



Board of Zoning Appeals
Memorandum

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Date: March 22, 2001
To: Alderman Paul Henningsen, Chairman, Zoning,
Neighborhoods, and Development Committee
From: Craig H. Zetley, Chairman, Board of Zoning Appeals *C.Z. /DQ*
Subject: Concentration as a criteria for approval of a Special Use
Common Council File No. 000796

It has only recently come to my attention that your committee is considering an amendment to the Milwaukee Code of Ordinances regarding the criteria that the Board of Zoning Appeals must use in order to approve a special use permit. During my years of service on the Board, I have had many opportunities to comment on this matter -- during both meetings of the Board as and of various city committees and commissions. As you and your committee consider this issue, I thought it would be beneficial to the dialogue if I offered my opinion.

It is my opinion, and one that is shared by other members of the Board, that concentration of a particular use is not a sound criteria for evaluating a special use permit. One notable exception is the separation requirement for most Community Living Arrangements (CLAs). In this instance, the legislature has adopted specific distance requirements to prevent an over-concentration of this type of use in a given area. Those separation requirements are the subject of pending litigation. Because the City Attorney has opined on this issue previously, I will limit my comments to general issues of concentration.

In the vast majority of cases, the Board cannot consider "concentration," in and of itself, to be a reason for denial of a special use permit. The mere fact that there is a concentration of a certain type of use does nothing to demonstrate that there are negative impacts that stem from such concentration. One might argue there is a concentration of office buildings in our central business district, but this is certainly not a negative situation. Moreover, the definition of "concentration" itself is unclear-- at least as it is used in the proposed amendment to the ordinance.

Several questions come to mind: What constitutes a concentration? Is there a particular geographical area that must be studied when trying to determine if a concentration exists? Does this geographical area change depending on the proposed use or various neighborhood conditions? When does a concentration of a particular use become an "over-concentration"?, etc.

Please understand that the *negative impacts* resulting from an over-concentration of a use may presently be used by the Board to deny a special use permit. Imagine there is an intersection of two busy streets. On each of three corners, there exists a gas station. The proposed special use is a fourth gas station at this intersection. It might be argued that the construction of a fourth gas station at this intersection will introduce an amount of vehicular traffic that would be detrimental to the safety of this intersection, i.e. too many driveways near this busy intersection with too many vehicles trying to enter and exit from these heavily traveled streets. One gas station at this intersection may not have caused a traffic problem. Two gas stations at this intersection may not have caused a traffic problem. Perhaps the third gas station did not even cause a traffic problem. But, the addition of the fourth gas station may be shown to cause a traffic safety problem.

In the example above, it was the addition of a fourth gas station that caused an "over-concentration" of a particular use in very close proximity to one another -- as demonstrated by the adverse impact that the fourth station would have had on the safe vehicular circulation through the intersection. This leads me to point out that the Board already has the ability to deny a special use based on a safety problem. This is much the same conclusion that the Zoning Code Technical Committee and the City Plan Commission came to as they reviewed the proposal to add concentration as a criteria -- "existing criteria used by the Board is already available for use in evaluating the negative aspects of over-concentration."

If you require additional information regarding this issue, or desire my appearance before the committee, I would be happy to respond.