealing with properties (buildings) that are gone and new development occurs. He stated, regarding cumulative, when does the stormwater ordinance apply if not saying cumulative does not apply. He stated the previous building and parking lot are gone and were not there for a year or two so at what point would it become a cumulative project.

Mosher stated he does not believe there is a cumulative portion of the ordinance. He stated the City never provided the cumulative portion and they believe the area of disturbance is under one (1) acre. He would like to ask staff to provide the section of the code where it says cumulative disturbance with the driveway put in by someone else.

Austin disagrees does not like cumulative then cannot argue that not increasing parking because parking lot was removed. Cumulative meaning post construction – I development 28 and abutting against another cumulative effect is more than one.

Yersin stated that the older development was replaced by the newer development and the maintained site, whether it is grass, etc., meets what redevelopment is based on city ordinance.

Jung asked conclusion hypothetically that they can reduce the amount of pavement if that becomes the less

In response to Jung, Hintz stated that the developer can reduce parking without coming back to the Planning Commission as long as it does not drastically change the

plan that was approved.

Mosher stated redevelopment means areas where development is replacing older development.

In response to Hefel, Eggert explained that the applicant is contending that the area of disturbance is over an acre.

Chair Hefel asked about disparity between numbers.

Yersin stated that the pavement was part of the theater before.

Chair Hefel asked if it were their parcel (the theater).

Yersin responded yes.

Yersin asked where the cumulative number is in the ordinance and stated that was the kicking point of contention.

Eggert stated that it would be the section up previously where it says cumulative of all areas.

Yersin asked if there were something written from the Attorney.

Martinez stated that there was no amount of clarity, unfortunately, and that the applicants have a valid point.

Chair Hefel closed the public hearing at 6:09 p.m.

Eggert responded to Martinez regarding the cumulative of the site. He stated staff called the WDNR when they saw the plan and that it was unique in that part was rebuilt from someone else and sold. He stated had it been the same owner they would enforce stormwater management. He stated it is a unique situation, however in Staff's interpretation cumulative applies although separate ownership. He stated the cost might be around \$25,000, not \$100,000. He referenced a similar situation that occurred a couple of years ago where the developer put in a chamber.

In response to Jung, Sadowski explained that the ordinance depends on how the site and the stormwater were developed and how the initial phase of the development was designed.

Eggert described the site location and what it includes.

Martinez expressed concern about making a decision at this time. He asked if this is where we decide.

Sadowski stated that the ordinance and how it is being interpreted towards the project is being questioned.

Discussion ensued regarding possible deferral of the request.

Alder Peete asked if the City Attorney clarified what the increase meant regarding cumulative.

Eggert stated he sent his interpretation and copy of the ordinance to the City Attorney who agrees with the definition, as interpreted by Staff.

In response to Peete, Eggert stated the additional cost could be up to \$20,000 to the developer.

Molitor create a structure to maintain water before it goes to the storm sewer.

Jung explained that the debate was if the area were over or under an acre.

Discussion ensued.

A motion was made by Martinez to defer, the request. The motion failed for a lack of a second.

A motion was made by Austin, seconded by Peete, to deny the appeal, denying the variance, and supporting the interpretation of the City Engineer as related to storm water management as required by Sec. 98-404 (a)(2)(b) for the site at 5019 Washington Avenue finding that the decision relates to the size of the parcel and not just the piece of the development. The motion PASSED by a Voice Vote.

END OF PUBLIC HEARING

Adjournment

There being no further business, the meeting adjourned.