

STATE OF WISCONSIN
CITY OF MILWAUKEE
ADMINISTRATIVE REVIEW APPEALS BOARD

SUZANNE C. SPENNER-HUPY
3340 West Windermere Court
Milwaukee, WI 53211

Petitioner,

vs.

CITY OF MILWAUKEE
HISTORIC PRESERVATION COMMISSION

Respondent.

**BRIEF IN RESPONSE TO CITY ATTORNEY OPINION ON
STANDING OF PETITIONER**

Petitioner named above hereby files this brief in response to the City Attorney Opinion on the standing of Petitioner to appeal a decision of the City of Milwaukee Historic Preservation Commission (“HPC”) to the City of Milwaukee Administrative Review Appeals Board (“ARBA”) pursuant to §320-21 of the City of Milwaukee Code of Ordinances (“MCO”) and Chapter 68 of the Wisconsin Statutes.

FACTUAL AND PROCEDURAL SUMMARY

This matter involves the erroneous grant of a Certificate of Appropriateness (“COA”) by HPC to Chris & Jennifer Abele (“Abele”) for the proposed construction of a 6,816 square foot accessory building (the “Project”) on the property located at 3319 North Lake Drive (the “Property”) in a specific and clear violation of applicable ordinances (as further detailed herein). The Property is located in the City’s North Lake Drive Estates Historic District (the “District”). Pursuant to MCO §320-21-11-a, as a prerequisite to the issuance of a building permit to construct any improvements on a parcel within a historic district, the property owner must first obtain a COA

from HPC for such construction. The North Lake Drive Estates Historic District requires that the construction of any single accessory building “shall not increase the total gross floor area of all structures on the lot by more than 20%.” In its COA application, Abele asserts that the total gross floor area of all structures on the Property is 24,841 square feet (*See* Article IV herein and **Exhibit D** attached hereto). Assuming (for argument’s sake) that Abele’s square footage calculations are correct, any individual accessory building constructed on the Property shall be no larger than 4,968 square feet (20% of 24,841). As noted above, Abele is seeking to construct an approximately 6,816 square foot accessory building on the Property. Therefore, the proposed Project (using Abele’s own square footage calculation) exceeds the 20% square footage cap required in the District by 1,848 square feet and thus, HPC erroneously granted a COA for the 6,816 square foot structure in violation of applicable law.

Petitioner Hupy, the owner of the residential property located immediately adjacent to the northern boundary of the Property at 3340 West Windermere Court, Parcel #2780501100, is an “aggrieved” person under Wis. Stat. §68.06 and will incur special damages should the Project be allowed to go forward.

HPC held two hearings on this matter (on May 9, 2022 and July 11, 2022) in which Ms. Hupy appeared personally and provided sworn testimony on the uniqueness of her property (hers is the only address on Windermere Court), the sense of seclusion it provides (while still being located in the City just off Lake Drive) and the potential damage to her property’s value due to light pollution from the Project’s 18 foot, 9 ¼ inch tall, fully-lighted, glass enclosed swimming pool enclosure and the security risk the structure could create. In addition, Ms. Hupy submitted formal written objections to HPC granting a COA for a Project that violates applicable law.¹

¹ The City Attorney in its brief sees fit to categorize Petitioner’s sworn testimony and written submittals as not being “meaningful evidence”; however, that is not the role of the City Attorney. The meaningfulness of any evidence is for ARBA to evaluate in a hearing on the merits of Petitioner’s substantive claims.

Thereafter, on August 10, 2022, Petitioner, pursuant to ABRA precedent, timely filed an appeal with this body entitled a “Request For Review Of Historic Preservation Commission's Grant Of A Certificate Of Appropriateness Pursuant To MCO §320-11 & Wis. Stat. Ch. 68” (the “Appeal”), seeking the review of HPC’s decision to grant the COA. In addition, on September 1, 2022, Petitioner submitted to this body a Legal Authority Memorandum in support of its appeal. A hearing before ARBA on this matter was held on September 10, 2022 during which ARBA requested a legal opinion from the City Attorney’s Office as to whether or not ARBA has jurisdiction to hear an appeal of a decision by HPC. To facilitate that request, ARBA held this matter over until November 3, 2022. On September 13, 2022, Mr. Vincent J. Bobot, as Chair of ARBA, submitted a formal written request to the City Attorney’s Office for a legal opinion concerning ARBA’s jurisdiction in this matter.

As further described below, Petitioner Hupy possesses a constitutionally protected due process right that has been adversely affected by HPC in the following manner: (i) HPC’s decision to grant a COA for a development that is in violation of a City ordinance, and (ii) the bias demonstrated against Petitioner Hupy and in favor of the Project by a member of HPC during its review of the COA application. Therefore, Petitioner Hupy has standing to bring this appeal and this matter should proceed with a review on the merits of Petitioner’s substantive claims.

ARGUMENT

I. ARBA has previously determined it has jurisdiction to review a decision by HPC to grant a COA.

In a case with the identical facts as the instant matter, ARBA has previously determined it has jurisdiction to review a decision by HPC to grant a COA and that an immediately adjacent property owner to the subject development has standing to appeal HPC’s decision. Attached hereto as **Exhibit A** is a copy of an ARBA decision establishing that Patrick O. Dunphy, the owner of a

residential condominium unit located at 1522 North Prospect Avenue, Unit 1804 had standing to appeal the decision by HPC to grant a COA for the redevelopment of an immediately adjacent property located at 1550 North Prospect Avenue (the “ARBA Precedent”). ARBA further held that Mr. Dunphy, who asserted that the value of his condominium would be diminished due to a faulty HPC approval process, had a “Constitutionally protected right implicated by the proceedings before HPC.” A copy of the deed establishing Patrick O. Dunphy’s ownership of an immediately adjacent property to the development site is attached hereto as **Exhibit B**.

The City Attorney Opinion argues that Chapter 68 requires Petitioner’s appeal to be “made to the commission who made the initial determination” or HPC. However, the ARBA Precedent clearly shows this is not how this body has interpreted Chapter 68 previously and the City Attorney Opinion provides no evidence to distinguish the facts in the ARBA Precedent from the instant matter. In addition, on a practical level, asking HPC to hear an appeal based on HPC being biased and failing to enforce applicable law does not appear to be a process designed to protect the due process rights of aggrieved parties as required by MCO §320-11(1) and Chapter 68. Petitioner has filed its Appeal with ARBA in good faith and in reliance on this precedent established more than a decade ago. What basis does ARBA have to overturn this precedent now? Petitioner’s appeal should be heard on the merits of the substantive claims.

II. Petitioner has standing to appeal this matter to ARBA.

ARBA has been established by City ordinance to review municipal decisions in accordance with the requirements of Chapter 68 of the Wisconsin Statutes.

MCO §320-11(1) provides:

Administrative Review Appeals Board

- 1. DUE PROCESS.** The purpose of this section is to afford a constitutionally sufficient, fair and orderly administrative procedure and review in connection with determinations of municipal authorities which involve

constitutionally protected rights of specific persons who are entitled to due process protection under the 14th amendment to the United States constitution. In order to insure that such rights are protected in the administration of the affairs ordinances regulations and by-laws of the city it is declared and required that the provisions of ch 68, Wis. Stats., relating to municipal administrative review procedure shall be in full force and effect in this city except as provided in subs 5 and 6.²

Chapter 68 of the Wisconsin Statutes grants “any person aggrieved” to appeal administrative determinations like the grant or denial of a COA:

Any person aggrieved may have a written or oral determination reviewed by written request mailed or delivered to the municipal authority which made such determination within 30 days of notice to such person of such determination. The request for review shall state the ground or grounds upon which the person aggrieved contends that the decision should be modified or reversed. Wis. Stats. § 68.09.

Wis. Stats. § 68.03 provides a general definition of persons aggrieved:

Persons aggrieved A person aggrieved includes any individual, partnership, limited liability company, corporation, association, public or private organization, officer, department, board, commission or agency of the municipality, whose rights, duties or privileges are adversely affected by a determination of a municipal authority.

In addition, Wis. Stats. § 68.01 provides additional authority as to the types of parties allowed to file administrative challenges:

Any person having a substantial interest which is adversely affected by an administrative determination of a governing body, board, commission, committee, agency, officer or employee of a municipality or agent acting on behalf of a municipality as set forth in s. 68.02, may have such determination reviewed as provided in this chapter.

Petitioner Hupy clearly is an “aggrieved” person under Chapter 68 that has a substantial interest – the value and enjoyment of her home – that is adversely affected by HPC granting a COA for a Project that violates applicable law. If the Project is allowed to go forward as currently presented, that home will be adversely affected by a structure that City ordinances say is too large

² Subsections 5 and 6 do not impact the substantive issues in this matter.

for the District. In *Jelinski v. Eggers*, 34 Wis.2d 85, 148 N.W.2d 750 (1967), the Wisconsin Supreme Court held that the issuance of an occupancy or building permit which violates an ordinance is not only per se illegal, but is injurious to the interests of property owners and residents of the neighborhood adversely affected by the violation. *Id.* at 93. See also *City of Milwaukee v. Leavitt*, 31 Wis.2d 72, 78, 142 N.W.2d 169 (1966).³

The doctrine that adjacent property owners have standing to sue is also expressly made in the zoning enabling statute (Wis. Stat. § 62.23(7)), which provides the statutory authority for the City to establish its historic preservation code (MCO § 320-21). See Wis. Stat. § 62.23(7)(em). Wis. Stat. § 62.23(7)(f)(2), specifically entitles adjacent property owners standing to sue the City or the developer of an adjacent property when there have been violations “of any ordinance or other regulation made under authority conferred hereby”:

In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used **in violation of this section or of any ordinance or other regulation made under authority conferred hereby**, the proper authorities of the city, or **any adjacent or neighboring property owner who would be specially damaged by such violation** may, in addition to other remedies, **institute appropriate action or proceedings to prevent such unlawful erection, construction**, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; **or to prevent any illegal act, conduct, business or use in or about such premises** (emphasis added).

In *Ramaker v. Cities Service Oil Co.* (1965), 27 Wis.2d 143, 152-154, 133 N.W.2d 789, the Wisconsin Supreme Court held that neighbors whose enjoyment of their property was decreased by the noise and traffic caused by the defendant's use of its property in violation of a zoning ordinance were specially damaged within the meaning of § 62.23 (7)(f)(2).

³ As previously noted, issuance of a COA is a required preliminary step for the issuance of a building permit to construct a new structure in a historic district.

As established herein, Petitioner Hupy is an aggrieved party whose rights, duties or privileges are adversely affected by the decision of HPC. Under Chapter 68 and MCO §320-11, Petitioner has standing to file an appeal of HPC's decision.

III. Petitioner has a constitutionally protected right to use and enjoy its property.

Petitioner's constitutionally protected right to protect the value of its private property is an interest that is recognized by Wisconsin law. See Penterman v. Wisconsin Electric Power Co., 211 Wis. 2d 458, 480-81 (1997) ("it is well settled that the rights of ownership and use of property have long been recognized by this state") see also Prah v. Miretti, 108 Wis.2d 223, 230 (1982) (This state has long recognized that an owner of land does not have an absolute or unlimited right to use the land in a way which injures the rights of others. The rights of neighboring landowners are relative; the uses by one must not unreasonably impair the uses or enjoyment of the other.) As established herein, Petitioner Hupy is an aggrieved party whose constitutionally protected rights, duties or privileges are adversely affected by the decision of HPC. Under Chapter 68 and MCO §320-11, Petitioner has standing to file an appeal of HPC's decision.

IV. The Project clearly and specifically violates applicable law.

As detailed in Paragraph 4 of the Appeal, MCO § 320-21-11-g-3 provides that when reviewing an application for a COA, HPC "*shall consider*"⁴ whether an applicant's proposed new construction "*conforms to the objectives of the preservation plan for the district as duly adopted by the common council*" (the "Study Report").

As detailed in Paragraph 5 of the Appeal, the District's Study Report provides in relevant part:

⁴ The rules of statutory interpretation apply when interpreting ordinances. Schwegel v. Milwaukee County, 2015 WI 12, ¶22, 360 Wis. 2d 654, 859 N.W.2d 78. The general rule of statutory interpretation is that the word "shall" is presumed to be mandatory. Karow v. Milwaukee Cnty. Civil Serv. Comm'n, 82 Wis. 2d 565, 570, 263 N.W.2d 214 (1978).

“The **construction of any single building addition or accessory building shall not increase** the total gross floor area of all structures on the lot **by more than 20%**. The total gross floor area of all additions or accessory buildings constructed after July 27, 1984, shall not exceed 50% of the total gross floor area of all structures on the lot on that date” (emphasis added). *See* Section IX, Paragraph C, Subsection 2 of the District’s Study Report.

On June 16, 1998, the Common Council unanimously passed a resolution amending the District Study Report to include the above-captioned language limiting new construction of accessory buildings in the North Lake Drive Estates Historic District (the “Resolution”). A copy of the Resolution is attached hereto as **Exhibit C**.

The Resolution creates two limitations on new construction in the North Lake Drive Estates Historic District:

- A. The **construction of any single building addition or accessory building shall not increase** the total gross floor area of all structures on the lot **by more than 20%**.
- B. The total gross floor area of **all** additions or **accessory buildings** constructed after July 27, 1984, shall not exceed 50% of the total gross floor area of all structures on the lot on that date (emphasis added). *See* Section IX, Paragraph C, Subsection 2 of the District’s Study Report.

Any individual accessory building shall not be larger than 20% of the total square footage of all structures on the Property, and

The total square footage of all accessory structures constructed on the Property after July 27, 1984 shall not exceed 50% of the total square footage of all structures on the Property on that date.

Therefore, if the owner of a property in the District wants to construct 2 accessory structures, then:

- (a) Each accessory building can be no larger than 20% of the total square footage of all structures on the Property;
- (b) And the total square footage of the 2 accessory structures cannot be greater than 50% of the total square footage of all structures on the Property on July 27, 1984.

Accordingly, the 50% limitation only applies when multiple accessory buildings are being constructed. Any other interpretation renders meaningless the distinction made in the Study Report between the size of a single accessory building and the size of all accessory buildings on the Property. If the 50% limitation for multiple accessory buildings also applied to a single accessory structure, then the 20% limitation would serve absolutely no purpose. It is a well-established principal of statutory interpretation that statutory language is to be read where possible to give reasonable effect to every word. *See, e.g., Kalal v. Circuit Court for Dane County, 2004 WI 58, ¶ 46, 271 Wis.2d 633, 681 N.W.2d 110. See also State v. Pratt, 36 Wis. 2d 312, 317, 153 N.W.2d 18 (1967)* (“In construing or interpreting a statute the court is not at liberty to disregard the plain, clear words of the statute”).

On the Existing Site Plan submitted as part of the Abele’s COA application, Abele calculates that the current “Building Square Footage” for the Property totals 24,841 square feet. Attached hereto as **Exhibit D** are the submitted Existing Site Calculations from the COA application. In addition, Abele’s COA application clearly shows that the Project is one building. In the COA application’s Project Summary, Abele specifically states that the proposed Project is a single structure:

*“The project under consideration consists of **a new outbuilding** on the premises of the Erwin & Paula Uihlein Residence located at 3319 N. Lake Drive in Milwaukee Wisconsin. **The new structure** will house a four-car garage as well as a swimming pool and associated support facilities”* (emphasis added).

A copy of the Application’s Project Summary is attached hereto as **Exhibit E**.

Abele’s intent that the proposed Project is a single structure is further demonstrated in its application for zoning approvals related to the Project. The Property currently contains two accessory buildings, the “Caretaker’s Cottage” and the “Stable”. Per MCO § 295-505-3-d, the

Property is restricted from having more than two accessory buildings, so to build the Project as presented Abele needs a dimensional variance to exceed the two accessory building limitation. Attached hereto as **Exhibit F** is Abele's Statement of Variance to the City of Milwaukee Board of Zoning Appeals ("BOZA") requesting a dimensional variance to exceed the "maximum number of outbuildings" by 1 additional building. In addition, attached hereto as **Exhibit G** is the City of Milwaukee Development Department's BOZA Referral Letter for the Project showing Abele's request for a dimensional variance to exceed the maximum number of outbuildings on the Property by 1 additional building.

Assuming (for argument's sake) that Abele's square footage calculations are correct, any individual accessory building constructed on the Property shall be no larger than 4,968 square feet (20% of 24,841). Abele is seeking to construct one approximately 6,816 square foot accessory building on the Property. Therefore, the proposed Project (using Abele's own square footage calculation) exceeds the 20% square footage cap required in the District by 1,848 square feet in violation of applicable law. The size limitation in the Study Report is not discretionary and HPC is not authorized to simply disregard it. As noted above, the Wisconsin Supreme Court has held that the issuance of an occupancy or building permit which violates an ordinance is not only per se illegal, but is injurious to the interests of property owners and residents of the neighborhood adversely affected by the violation. *Jelinski, 34 Wis.2d. at 93.*

V. HPC violated Petitioner's due process right to an impartial decision maker.

During the July 11th HPC hearing, multiple statements made by HPC Chair, Patricia Keating Kahn, indicated that she had prejudged the Project and acted contrary to her quasi-judicial role as an HPC commissioner, thereby violating Hupy's due process right to have the matter decided by an impartial decision maker.

For example, Chair Keating Kahn admitted to visiting the Property in an attempt to investigate this matter on her own, outside of official proceedings, in violation of her quasi-judicial role as a HPC commissioner:

- (i) *“I drove to Windermere Court to see how this lays out, after the last meeting, because I was curious.” See HPC video transcript July 11, 2022 at 3:26:47;*
- (ii) *Speaking to Hupy: “You have neighbor’s windows looking right into your house.” Id. at 3:39:24.*
- (iii) *“I looked at your property and I can see your house. You can stand on the sidewalk and look.” Id. at 3:39:55.*

Chair Keating Kahn repeatedly advocated for Abele and the Project during the July 11th hearing:

- (i) *In response to Commissioner Peltz requesting to hear from Hupy: “I agree with you, we should hear from the neighbor, but I would like to say it’s an awesome project. It’s quite lovely and I wouldn’t expect anything less of [Abele architect Nick Carnahan]. See HPC video transcript July 11, 2022 at 3:26:06*
- (ii) *To Hupy: “The other thing I’d like to say is the two homes that are next to your house practically are far closer than this pool house is going to be. So how can you live so close to those homes if this pool house is going to be a problem?” Id. at 3:26:21.*
- (iii) *To HPC commissioners: “The views of that glass enclosure are actually going to be stunningly beautiful, you know, you’ve seen [Abele architect Nick Carnahan]’s designs before, right? He’s a great architect.” Id. at 3:43:18.*

Additionally, Chair Keating Kahn repeatedly interrupted Hupy and ridiculed her concerns about the Project:

- (i) *To Hupy: “So you don’t want to look at a glass building? That’s what you don’t like? I mean, it just doesn’t seem legal for you to say that. I don’t understand how we can be talking about that.” See HPC video transcript July 11, 2022 at 3:35:51.*
- (ii) *To Hupy: “You allowed someone on Lake Drive to build a house right in front of yours? How did that happen? Right now, you have a [neighboring] house that looks into your backdoor.” Interrupting Hupy’s attempted response: “Look at it.” Id. at 3:39:35.*
- (iii) *To Hupy: “Those homes next to your house aren’t causing you light problems. This one is five times farther away.” Id. at 3:43:42*


HPC sits in a quasi-judicial role when reviewing an application for a COA. Petitioner Hupy, as an adjacent property owner, has a due process right to expect that a decision by HPC on Abele's COA application will be made on the basis of facts obtained during official proceedings and applied to existing legal standards established in the City's historic preservation code. If a HPC commissioner prejudices the facts or the application of said legal standards, then Petitioner's due process right to an impartial decision-maker is violated. Under Wisconsin law, "an unbiased tribunal is a constitutional necessity in a quasi-judicial hearing and the denial of such a tribunal is the denial of due process." *State ex rel. DeLuca v. Common Council of Franklin*, 72 Wis.2d 672, 682, 242 N.W.2d 689, 695 (1976). Whether actual bias may be found in the record is not necessarily determinative. Circumstances which show a high probability of bias may be sufficient to give the proceedings an unacceptable constitutional taint. *Id. at 684, 242 N.W.2d at 695*.

CONCLUSION

As detailed herein, Petitioner Hupy possesses a constitutionally protected due process right that has been adversely affected by HPC in the following manner: (i) HPC's decision to grant a COA for a development that is in violation of a City ordinance, and (ii) the bias demonstrated against Petitioner Hupy and in favor of the Project by a member of HPC during its review of the COA application. Therefore, Petitioner Hupy has standing to bring this appeal and this matter should proceed with a review on the merits of Petitioner's substantive claims.

Dated at Milwaukee, Wisconsin this 27th day of October, 2022.

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Attorney for Petitioner



A



City of Milwaukee
Decision
Administrative Review Appeals Board
Jennifer Havas, Chair
Donald Fraker, Vice-Chair
Frederick Gordon, Daniel Lee, Christopher Strohbehn, and Ald. Terry Witkowski
Staff Assistant, Terry MacDonald, (414)-286-2233
Fax: 286-3456, E-mail: tmacdo@milwaukee.gov
File Specialist, Joanna Polanco, 286-3936

RE: File 08181, Appeal of Atty. John Fuchs, on behalf of Patrick Dunphy relating to the Administrative Review Appeals Board's jurisdiction to review the Historic Preservation Commission's decision to grant a certificate of appropriateness. (1550 N. Prospect Ave. Goll House) (4th Aldermanic District)

This matter came before the Administrative Review Appeals Board on January 15, 2009, for a determination as to whether or not the appellant, Patrick O. Dunphy, had standing to file this appeal. After having reviewed the written submissions of the parties, and after having heard the argument of the parties, and by a vote of three to one (one member having recused himself), we concluded, on the record at that hearing, that the appellant had standing to file this appeal.

This conclusion was based upon the following reasons articulated at the hearing:

(1) Section 308-81 of the Milwaukee Code of Ordinances and related provisions are ambiguous with respect to who has standing to appeal a decision of the Historic Preservation Commission (HPC) and any ambiguity in this regard ought to be construed against the City, since it drafted the ordinance, and in favor of appellant; and

(2) To the extent that an appellant from a decision of the HPC must have a Constitutionally protected right implicated by the proceedings before the HPC, appellant has such a right.

This determination is not a final determination within the meaning of chapter 68. Rather, this matter is now set for a hearing on the merits of the appeal (on February 27, 2009) and it is anticipated that then or thereafter, the Board will issue a final, appealable, determination.



Jennifer Havas, Chair

B

Condominium Deed

DOC. #
8703886

REGISTER'S OFFICE, 1 SS
Milwaukee County, WI

RECORDED AT 2:55 PM
12-18-2003

JOHN LA FAVE
REGISTER OF DEEDS

AMOUNT 13.00

REEL 5734

IMAGE 4091

TRANSFER
\$ 3,417.00
FEE

Name and Return Address

Patrick O. and Virginia Dunphy
1522 N. Prospect Ave #1804
Milwaukee, WI 53202

359-0026-100-2
Parcel Identification Number (PIN)

Unit No. 1804 together with the use of Parking Stall Nos. 160 and 161 and so much of the undivided interest in the common areas and facilities appurtenant to such unit in the percentage specified and established in the hereinafter-mentioned Declaration, in a Condominium commonly known as 1522 ON THE LAKE CONDOMINIUM created under the Condominium Ownership Act of the State of Wisconsin by Declaration recorded on August 13, 2001 in the Office of the Register of Deeds for Milwaukee County, Wisconsin, as Document No. 8116479, and by First Amendment to the Original Declaration recorded on February 21, 2003 as Document No. 8460478. The post office address of the above unit is 1522 North Prospect Avenue, Milwaukee, Wisconsin.

Part of Tax Key No. 359-0026-100-2

This information must be completed by submitter: document title, name and return address, and PIN. (If required). Other information such as the granting clauses, legal description, etc. may be placed on this first page of the document or may be placed on additional pages of the document. Note: Use of this cover page adds one page to your document and \$2.00 to the recording fee.

REEL 5734

IMAGE

4092

STATE BAR OF WISCONSIN FORM 8 - 2000
CONDOMINIUM DEED

Document Number

This Deed, made between 1522 Partners, LLC a Wisconsin limited liability company, Grantor, and Patrick O. Dunphy and Virginia M. Dunphy, husband and wife Grantee.

Grantor, for a valuable consideration, conveys to Grantee the following described real estate in Milwaukee County, State of Wisconsin:

Unit 1804 and Parking Stall(s) 160 & 161 in 1522 on the Lake Condominium, being a condominium created under the Condominium Ownership Act of the State of Wisconsin by a "Declaration of Condominium Ownership of 1522 On The Lake Condominium" dated the 9th day of August, 2001 and recorded the 13th day of August, 2001 in the Office of the Register of Deeds for Milwaukee County, Wisconsin, in (Reel)(Vol.) --- of Records, at (Images) (Pages) --- through ---, as Document No. 8116479 and by a Condominium Plat therefor;

Together with all appurtenant rights, title and interests, including (without limitation):

- the undivided percentage interest in all Common Elements as specified for such Unit in the aforementioned Declaration;
- the right to use of the areas and/or facilities, if any, specified in the aforementioned Declaration, as Limited Common Elements for such Unit; and
- membership in the 1522 On The Lake Condominium Owner's Association, Inc., (hereafter the "Owner's

Association"), a Wisconsin Corporation, as provided for in the aforementioned Declaration and in any Articles of Incorporation and/or Bylaws for such Owner's Association.

Recording Area

Name and Return Address

Patrick O. & Virginia M. Dunphy
1522 N. Prospect Ave., #1804
Milwaukee, WI 53202

Part of 359-0026-100-2

Parcel Identification Number (PIN)

This is not homestead property.

Grantor warrants that the title is good, indefeasible in fee simple and free and clear of encumbrances, except terms, provisions, conditions and restrictions contained in the Condominium Ownership Act for the State of Wisconsin and/or contained in any of the "Condominium Documents" (consisting of the aforementioned Declaration and Condominium Plat, the Bylaws, any Articles of Incorporation of such Owner's Association, any Rules or Regulations adopted pursuant to the Declaration or Bylaws) and all amendments to any of those Condominium Documents and municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility, municipal and association service, easements for performance of association duties, recorded building and use restrictions and covenants, general taxes levied in the year of closing, Wisconsin Condominium Act, condominium declaration and plat and association articles of incorporation, bylaws and rules and amendments to the above and exceptions listed on the attached Exhibit "A".

Grantee, by acceptance of this Deed, agrees and binds Grantee and all his/her heirs, representatives, successors and assigns to all the terms, provisions and conditions of the Condominium Documents and all amendments thereto.

Dated this 1st day of December, 2003

AUTHENTICATION

Signature(s) _____

authenticated this _____ day of _____

TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, _____ authorized by § 706.06, Wis. Stats.)

THIS INSTRUMENT WAS DRAFTED BY
MARVIN RIPP

(Signatures may be authenticated or acknowledged. Both are not necessary.)

1522 Partners, LLC a Wisconsin limited liability company

By: Douglas J. Weas, Authorized Member

STATE OF WISCONSIN)

Milwaukee County)

ACKNOWLEDGMENT

) ss.

Personally came before me this 1st day of December, 2003 the above named 1522 Partners, LLC, a Wisconsin limited liability company by Douglas J. Weas, Authorized Member, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Stephanie D. Gordon
Notary Public, State of Wisconsin

My Commission is permanent. (If not, state expiration date: October 23, 2005)



*Names of persons signing in any capacity must be typed or printed below their signature.

CONDOMINIUM DEED

STATE BAR OF WISCONSIN

FORM No. 8 - 2000

POOR QUALITY DOCUMENT RECEIVED FOR RECORDING



Legislation Details (With Text)

File #: 980106 **Version:** 1

Type: Resolution **Status:** Passed

File created: 5/5/1998 **In control:** ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE

On agenda: **Final action:** 6/16/1998

Effective date:

Title: Substitute resolution amending the preservation guidelines for the North Lake Drive Estates Historic District.

Sponsors: THE CHAIR

Indexes: HISTORIC PRESERVATION, HISTORIC STRUCTURE

Attachments:

Date	Ver.	Action By	Action	Result	Tally
5/5/1998	0	COMMON COUNCIL	ASSIGNED TO		
5/19/1998	1	CITY CLERK	DRAFT SUBMITTED		
6/1/1998	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
6/9/1998	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	RECOMMENDED FOR ADOPTION	Pass	5:0
6/16/1998	1	COMMON COUNCIL	ADOPTED	Pass	17:0
6/25/1998	1	MAYOR	SIGNED		

980106
SUBSTITUTE 1
84-71
THE CHAIR
Substitute resolution amending the preservation guidelines for the North Lake Drive Estates Historic District.
- Analysis -

This resolution amends the preservation guidelines for the North Lake Drive Estates Historic District to include the following provision:

"The construction of any single building addition or accessory building shall not increase the total gross floor area of all structures on the lot by more than 20%. The total gross floor area of all additions or accessory buildings constructed after July 27, 1984, shall not exceed 50% of the total gross floor area of all structures on the lot on that date."

Whereas, On July 27, 1984, the Common Council adopted File Number 84-71, a resolution designating North Lake Drive Estates as a City historic district; and

Whereas, The North Lake Drive Estates Historic District is significant in that it contains an intact collection of early 20th century mansions built with high-quality craftsmanship and materials by prominent Milwaukeeans of that era; and

Whereas, The structures in the North Lake Drive Estates Historic District were built for residential use and remain residential in appearance, if not use; and

Whereas, The construction of large additions or accessory buildings on parcels in the North Lake Drive Estates Historic District would have a significant, negative and irreparable impact on the residential character of the District; and

Whereas, In adopting File Number 84-71, the Common Council adopted, by reference, preservation guidelines for the North Lake Drive Estates Historic District, including guidelines for new construction in the district; and

Whereas, While these guidelines require that the scale of new construction be in harmony with the character of the district, they do not

establish specific limits on the size of new additions and accessory buildings; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that part (C)(2) of the preservation guidelines for the North Lake Drive Estates Historic District is amended to read:

C. Guidelines for New Construction

2. Scale

Overall building height and bulk; the expression of major building divisions including foundation, body and roof; and individual building components such as porches, overhangs and fenestration must be compatible with the surrounding structures. >>The construction of any single building addition or accessory building shall not increase the total gross floor area of all structures on the lot by more than 20%. The total gross floor area of all additions or accessory buildings constructed after July 27, 1984, shall not exceed 50% of the total gross floor area of all structures on the lot on that date.<<

Department of City Development

LRB98143.2

JDO

5/19/98

D

SD100

EXISTING SITE PLAN

SITE CALCS

LOT COVERAGE

PRIMARY RESIDENCE	5,646 S.F.
CARETAKER'S COTTAGE	873 S.F.
STABLE	822 S.F.
<u>TOTAL</u>	<u>7,341 S.F.</u>

LOT SIZE: 65,158 S.F.

$7,341 / 65,158 =$

11.26% LOT COVERAGE RATIO.

BUILDING SQUARE FOOTAGE

PRIMARY RESIDENCE

LOWER LEVEL	4,733
FIRST FLOOR	5,646
SECOND FLOOR	5,314
THIRD FLOOR	5,314
<u>TOTAL:</u>	<u>21,007 S.F.</u>

CARETAKER'S COTTAGE

FIRST FLOOR	725
SECOND FLOOR	631
<u>TOTAL:</u>	<u>1,356 S.F.</u>

STABLE

LOWER LEVEL	826
FIRST FLOOR	826
SECOND FLOOR	826
<u>TOTAL:</u>	<u>2,478 S.F.</u>

HISTORIC TOTAL

SQUARE FOOTAGE:	24,841
<u>20% ADDITION LIMITATION:</u>	<u>4,968</u>

JULY 1984 TOTAL

SQUARE FOOTAGE:	26,974
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50% TOTAL

<u>NEW CONSTRUCTION LIMIT:</u>	<u>13,487 S.F.</u>
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E

PROJECT SUMMARY

The project under consideration consists of a new outbuilding on the premises of the Erwin & Paula Uihlein Residence located at 3319 N. Lake Drive in Milwaukee Wisconsin. The new structure will house a four-car garage as well as a swimming pool and associated support facilities.

The primary residence, designed by Milwaukee Architects Kirchoff & Rose was constructed in 1915-1916 in the Elizabethan Revival style. The property is a contributing structure to the national register Kenwood Park – Prospect Hill Historic District. It is also located in the smaller North Lake Drive Estates Historic District.

SITE DESIGN

The home, when initially designed was intended to sit on a block bounded on the East by Lake Drive, and Marietta Avenue along the West face. Plans to extend Marietta Avenue to the north were abandoned in the 1920's and the street extension as well as the underlying 18" sewer main were subsequently vacated to 3319 N. Lake Drive.

Following the vacation of Marietta Avenue to the West of the house the property was expanded westward to Windmere Court. The character and landscape design of the grounds to the West of the Uihlein Residence is markedly more relaxed and informal than the rigid formal gardens between the home and Lake Drive.

In the 1970's two residences were constructed in the Southwest corner of the site in an effort to offset some of the ongoing maintenance on the original house. These homes are visible in the 1980, 1985, and 1990 aerial images of the property. The easternmost home was demolished between 1990 and 1995 and the second home at the corner of Windmere and Hartford was removed following that.

In siting our new structure on the property, we recognized that the Southwest corner of the site had the least historic integrity of the overall property, was not part of the original 1915 design for the property, and had in fact been previously constructed upon in the 1970's. It was felt that this area was therefore the most appropriate place to site the building.

Further reinforcing this decision was the observation that the overall design concept of the original house consisted of buildings that anchored the three corners of the site (the house, the caretaker's residence, and the stable). Between these three objects stretched the taut brick walls that defined the perimeter of the property. By locating the new outbuilding in the Southwest corner of the site, the massing of this structure could continue that original vision of buildings that anchored corners of the property and were connected by thin masonry perimeter walls. In a nod to the interesting history of the site, it also creates a void on the property where Marietta Avenue was initially planned to extend.

BUILDING DESIGN

Once appropriately sited, we focused on the most sympathetic approach to the materials and form of the new building. To denote the full East / West extent of the property along Hartford Avenue, we are proposing extending the perimeter garden wall in a brick to match the existing structures on the site. The bond pattern would be changed from Flemish to running bond as a subtle way of differentiating between the two eras of construction.

For the building itself, the decision was made to maintain the general historic forms and proportions that exist in the 1915 design while altering the materials so that there would be no confusion about what was added as part of the current changes. This strategy is in keeping with the National Park Services' Secretary's Standards for Rehabilitation. Standard 9 and 10 state:

(9) "New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment."

(10) "New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired."

The materials chosen for the new structure consist of black concrete standard sized brick with accents of a green glazed brick that ties in color wise with the green glazed terracotta of the 1915 roof on the main house. The brick will be trimmed out with limestone caps, sills, and lintels to match the approach taken on the original 1915 house. Fenestration on the buildings will be a thermally broken steel window system to match the

steel windows on the original house as well. The roof will be comprised of slate with copper flashing, gutters, and downspouts. The color palette these materials comprise is tied to the original house, but the goal is to be more congruous with the dense cedar grove and adjacent landscaping that borders Windmere Court.

LANDSCAPE DESIGN

Recognizing the role that landscape has played in the design of the original 1915 structure, we are also focusing attention on the landscape strategy for the new design. Most significantly, we are planning for a row of evergreen trees directly to the north of the Hartford Avenue wall. This row of vegetation will help to screen views of the glass roof of the pool house from Hartford Avenue.

We saw the traffic oval on the West face of the property as the most significant historical aspect of that portion of the site. Our siting of the garage sought to reinforce it's hierarchy by centering the garage approach on the west face of the oval and aligned with the main entrance to the West face of the house. The balance of the landscaping around the new outbuilding will maintain the more loose, English garden approach that has always existed to the West of the primary residence.



GALBRAITH CARNAHAN ARCHITECTS

RE: STATEMENT OF VARIANCE #1 – MAXIMUM NUMBER OF OUTBUILDINGS

June 16th 2022

New Outbuilding
3319 N. Lake Drive
Milwaukee, Wisconsin 53211

PRESERVATION OF INTENT

SEC. 295-505-3-d
ACCESSORY STRUCTURE STANDARDS
MAXIMUM NUMBER

Maximum Number. Not more than 2 accessory buildings may be located on a single lot.

The site for this project is the Erwin & Paula Uihlein Residence at 3319 N. Lake Drive. The property is zoned RS5 which has the following purpose:

"The purpose of the RS1-RS5 districts is to promote, preserve and protect neighborhoods intended for single-family dwellings and having a character slightly more suburban than the RS6 district. These districts require larger lots, larger setbacks and a smaller lot coverage than the RS6 district. The neighborhoods found in these districts feature a regular platting pattern and a more uniform pattern of development than those of the RS6 district. These neighborhoods were platted and developed, in large part, in the mid – to late – 1900's with some areas recently developed."

The site at 3319 N. Lake Drive is very unique in that it is an exceptionally large lot for the neighborhood and RS5 zoning in general. Compared with the other lots along Lake Drive, the site under consideration is 5.98 times their average size.

3300 BLOCK OF LAKE DRIVE – LOT SIZES	
3371 North Lake Drive:	11,560 S.F.
3365 North Lake Drive:	9,648 S.F.
3357 North Lake Drive:	12,560 S.F.
3347 N. Lake Drive:	10,062 S.F.
<u>3329 N. Lake Drive:</u>	<u>10,608 S.F.</u>
Average Neighboring Lot Size:	10,887 S.F.

3319 N. Lake Drive **65,158 S.F.**
5.98 x the Average Lot Size on the Street.

RECEIVED

JUN 16 2022

BOARD OF ZONING APPEALS
CITY OF MILWAUKEE

RECEIVED

JUN 16 2022

BOARD OF ZONING APPEALS
CITY OF MILWAUKEE

This unusual sized parcel allows for additional built density while preserving the lot coverage and character outlined in the zoning goals above.

EXCEPTIONAL CIRCUMSTANCES

As outlined above, the lot size itself creates exceptional circumstances that are not found in many other RS5 lots in the area. The granting of this variance based on the unique size of this property would not establish a precedent that could be repeated on other RS5 lots throughout the neighborhood where it would be less appropriate.

PRESERVATION OF PROPERTY RIGHTS

The requested additional outbuilding provides secure storage for automobiles that is needed to deter recent intrusions onto the property. These incidents create a safety risk that could be solved on other properties by a zoning compliant addition of a 1st or 2nd outbuilding.

Because of the historic status of the property, and the unique estate design that includes a stable and caretaker's cottage, we are unable to construct this security feature without either a variance, or a demolition permit for one of the historic outbuildings. Given that the latter is not desired, nor would be granted by the Historic Preservation Commission, we are seeking the variance to provide the needed security for the property.

ABSENCE OF DETRIMENT

The requested additional outbuilding would not pose a significant detriment to any of the neighboring properties. The location of the outbuilding on the site was carefully considered and orchestrated to seamlessly fit within the existing neighborhood.

The primary house shields the Lake Drive properties to the north from the building site. The interior lot at the end of Windermere Ct. is a significant distance from the proposed building. Additionally, a thick grove of evergreen and serviceberry plants are being proposed for the northern edge of the property to fully screen the views into the site. Westward, across Windermere Ct. the proposed outbuilding would be lower than the two-story garage building at the western corner of Windermere Ct. and Hartford Ave. The relationship of the outbuilding to Windermere Ct. would be very similar to the existing condition that the garage at Windermere and Hartford creates.

HARDSHIP OF DIMENSIONAL VARIANCE

The property owner did not create the hardships associated with the requested variance to the number of accessory structures. They stem from the appropriate historic and architectural response to the existing site which contains two obsolete accessory structures that are integral to the historic importance of the property.

G



BOZA Referral Letter

809 N. Broadway

Milwaukee, WI 53202-3617

414-286-8210

LMS ID: RES-NEW-22-00128

Premise: 3319 N LAKE DR

Zoning: RS5

Proposed use: Accessory Structure

Applicant

Nick Carnahan
Galbraith Carnahan Architects
6528 W North Ave
Wauwatosa WI 53213
414-291-0772
nac@galbraithcarnahan.com

Ald. District 12

Lot area: 65,158 SF

Code citation: MCO VII (295-503-1)

Owner

CHRISTOPHER S ABELE
3319 N LAKE DR
MILWAUKEE WI 53211

Your request for a permit cannot be granted at this time because, in accordance with the City of Milwaukee's zoning ordinance, the project requires approval by the Board of Zoning Appeals for the following:

☒ **Dimensional Variance Required**

Code Section	Dimension	Required	Proposed	Shortage/Excess
295-505-3-d	Maximum Number.	2	1	1
295-505-3-e	Maximum Size	1,000 SFT	6,816 SFT	5,816 SFT
Table 295-505-3	Side Street Setback	62'-6" No closer than house	4'-1"	58'-5"
Table 295-505-3	Sidewall Height	10'-0"	12'-2"	2'-2"
295-505-5-f-5-a	Fences along Side Streets	4'-0"	6'-0"	2'-0"

Comments: The proposed new garage building is required to connect to the street for plumbing. A Historic COA is required.

Plan examiner:

Nicolas Curich

Issued: 06/13/2022

If you wish to pursue this request, you must file an application with the Board of Zoning Appeals. An informational booklet is available to assist you in this process; information also is available on the Internet at www.mkedcd.org/BOZA. If you have questions about the zoning appeals process, please feel free to contact the Board office at (414) 286-2501.

You must appeal this denial within 30 days of the signed date. If you do not file an appeal within 30 days, you will need to obtain another statement of denial from the Milwaukee Development Center before pursuing your zoning appeal.

If you have questions regarding occupancy or building permits, please call the Milwaukee Development Center at (414) 286-8211. Permit information is available on the Internet at www.mkedcd.org/build.