

Dave Less

From: Dave Less
Sent: Wednesday, January 29, 2014 11:27 AM
To: Kathleen McDaniel
Subject: RE: 22r11 North 8th Street

How about 2pm today. See you down here.

From: Kathleen McDaniel
Sent: Wednesday, January 29, 2014 11:24 AM
To: Dave Less
Subject: RE: 22r11 North 8th Street

I'm free this afternoon between 1:30 and 3:30, otherwise Friday after 1.

Kathleen M. McDaniel
Interim City Attorney, City of Manitowoc
ph: (920) 686-6990 | fax: (920) 686-6999
email: kmcdaniel@manitowoc.org

From: Dave Less
Sent: Wednesday, January 29, 2014 10:05 AM
To: Tim Frey
Cc: Kathleen McDaniel; Paul Braun
Subject: RE: 22r11 North 8th Street

Tim, good idea to have your counsel contact Kathleen to discuss. Make sure you keep me in the loop.

Kathleen, let's talk when you have a chance.

From: Tim Frey [<mailto:timfrey@tlchomes.net>]
Sent: Wednesday, January 29, 2014 10:02 AM
To: Dave Less
Subject: Fwd: 22r11 North 8th Street

Hi David,

Please see my attorney's initial thoughts. I will share with you his final thoughts too. Would it be a good idea for my attorney to contact City of Manitowoc's attorney when he has completed his research?

Tim

----- Forwarded message -----
From: Anthony Resimius <resimius@rohdedales.com>
Date: Wed, Jan 29, 2014 at 9:26 AM
Subject: RE: 22r11 North 8th Street
To: Tim Frey <timfrey@tlchomes.net>

Tim,

I took a quick look at the statute. My initial thought is that the City could deny approval based on the 1% rule. However, they would need to provide you with a way to apply for a reasonable accommodation under the Federal Fair Housing Act. This would likely be in the form of a conditional use permit or something of that nature. There would need to be a hearing on your request for reasonable accommodation.

I will do some research today or tomorrow and get back to you with my final thoughts.

Tony

Tony Resimius | ROHDE DALES LLP | 607 N. 8th Street, Ste. 700, Sheboygan, Wisconsin 53081-4513 | phone [920.458.5501](tel:920.458.5501) | fax [920.458.5874](tel:920.458.5874) | resimius@rohdedales.com | www.rohdedales.com

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From: Tim Frey [<mailto:timfrey@tlchomes.net>]
Sent: Tuesday, January 28, 2014 4:39 PM
To: Anthony Resimius
Subject: Fwd: 22r11 North 8th Street

Hi Tony,

Please see the email below from David Less, City Planner for Manitowoc. Specifically the 1% rule. He has always been supportive of our facilities and wanted to make me aware of this as soon as possible. I'm interested in any case law and your interpretation of the statute.

Thanks,

Tim

----- Forwarded message -----

From: **Dave Less** <dless@manitowoc.org>

Date: Tue, Jan 28, 2014 at 1:31 PM

Subject: 22r11 North 8th Street

To: Tim Frey <timfrey@tlchomes.net>

Tim, if you're looking at 2211 N. 8th, it looks like there is already a home on the south half of this parcel. That was the address you captioned in your email below, so if this is the parcel, its Tax ID# is #808-301-040, and is currently zoned "R-2", Single-Family District. 2 homes on the same parcel is a problem, but beyond this, it looks like the City would need some additional R/W dedicated along the west side of this lot. More important is your reference to locating 2, 8-person CBRF's on the site. Probably problematic in terms of neighborhood, but more pertinent is that while we would look at the 2 facilities as "comprising essential components of a single program" as per 62.23(7)(i)1., you'd have to apply for a Conditional Use Permit under that zoning district. Further, while you would be able to apply for the 16 units pursuant to (7)(i)5., the City would not be compelled to approve; the same being true for just an 8-bed facility, because, as you may know, there is a 1% threshold in the statute under (7)(i)2. that states the City is not required to approve above this 1% limit. The City's population as of 1/1/2013 is 33,685, which makes the 1% threshold 337. Our community living arrangement capacity as of 1/1/2014 is 354.

Tim, that's my personal take on this parcel, so take it for what it's worth.

From: Tim Frey [mailto:timfrey@tlchomes.net]

Sent: Monday, January 27, 2014 4:58 PM

To: Dave Less

Subject: 2211 North 8th Street

Hi Dave,

The following is a link to a parcel that I'm considering putting in an offer to purchase.

http://www.realtor.com/realestateandhomes-detail/2211-N-8Th-St_Manitowoc_WI_54220_M84746-85526?row=2

My plan would be to construct two 8 bed CBRF's which are approximately 53' wide and 67' deep. This lot would accommodate a garage but my preference would be to build without a garage. The garages are rarely used in our operations. We would provide a 4+ stall parking slab for each CBRF. Construction single story and on slab construction.

Please provide feedback on my plan for this parcel.

Thank you,

Tim Frey

633 St. Clair Avenue

Sheboygan, WI 53081

(920) 694-1102 - Phone

(920) 694-4685 - Private Fax

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This email was Anti Virus checked by Astaro Security Gateway. <http://www.astaro.com>

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Tim Frey

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3. The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10% of the purchase price and installation fee of the antenna and associated equipment.

(hf) *Amateur radio antennas.* The governing body of a city may not enact an ordinance or adopt a resolution on or after April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.

2. The ordinance or resolution reasonably accommodates amateur radio communications.

(hg) *Amortization prohibited.* 1. In this paragraph, “amortization ordinance” means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used as described under par. (h), but only for a specified period of time, after which the lawful use of such building, premises, structure, or fixture must be discontinued without the payment of just compensation.

2. Subject to par. (h), an ordinance enacted under this subsection may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.

(hi) *Payday lenders.* 1. In this paragraph:

a. “Licensee” has the meaning given in s. 138.14 (1) (i).

b. “Payday lender” means a business, owned by a licensee, that makes payday loans.

c. “Payday loan” has the meaning given in s. 138.14 (1) (k).

2. Except as provided in subs. 3., 4., and 5., no payday lender may operate in a city unless it receives a permit to do so from the city council, and the city council may not issue a permit to a payday lender if any of the following applies:

a. The payday lender would be located within 1,500 feet of another payday lender.

b. The payday lender would be located within 150 feet of a single-family or 2-family residential zoning district.

3. A city may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in subd. 2.

4. If a city has enacted an ordinance regulating payday lenders that is in effect on January 1, 2011, the ordinance may continue to apply and the city may continue to enforce the ordinance, but only if the ordinance is at least as restrictive as the provisions of subd. 2.

5. Notwithstanding the provisions of subd. 4., if a payday lender that is doing business on January 1, 2011, from a location that does not comply with the provisions of subd. 2., the payday lender may continue to operate from that location notwithstanding the provisions of subd. 2.

(hm) *Migrant labor camps.* The council of a city may not enact an ordinance or adopt a resolution that interferes with any repair or expansion of migrant labor camps, as defined in s. 103.90 (3), that are in existence on May 12, 1992, if the repair or expansion is required by an administrative rule promulgated by the department of workforce development under ss. 103.90 to 103.97. An ordinance or resolution of a city that is in effect on May 12, 1992, and that interferes with any repair or expansion of existing migrant labor camps that is required by such an administrative rule is void.

(i) *Community and other living arrangements.* For purposes of this section, the location of a community living arrangement for adults, as defined in s. 46.03 (22), a community living arrangement for children, as defined in s. 48.743 (1), a foster home, as defined in s. 48.02 (6), or an adult family home, as defined in s. 50.01 (1), in any city shall be subject to the following criteria:

1. No community living arrangement may be established after March 28, 1978 within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the city. Two community living arrangements may be adjacent if the city authorizes that arrangement and if both facilities comprise essential components of a single program.

2. Community living arrangements shall be permitted in each city without restriction as to the number of facilities, so long as the total capacity of such community living arrangements does not exceed 25 or one percent of the city’s population, whichever is greater. When the capacity of the community living arrangements in the city reaches that total, the city may prohibit additional community living arrangements from locating in the city. In any city of the 1st, 2nd, 3rd or 4th class, when the capacity of community living arrangements in an aldermanic district reaches 25 or one percent of the population, whichever is greater, of the district, the city may prohibit additional community living arrangements from being located within the district. Agents of a facility may apply for an exception to the requirements of this subdivision, and such exceptions may be granted at the discretion of the city.

2m. A foster home that is the primary domicile of a foster parent and that is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1m) (b) shall be a permitted use in all residential areas and is not subject to subs. 1. and 2. except that foster homes operated by corporations, child welfare agencies, churches, associations, or public agencies shall be subject to subs. 1. and 2.

2r. a. No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the city.

b. An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in subd. 2r. a. and that is licensed under s. 50.033 (1m) (b) is permitted in the city without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.

3. In all cases where the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in subs. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.

4. In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in subs. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences except as provided in subd. 9., but is entitled to apply for special zoning permission to locate in those areas. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

5. In all cases where the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in subs. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

6. The department of health services shall designate a single subunit within that department to maintain appropriate records indicating the location and number of persons served by each community living arrangement for adults, and such information shall be available to the public. The department of children and families shall designate a single subunit within that department to maintain appropriate records indicating the location and number of persons served by each community living arrangement for children, and such information shall be available to the public.

7. In this paragraph, “special zoning permission” includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

8. The attorney general shall take all necessary action, upon the request of the department of health services or the department of children and families, to enforce compliance with this paragraph.

9. Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement and every year thereafter, the common council of a city in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the city. The determination shall be made according to the procedures provided under subd. 10. If the common council determines that the existence in the city of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the city, the common council may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the adult family home or community living arrangement. The adult family home or community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

9m. The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in s. 252.01 (2m), resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under subd. 9. to assert or prove that the existence of the community living arrangement in the city poses a threat to the health, safety or welfare of the residents of the city.

10. A determination made under subd. 9. shall be made after a hearing before the common council. The city shall provide at least 30 days’ notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council. The common council shall take notes of the testimony and shall mark and preserve all exhibits. The common council may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the city. Within 20 days after the hearing, the common council shall mail or deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

(7a) EXTRATERRITORIAL ZONING. The governing body of any city which has created a city plan commission under sub. (1) and has adopted a zoning ordinance under sub. (7) may exercise extraterritorial zoning power as set forth in this subsection. Insofar as applicable sub. (7) (am), (b), (c), (ea), (h) and (i) shall apply to extraterritorial zoning ordinances enacted under this subsection.

This subsection shall also apply to the governing body of any village.

(a) Extraterritorial zoning jurisdiction means the unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or 1 1/2 miles of a fourth class city or a village. Wherever extraterritorial zoning jurisdictions overlap, the provisions of s. 66.0105 shall apply and any subsequent alteration of the corporate limits of the city by annexation, detachment or consolidation proceedings shall not affect the dividing line as initially determined under s. 66.0105. The governing body of the city shall specify by resolution the description of the area to be zoned within its extraterritorial zoning jurisdiction sufficiently accurate to determine its location and such area shall be contiguous to the city. The boundary line of such area shall follow government lot or survey section or fractional section lines or public roads, but need not extend to the limits of the extraterritorial zoning jurisdiction. Within 15 days of the adoption of the resolution the governing body shall declare its intention to prepare a comprehensive zoning ordinance for all or part of its extraterritorial zoning jurisdiction by the publication of the resolution in a newspaper having general circulation in the area proposed to be zoned, as a class 1 notice, under ch. 985. The city clerk shall mail a certified copy of the resolution and a scale map reasonably showing the boundaries of the extraterritorial jurisdiction to the clerk of the county in which the extraterritorial jurisdiction area is located and to the town clerk of each town, any part of which is included in such area.

(b) The governing body may enact, without referring the matter to the plan commission, an interim zoning ordinance to preserve existing zoning or uses in all or part of the extraterritorial zoning jurisdiction while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 2 years after its enactment, unless extended as provided in this paragraph. Within 15 days of its passage, the governing body of the city shall publish the ordinance in a newspaper having general circulation in the area proposed to be zoned as a class 1 notice, under ch. 985, or as a notice, as described under s. 62.11 (4) (c) 2., and the city clerk shall mail a certified copy of the ordinance to the clerk of the county in which the extraterritorial jurisdiction is located and to the clerk of each town affected by the interim zoning ordinance and shall file a copy of the ordinance with the city plan commission. The governing body of the city may extend the interim zoning ordinance for no longer than one year, upon the recommendation of the joint extraterritorial zoning committee established under par. (c). No other interim zoning ordinance shall be enacted affecting the same area or part thereof until 2 years after the date of the expiration of the interim zoning ordinance or the one year extension thereof. While the interim zoning ordinance is in effect, the governing body of the city may amend the districts and regulations of the ordinance according to the procedure set forth in par. (f).

(c) If the governing body of the city adopts a resolution under par. (a), it shall direct the plan commission to formulate tentative recommendations for the district plan and regulations within all or a part of the extraterritorial zoning jurisdiction as described in the resolution adopted under par. (a). When the plan commission is engaged in the preparation of such district plan and regulations, or amendments thereto, a joint extraterritorial zoning committee shall be established. Such joint committee shall consist of 3 citizen members of the plan commission, or 3 members of the plan commission designated by the mayor if there are no citizen members of the commission, and 3 town members from each town affected by the proposed plan and regulations, or amendments thereto. The 3 town members shall be appointed by the town board for 3 year terms and shall be residents of the town and persons of recognized experience and qualifications. Town board members are eligible to serve. If the town board fails to appoint the 3 members within 30 days following receipt of the certified resolution under par. (a), the board shall be subject to a mandamus proceeding which may be instituted by any resident of the area to