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Patrick J. Houlihan
City Attorney

Stephen F. Matty
Assistant City Attorney

Legal Memorandum

To: Board of Zoning Appeals
CC: Patrick J. Houlihan, City Attorney
From: Stephen F. Matty, Assistant City Attorney
Date: December 19, 2006
Re: New Truss Roof on Nonconforming Use;
755 Losey Boulevard North;
File No. 2314

You asked me to provide the Board of Zoning Appeals with assistance in evaluating whether the contested structural alterations, specifically in the context of the proposed roof truss system to improve a leaky roof, is an ambiguous concept within the city code and to prepare an analysis to help the Board form its decision. This memorandum concludes that the term, "structural alteration" is not ambiguous and that the proposed truss roof system constitutes a "structural alteration" and is therefore prohibited under state statute and city code.

Facts

On October 18, 2006, the Board held a public hearing on the appeal from Mr. Robert Cooper contesting the administrative interpretation of the City of La Crosse's Department of Building and Inspections, which resulted in the denial of a building permit to install a roof and trusses on a nonconforming building at 755 Losey Boulevard North.

At the hearing, Mr. Jason Hansen, from the Department of Building and Inspections testified that a person may perform structural alterations and remodeling on a nonconforming use as long as the cost of the same does not exceed fifty per cent (50%)

of the assessed value over the life of the structure. For this particular real estate, Mr. Hansen testified that the real property is a nonconforming use because it is a commercial building located within a residential district. Additionally, he testified that structural repairs already exceeded the 50% threshold back in 1985. No further structural alterations may occur because it would be contrary to the whole idea of a nonconforming use, namely, that such nonconforming uses must eventually disappear.

Moreover, Mr. Hansen testified that the property owner's proposal to install a pitched roof truss system over his existing flat roof building would be a structural alteration. He referenced the dictionary definition of truss as "any of various structural frames based on the geometric rigidity of the triangle."

Mr. Cooper testified that he purchased the property in 1992 and has operated it as a business since then. He admitted that an addition had been added to the building and conceded that 50% threshold had already been exceeded in 1985. Mr. Cooper challenged that his proposal is not a structural alteration, but rather only an attempt to repair his roof.

Next, Mr. Cooper testified that the roof is not flat, but instead a parapet roof. In theory, it is supposed to slope to the back where there are holes for the water to drain out. He testified that it does not work because mature trees deposit debris on the roof, which plugs up the roof openings continuously and prevents the water from draining out. As a result, the roof leaks. Mr. Cooper testified that he tried to repair the roof many times.

Mr. Cooper testified that he proposes to add an angled roof to the building by using trusses. Mr. Cooper conceded that a truss is a "structural thing," but interprets a "structural change" as constructing a new addition to the building, not trying to repair his roof.

Mr. Rick Zielke, the neighbor at 757 Losey Boulevard North, testified that he does not oppose the new roof and trusses as long as the water is discharged away from his property.

During deliberations, the Board postponed a decision on the matter for a period of sixty (60) days to obtain guidance from the legal department, a transcript of the proceedings and additional information from the applicant and Department.

On October 23, 2006, the legal department received a correspondence from Mr. Hansen in support of the Department's administrative interpretation. The Department reaffirmed its determination that the proposed construction of a new sloped roof with trusses constitutes a "structural alteration" under the city code and "structural repairs or alterations" under state statutes. On November 7, 2006, the legal department received a correspondence from Mr. Cooper in support of his interpretation. In his letter, Mr. Cooper noted that he wishes to "eliminate the flat roof." He reasserted that he is not conducting structural repairs, but rather trying to prevent deterioration through maintenance.

Analysis

Mr. Cooper has conceded that the 50% threshold had been exceeded in 1985. Therefore, the only issue before the Board is whether the installation of the proposed truss roof system constitutes a “structural alteration” or non-structural maintenance and repair. The answer to this question requires the interpretation of Wis. Stat. § 62.23(7)(h) and La Crosse Municipal Code § 15.27(A)(6).

Statutory Interpretation Generally

Statutory interpretation focuses primarily on the language of the statute. See ***State ex rel. Kalal v. Circuit Court***, 2004 WI 58 ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. The statute’s language must be given its common, ordinary and accepted meaning, although technical or specially defined words or phrases are given their technical or special defined meaning. See *id.* “[S]tatutory language is interpreted in the context in which it is used, not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.* ¶ 46. The statute’s language must be read where possible to avoid surplusage and to give reasonable effect to every word. See *id.* “If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.” *Id.* When “construing or interpreting a statute, [a person] is not at liberty to disregard the plain, clear words of the statute.” *Id.*

Where the statute’s language is unambiguous, there is no need to consult extrinsic sources of interpretation such as legislative history. See *id.* “A statute’s purpose or scope may be readily apparent from its plain language or its relationship to surrounding or closely-related statutes – that is, from its context or the structure of the statute as a coherent whole.” *Id.* ¶ 49. Generally, the legislative history is not consulted except to resolve an ambiguity in the statutory language, although legislative history is sometimes consulted to confirm or verify the interpretation of the statute’s plain meaning. See *id.* ¶ 51.

The test for ambiguity centers on whether the statute is capable of being understood by reasonably well-informed persons in two or more understandings. See *id.* ¶ 47. Mere disagreement about statutory meaning is not enough to find ambiguity. See *id.* Rather, “the test for ambiguity examines the language of the statute to determine whether well-informed persons should have become confused, that is, whether the statutory language reasonably gives rise to different meanings. See *id.* (emphasis in original). “Statutory interpretation involves the ascertainment of meaning, not a search for ambiguity. *Id.*

Applicable Statutes and Ordinances

The “spirit of zoning is to restrict rather than increase a nonconforming use and to eliminate such uses as speedily as possible.” ***City of Lake Geneva v. Smuda***, 75 Wis. 2d 532, 249 N.W.2d 783, 787 (1977). To this end, both the municipal code and the state statutes limit structural repairs and alterations to 50% of the value of the nonconforming use.

Nonconforming uses. The lawful use of a building or premises existing at the time of the adoption or amendment of a zoning ordinance may be continued although such use does not conform with the provisions of the ordinance. Such nonconforming use may not be

extended. The total structural repairs or alterations in such a nonconforming building shall not during its life exceed 50 per cent of the assessed value of the building unless permanently changed to a conforming use. If such nonconforming use is discontinued for a period of 12 months, any future use of the building and premises shall conform to the ordinance.

Section 62.23(7)(h) (emphasis added).

The existing lawful use of a structure or building ... which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:

- (1) No modifications or additions to a nonconforming use shall be permitted unless they are made in conformity with the provisions of this Section. For the purpose of this Section, the words "modification" and "addition" shall include, but not be limited to, any alteration, addition, modification, rebuilding or replacement of any such existing structure ... Ordinary maintenance repairs are not considered structural repairs, modifications or additions; such ordinance maintenance repairs include internal and external painting, decorating, paneling and the replacement of doors, windows and other nonstructural components.
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) The remodeling involving structural alterations made in a nonconforming building shall not during its life exceed 50% of its assessed value, nor shall the building be enlarged, unless the use therein is changed to a conforming use.

Section 15.27(A) (emphasis added).

Within the municipal code, "structural alteration" means "[a]ny change in the supporting members of a building, such as bearing walls, columns, beams or girders." See § 15.01(PPP). The state statutes do not define "structural repairs or alterations."

Judicial Guidance

In trying to address a similar dispute, the Wisconsin Supreme Court described this kind of interpretation and determination as "not an easy task." ***Marris v. City of Cedarburg***, 176 Wis. 2d 14, 37, 498 N.W.2d 842, 852 (1993). No single rule can be established or applied; each case must be determined on its own unique facts. See *id.* The Court, however, set forth some guidelines:

We construe structural repairs in this ordinance to include work that would convert an existing building into a new or substantially different building, or work that would affect the structural quality of the building. We also construe structural repairs in this ordinance to include proposed improvements that would contribute to the longevity or permanence of the building. This characterization of structural repairs satisfies the public interest in eliminating nonconforming uses. If work indefinitely prolonging the natural life of nonconforming buildings were permitted, the purpose of zoning to achieve uniformity would be defeated.

However, under our characterization of structural repairs an owner is permitted to modernize facilities. The right to continue a use existing at the time a zoning restriction becomes effective necessarily embraces preservation of that use. Therefore proposed improvements such as the addition of acoustical ceilings or the installation of heating, electricity, plumbing (including fixtures) or insulation, might not ordinarily be regarded as

structural repairs. Such improvements might be characterized as remodeling, or as improving the appearance or efficiency of a nonconforming use structure. Likewise, repairs that are reasonably necessary to prevent deterioration might not be classed as structural repairs. It is in the community's interest that buildings be maintained in good, safe and sanitary condition. We recognize that any modernization or maintenance carries with it some possibility of extending the life expectancy of the nonconforming use. Yet, in order to respect ownership rights, some modernization and maintenance must be permitted.

We have attempted to provide a functional definition to guide the Board in the exercise of its discretionary decision-making. The board must use its discretion in applying this functional definition of structural repairs in a fair and reasonable manner in each case, considering the language of the ordinance, the purposes of the ordinance and the need to balance individual and community interests.

Id. 176 Wis. 2d at 38-39, 498 N.W.2d at 852-53.

Application of Plain Language

The municipal code's limitation on "structural alterations" not exceeding 50% of the assessed value is unambiguous with regard to the proposed truss roof system. The proper meaning for "structural alterations" can be found in the municipal code without resort to magic or superhuman efforts. Indeed, the proper meaning only requires well established rules of statutory construction, which are the same for statutes and ordinances. See ***Bettendorf v. St. Croix County Bd. of Adjustment***, 224 Wis. 2d 735, 591 N.W.2d 916, 918 (Ct. App. 1999). While technical terms retain their defined meaning in the code, non-technical terms not defined within the ordinances must be given their ordinary and accepted meaning; such ordinary meaning may be ascertained from a recognized dictionary. See ***State v. Williquette***, 129 Wis. 2d 239, 248, 385 N.W.2d 145, 149 (1986).

Under § 15.01(PPP) of the municipal code, "structural alteration" means "[a]ny change in the supporting members of the building, such as bearing walls, columns, beams or girders." There is no code definition for "beams" or "girders." Nonetheless a "beam" is "any of various relatively long pieces of metal, wood, stone, etc., manufactured or shaped especially for use as rigid members or parts of structures or machines." ***Dictionary.com Unabridged***, (Random House, Inc. 2006). A "girder" is a "beam, as of steel, wood, or reinforced concrete, used as a main horizontal support in a building or bridge." ***American Heritage Dictionary of the English Language***, Fourth Edition (Houghton Mifflin Co. 2000).

In comparison, the common, everyday definition of the word "truss" conforms to the municipal code's definition of structural alteration. A truss is a "rigid framework, of wooden beams or metal bars, designed to support a structure, such as a roof." See *id.* Another source describes a truss as "a framework of beams (rafters, posts, struts) forming a rigid structure that supports a roof or bridge or other structure." ***WordNet 2.1*** (Princeton University 2005).

Here, the proposed construction will use trusses to create a sloped roof in lieu of the current flat roof on the building. The trusses function as beams and girders to maintain

the shape and placement of the sloped roof. Without the trusses, the angular roof would collapse. Therefore, the proposed truss roof system is a change to the supporting members of the building, more specifically a "structural alteration." To conclude otherwise, would ignore the plain language of the ordinance and result in a search for ambiguity.

Significantly, the proposed truss system is not an ordinary maintenance repair, modification or addition. Section 15.27(A)(1) of the municipal code provides examples of the same to include "internal and external painting, decorating, paneling and the replacement of doors, windows and other nonstructural components." For the reasons already stated above, the proposed truss roof system would create a new structural component to the building, not update or repair its current structure or state of being.

Application of Marris

Likewise, in accordance with *Marris*, the proposed truss roof system would convert the existing building into a substantially different building by affecting its structural quality. Changing the flat roof to a sloped roof will contribute to the building's improved longevity and performance contrary to the public interest in eliminating nonconforming uses.

The addition of the trusses and sloped roof would likely create additionally enclosed space for the structure. This new "attic" space may increase the utility of the structure. Such an increase in utility could be considered extending a nonconforming use contrary to § 62.23(7)(h) or enlarging the nonconforming use contrary to § 15.27(A)(6).

Nonconformities prevent uniformity with surrounding areas and can affect the value of neighboring property. A vertical extension of a building by adding a second story can change and affect the amount of air or light between buildings and may detract from the aesthetic value of a neighborhood. The addition of a second story is not a negligible or cosmetic change from the original nature of the nonconformity. The bulk of the building has been increased in quantity and dimension, thereby intensifying the nonconformity. The second story provides a significant additional amount of enclosed space within the confines of the nonconforming footprint, causing a substantial increase in the nonconformity.

Munroe v. Zoning Bd. of Appeals of the Town of Branford, 818 A.2d 72, 81 (Conn. Ct. App. 2003) (holding that a second story addition to a nonconforming garage was a structural alteration and would result in an increase in the structure's nonconformity).

The *Marris* Court's guidance with regard to nonstructural repairs is inapplicable to the instant case. The Court noted that installing acoustical ceilings, insulation, heating, electricity and plumbing fixtures are not ordinarily structural repairs. This is more apt to remodeling or modernizing facilities. Here, the creation and construction of a new roof for a building does not fit into any of these categories.

Next, the deterioration (i.e. leaky roof) of the building that Mr. Cooper is attempting to prevent stems from clogged water drains. The only testimony and evidence before the Board is that the flat roof leaks because leaves, branches and other debris originating from mature trees routinely clog the drains. Here, the solution is not necessarily to create a new angular roof structure, but rather more frequent maintenance to remove the debris

from the roof. More frequent maintenance or unclogging will protect the owner's right to the nonconforming use without unnecessarily prolonging its life in contradiction of the public interest.

It is a well established rule of statutory construction that an interpretation that achieves the purpose of legislation is favored over one that defeats it. ***State ex rel. Lank v. Rzentkowski***, 141 Wis. 2d 846, 416 N.W.2d 635, 637 (Ct. App. 1987). Mr. Cooper's interpretation would defeat, rather than promote, the underlying goal of law – the gradual elimination of nonconforming uses. Under Mr. Cooper's interpretation of the state statute and city code, nonconforming buildings would never be allowed to "die natural deaths," since such buildings could always be repaired with a new structural component to circumvent the 50% threshold limitation.

Conclusion

For the reasons stated above, the plain language of the statute and ordinance is not ambiguous with respect to its application to the proposed truss roof system. Accordingly, there is no reason to look at any extrinsic evidence to interpret the provision. All of the ***Marris*** factors weigh in favor of finding the proposed truss roof system to be a structural alteration. Mr. Cooper has not carried his burden of proving otherwise.



TERI LEHRKE, CMC, City Clerk

400 LA CROSSE STREET
LA CROSSE, WISCONSIN 54601
PHONE (608) 789-7510
FAX (608) 789-7552

October 24, 2006

Mr. Robert Cooper
435 24th St. N.
La Crosse, WI 54601

Mr. Kenneth Dentice
Director of Building and Inspections
400 La Crosse St.
La Crosse, WI 54601

RECEIVED

OCT 26 2006

BY _____

RE: Board of Zoning Appeals Meeting – October 18, 2006 – File #2314

Dear Messer's Cooper and Dentice:

The Board of Zoning Appeals passed the following motion requesting additional information in regards to the above mentioned file.

Michael Stoker made a motion, seconded by Carol Haefs, regarding the appeal of Robert Cooper of the code interpretation and determination by the Building and Inspections Department resulting in the denial of the building permit to install roof trusses on a nonconforming building at 755 Losey Blvd. N. that this matter be tabled for sixty days or until the next meeting after the next monthly meeting and that in the interim the Board requests that Assistant City Attorney provides the Board with assistance in evaluating whether the contested structural alterations, specifically in the context of the proposed roof truss system to improve a leaking roof problem, is an ambiguous concept and beyond that whether or not there is any information provided by either of the parties to this appeal - both the City Inspection Department and Mr. Cooper regarding the interpretation of that concept. What is suggested as part of the motion is that the Board asks the City Clerk's office to as expeditiously as possible create a transcript of that portion of tonight's record that covers this appeal for Mr. Cooper and anyone who testified who are Jason Hansen, Mr. Cooper, and the neighbor Mr. Zielke, and that also the City Clerk's office write to both Mr. Cooper and the City Inspection Department to explain what is going on and request that they, within the next three weeks, provide an answer to those two issues: 1) what does structural alterations mean and 2) whether or not the terms are ambiguous to Stephen Matty so that he can hopefully within 60 days prepare his analysis to help the Board form their decision. Motion carried.

Please send your written statements in response to the foregoing motion to the attention of Assistant City Attorney Stephen Matty at 400 La Crosse St., La Crosse, WI 54601. The information is requested to be in his office prior to November 8, 2006.

Sincerely,

Teri Lehrke, CMC
Secretary, Board of Zoning Appeals

C: ✓ Stephen Matty, Assistant City Attorney
Philip Nohr, Board of Zoning Appeals Chair

Stephen Matty



DEPARTMENT OF BUILDING AND INSPECTIONS

Kenneth M. Dentice, Director
400 La Crosse Street La Crosse, Wisconsin 54601-3396
Phone (608) 789-7530 Fax (608) 789-7589
cityoflacrosse.org



October 23, 2006

RECEIVED

OCT 23 2006

City of LaCrosse Board of Zoning Appeals
400 LaCrosse Street
LaCrosse, Wisconsin 54601

BY _____

RE: 755 Losey Boulevard North – New Truss Roof on Nonconforming Structure

Dear Board of Zoning Appeals:

Assistant City Attorney Stephen Matty has informed me of your request for a written explanation regarding the Department of Building and Inspection (Department) decision to not issue a building permit for a new truss roof on a nonconforming building located at 755 Losey Boulevard North.

The owner of 755 Losey Boulevard applied for a building permit to build a new 4 & 12 sloped roof, framed with trusses over the existing flat roof. The existing building is "legal nonconforming" because the building has a commercial use and is located in a residential zoning district.

The City of LaCrosse Code and the Wisconsin State Statutes both have a limit of 50% of the value of a nonconforming building for "structural alterations" and "structural repairs or alterations". The Department determined that the installation of a new truss roof framing system over an existing flat roof is a "structural alteration" as defined in subparagraph 15.27 (A) (6) of the City of LaCrosse Municipal Code of Ordinances, and that it also constitutes "...structural repairs or alterations" as defined in State of Wisconsin Statute 62.23 (7) (h).

The building at 755 Losey Boulevard North had an addition built in 1985. The Department believes that a building addition qualifies as being a "structural alteration" to a building. The 1985 addition cost \$5,439. The building had an assessed value of \$9,900 when the addition was built. When we did the arithmetic, we found that the addition built in 1985 already exceeded the maximum amount allowable for structural alterations: $\$9,900/\$5,439 = 54.94\%$. Thus, the Department cannot issue a building permit for any more structural alterations because the total allowable value for such work in the City Code and in the Wisconsin statutes was exhausted in 1985.

I have provided copies of the City Code and the State Statute below, for convenience:

"15.27 NONCONFORMING USES.

(A) GENERAL.

- (6) The **remodeling involving structural alterations** made in a nonconforming building shall not during its life exceed 50% of its assessed value, nor shall the building be enlarged, unless the use therein is changed to a conforming use." [Emphasis added.]

ss 62.23 (7) (h) *Nonconforming uses.* The continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance. The nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building, premises, or structure, or fixture shall not during its life exceed fifty percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. ..."

Wisconsin Supreme Court Discussion of This Issue

In 1993, the Wisconsin Supreme Court offered some guidance on structural alterations and repairs as they apply to nonconforming structures in a case known as "Marris versus City of Cedarburg". I have copied portions of the Wisconsin Supreme Court's comments below.

"...We cannot set forth a hard and fast definition which easily distinguishes between structural and nonstructural repairs. Any discussion of the meaning of the phrase 'structural repairs' must be in terms of the purpose of this type of ordinance, the language of the ordinance, and the proposed improvement. Nonetheless, some general guidelines can be set forth. These guidelines must be applied by zoning boards with common sense and consideration of all of the circumstances.

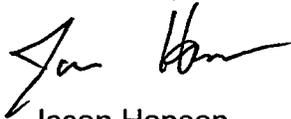
*We construe structural repairs in this ordinance to include work that would convert an existing building into a new or **substantially different** [emphasis added] building, or work that would affect the **structural quality** [emphasis added] of the building. We also construe structural repairs in this ordinance to include proposed improvements that would contribute to the longevity or permanence of the building. This characterization of structural repairs satisfies the public interest in eliminating nonconforming uses. If work indefinitely prolonging the natural life of nonconforming buildings were permitted, the purpose of zoning to achieve uniformity would be defeated.*

However, under our characterization of structural repairs, an owner is permitted to modernize facilities. The right to continue a use existing at the time a zoning restriction becomes effective necessarily embraces preservation of that use. Therefore proposed improvements such as the addition of acoustical ceilings or the installation of heating, electricity, plumbing (including fixtures), or insulation, might not ordinarily be regarded as structural repairs. Such improvements might be regarded as remodeling, (sic) or as improving the appearance or efficiency of a nonconforming use structure. Likewise, repairs that are reasonably necessary to prevent deterioration might not be classed as structural repairs. It is in the community's interest that buildings be maintained in good, safe and sanitary condition. We recognize that any modernization or maintenance carries with it some possibility of extending the life expectancy of the nonconforming use. Yet, in order to respect ownership rights, some modernization and maintenance must be permitted.

We have attempted to provide a functional definition to guide the board in the exercise of its discretionary decision-making. **The Board must use its discretion in applying this functional definition of structural repairs in a fair and reasonable manner in each case, considering the language of the ordinance, the purposes of the ordinance and the need to balance individual and community interests.** [Emphasis added.]

Thank you.

Sincerely,



Jason Hansen
Plan Reviewer

COPY: Kenneth M. Dentice, Director of Building and Inspections
Pat Houlihan, City Attorney
Stephen Matty, Assistant City Attorney
Bill Branson, Lead Inspector
Robert Cooper, Owner, 755 Losey Boulevard North

November 6, 2006

Mr. Stephen Matty
Assistant City Attorney
400 LaCrosse Street
LaCrosse, WI 54601

RECEIVED

NOV 07 2006

BY _____

Mr. Matty,

My request for a building permit to install roof trusses at 755 Losey Blvd. North is being questioned because it is a nonconforming building. It is claimed by the Building Inspector that it would be in violation of City Code 15.27 (A) (6) and Wisconsin Statutes 62.23 (7) (h).

The present roof has leaked for several years and many attempts have been made to repair it. It is a type of flat roof with drains located in the rear of the building. Over the past 50 years the trees in the area have grown and the leaves and other debris continue to plug the drains and cause problems. I want to eliminate the flat roof and eliminate the leaking by installing a roof truss system and a pitched roof.

In reading the City Code that Mr. Hansen provided in his letter that code was to cover remodeling and expansion of a building. I am trying to do neither. I want to repair the roof by installing trusses and a conventional roof to prevent leaking.

Also in reading the Wisconsin Statutes Mr. Hansen provided along with the accompanying Wisconsin Supreme Court case I would use the same information in defense of granting the permit. I cannot deny that the building has already used up the 50% rule (although neither code is specific as to when the value should be determined. The building is now valued at over \$50,000.), however the definition of structural repairs is open to discussion.

The purpose of both the City Code and the State Statute are to eventually eliminate buildings that are nonconforming. As stated in the Wisconsin Supreme Court Decision I quote from Mr. Hansen's letter. "...Likewise, repairs that are reasonably necessary to prevent deterioration might not be classified as structural repairs. It is in the community's interest that buildings be maintained in good, safe and sanitary condition. We recognize that any modernization or maintenance carries with it some possibility of extending the life expectancy of the nonconforming use. Yet in order to respect ownership rights, some modernization and maintenance must be permitted."

Thank you,



Robert Cooper

784-3156

TRANSCRIPTION OF THE PROCEEDINGS OF THE BOARD OF ZONING APPEALS

Wednesday, October 18, 2006

Regular Meeting; Phil Nohr, Chairing

Present: Phil Nohr, Michael Stoker, Fred Rohrer, Carol Haefs, Betty Woodruff,

The meeting was called to order by Chair Nohr at 7:00 p.m.

Other matters

File #2314 - Robert Cooper

Phil Nohr: The appeal of Robert Cooper regarding an administrative appeal of a code interpretation and determination by the Building and Inspections Department resulting in the denial of a building permit to install roof trusses on a nonconforming building at 755 Losey Blvd. N.

Jason Hansen: The owner of this property applied for a building permit to install a pitched roof truss system over his existing flat roof building located at 755 N. Losey Blvd. It is a nonconforming because it is a commercial building located in a residential zoning district. When you have nonconforming buildings like this you can do structural alterations and remodeling as long as the cost of the alterations or remodeling do not exceed 50% of the assessed value over the life of the structure. In 1985, there was a ...inaudible...put on and at that time they exceeded the 50% allowable...inaudible...at that time they denied his permit. He is asking for an administrative appeal because he feels that the addition of a truss roof system would not be a structural addition. It would be more of a maintenance/architectural addition. What I did was pull the definition out of the dictionary for a truss: Any of various structural frames based on the geometric rigidity of the triangle. I think it is a pretty good indication that a truss is a structural member. This is what a truss looks like...here is a sample drawing.

Phil Nohr: So let me get this straight. You said awhile back this thing went over 50%

Jason Hansen: In 1985, that is right.

Phil Nohr: And since it was a non-conforming building – that should have had some implications. Now, because they want to add the roof, how does this 50% come into play?

Jason Hansen: Oh—I will hit on that again. For non-conforming structures you have what is called the 50% rule. For the life of the building – let's say 1985, instead of going over the 50%, inaudible....30% of the assessed value. Today if they want to put roof trusses on, as long as the roof trusses do not exceed 20% of today's assessed value, they can do it.

Michael Stoker: Life of the building.

Jason Hansen: Life of the building. It adds up over time.

Phil Nohr: So, they have already hit the 50.

Jason Hansen: They have already hit the 50.

Phil Nohr: So, now there should be no further.

Jason Hansen: Because the whole idea of the nonconforming code is that eventually the building is going to disappear....inaudible....zoned....inaudible

Phil Nohr: Any other questions anyone has? Is there anyone here who would like to speak in favor of this appeal?

Robert Cooper: Robert Cooper, 435 N. 24th St., in La Crosse.

Phil Nohr: Do you swear to tell the truth, the whole truth and nothing but the truth so help you, God?

Robert Cooper: I do. I have some drawings and pictures for you. What I'm trying to do --I don't question the 50% value. I have owned the business since 1992. This addition was added on in 1985. The roof isn't exactly flat

Phil Nohr: You bought it in 1992?

Robert Cooper: Right, and I am not trying to alter the building; I am just trying to property repair the roof that is there. The roof is not flat. It is a parapet roof. It looks like this. It is pitched with a brick wall on each side. In theory it is supposed to slope to the back with holes so that the water drains out. It doesn't actually work. I tried to repair it many times and it continues to leak. I have tried to alter the slope of the roof where it leads to the openings. The problem is that the building is located on the street where the park is just off of highway 16. The trees are growing bigger and bigger. The roof accumulates a lot of debris along those walls and plugs up the openings and the water cannot drain out. So my original plan was to add trusses to the top of the roof and put on a ...inaudible...roof. I am not trying to enlarge the building or do anything else. I am just trying to properly repair what is there.

Phil Nohr: And what is the building used for today?

Robert Cooper: I own a company. I provide personal drivers to funeral homes and I store my hearses in the building and wash them. When I purchased the building in 1992 it was a body shop and I have done considerable amount of work around the building to try to improve the appearance to fit into the neighborhood better be a good neighbor and landscaped it The lot was a sand pit full of weeds. I have done whatever I can do to be a

good neighbor. I have talked to the neighbor to the south and he does not have a problem with it. He questioned why there was really a question about me doing this. The neighbor to the north had a concern since his driveway is to the north of the building. He was concerned about snow and water running off the roof. I planned on putting gutters and stuff on it. He just replaced his roof on his house. He has a problem with ice and snow. So we talked about it and I changed the design and instead of having a roof like this – if this was the north side this would be slanted one way so there would not be any snow running off the roof into his yard.

Phil Nohr: So it would be kind of a pitched roof rather than a cable roof.

Robert Cooper: Right.

Carol Haefs: Did you say the roof leaks?

Robert Cooper: It leaks. It has leaked for a considerable amount of time. We tried to do many things to repair it. One alternative would be to put a rubber roof on but with the trees and stuffinaudible....I can see that it wouldn't make any difference because of all the debris that collects up there...it plugs up the openings continuously. I tried to put heat tape up in the winter time...inaudible...to solve the problem. They said I would give you know...I would give you this...a truss is a structural thing but I consider a truss or a structural change that I was going to add onto the building or something like that and I contend that I am just merely trying to properly repair what I have.

Phil Nohr: Any other questions? Thank you very much. Is there anyone to speak in favor of this appeal? Anyone to speak in opposition?

Rick Zielke: Rick Zielke, 757 Losey Blvd. N.

Phil Nohr: Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

Rick Zielke: I do. I am not opposed to Bob fixing his roof as long as he slopes it away from my property. Here's the deal. His building is a foot off the property line and this is my house. That is the building. And this is mine in the winter time. So you can see the snow/ice problem I have in the winter. ...inaudible...that's what I have right now for snow and ice. And if his roof slopes towards my driveway too I got double ...inaudible..

Phil Nohr: I think he testified....

Rick Zielke: Right – so what I am saying is I don't have any objections if he slopes the other way

Phil Nohr: Ok

Rick Zielke: Otherwise...that's all I have.

Phil Nohr: Any questions? Thanks. Anyone else to speak in opposition? Hearing none, we will move on.....

Other matters