

STATE OF WISCONSIN      CIRCUIT COURT      MILWAUKEE COUNTY

Robin Palm, AICP  
1559 N 51st St  
Milwaukee, WI 53208,

Petitioner,  
v.

Case Class: Petition for  
Writ of Mandamus  
Case Code: 30952  
Case No. 23-CV-

FILED  
05-01-2023  
Anna Maria Hodges  
Clerk of Circuit Court  
2023CV003140  
Honorable Christopher R.  
Foley-14  
Branch 14

Paulette Enders, Development Director, Zoning Administrator City of Wauwatosa  
7725 W North Ave, Wauwatosa, WI 53213

Respondent.

Received by

MAY 03 2023

**PETITION FOR WRIT OF MANDAMUS**

City Clerk's Office

3:30 pm

This is an action to enforce Wisconsin's Zoning Law, Wis. Stat. §§ 62.23(7)(e)4- §§ 62.23(7)(e)6. State law declares it the public policy of this state that any person who is aggrieved by any decision of the administrative officer is presumptively entitled to an appeal within a reasonable time.

Petitioner hereby petitions this Court for a writ of mandamus directing the Respondent, Paulette Enders in her capacity as the zoning administrator of the City of Wauwatosa, to schedule a hearing of the Board of Zoning Appeals ("BOZA") within a reasonable time as requested by the Petitioner, alleging to the Court as follows:

**FACTUAL ALLEGATIONS**

***Parties***

1. Petitioner Robin Palm, AICP, acting in *Pro Se*, is an AICP certified urban planner, and is resident of the City of Milwaukee, in Milwaukee County Wisconsin with a home address of 1559 N 51st Street, Milwaukee, Wisconsin 53208.
2. Respondent Paulette Enders, in her capacity as the current title holder of Development Director of the City of Wauwatosa, the position also named as the Zoning Administrator in Wauwatosa Municipal Code (WMC) 24.18.020.



**STATE OF WISCONSIN****CIRCUIT COURT****MILWAUKEE**

Robin A Palm vs. Paulette Enders

**Electronic Filing  
Notice**

Case No. 2023CV003140

Class Code: Petition for Writ of Mandamus

**FILED**

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2023CV003140

Honorable Christopher R.

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PAULETTE ENDERS  
7725 W NORTH AVE  
MILWAUKEE WI 53212

Case number 2023CV003140 was electronically filed with/converted by the Milwaukee County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a \$20.00 fee to register as an electronic party. This fee may be waived if you file a Petition for Waiver of Fees and Costs Affidavit of Indigency (CV-410A) and the court finds you are indigent under §814.29, Wisconsin Statutes.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

**Pro Se opt-in code: 7c445b**

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 414-278-4140.

Milwaukee County Circuit Court  
Date: May 2, 2023





FILED  
05-01-2023  
Anna Maria Hodges  
Clerk of Circuit Court  
2023CV003140  
Honorable Christopher R.  
Foley-14  
Branch 14

### SUMMONS

Robin Palm, AICP  
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Respondent.

### THE STATE OF WISCONSIN

To each person named above as a Respondent:

You are hereby notified that the Petitioner named above has filed a lawsuit or other legal action against you. The Petition, which is attached, states the nature and basis of the legal action.

Within 18 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Petition. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: Clerk of Circuit Court, Milwaukee County, 9901 North 9th Street, Room 104 Milwaukee, Wisconsin 53233 and to the Petitioner, whose address is: 1559 N 51st Street, Milwaukee, WI 53208.

You may have an attorney help or represent you.

If you do not provide a proper answer within 18 days, the court may grant judgment against you for the award of money or other legal action requested in the Petition, and you may lose your right to object to anything that is or may be incorrect in the Petition. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Respectfully submitted,  
Robin Palm, AICP  
(804)400-0744; palmra@gmail.com  
1559 N 51st St  
Milwaukee, WI 53208,



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This is an action to enforce Wisconsin's Zoning Law, Wis. Stat. §§ 62.23(7)(e)4- §§ 62.23(7)(e)6. State law declares it the public policy of this state that any person who is aggrieved by any decision of the administrative officer is presumptively entitled to an appeal within a reasonable time.

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### FACTUAL ALLEGATIONS

#### *Parties*

1. Petitioner Robin Palm, AICP, acting in *Pro Se*, is an AICP certified urban planner, and is resident of the City of Milwaukee, in Milwaukee County Wisconsin with a home address of 1559 N 51st Street, Milwaukee, Wisconsin 53208.
2. Respondent Paulette Enders, in her capacity as the current title holder of Development Director of the City of Wauwatosa, the position also named as the Zoning Administrator in Wauwatosa Municipal Code (WMC) 24.18.020.



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3. The Zoning Administrator role can be designated and/or delegated by the Development Director per WMC 24.18.020 and WMC 24.01.100 to others over whom they have authority.

**Venue & Jurisdiction**

4. This Court has jurisdiction to hear this matter under Wis. Stat. § 62.23(7)(e)10, which provides aggrieved persons an ability to appeal any decision of the board of zoning appeals within 30 days by certiorari to the circuit court. This establishes the circuit court as the proper appellate court for all matters normally under the jurisdiction of a Board of Zoning Appeals.

5. Venue is proper in this County under Wis. Stat. § 801.50(2)(a) to (c)

**Mr. Palm's Request for an Administrative Appeal**

6. On March 31, 2023, Robin Palm, an urban planner, sent an application BZA2023-0003 for an Administrative Appeal to the City of Wauwatosa via its online portal. An Administrative Appeal is when an aggrieved person feels that an administrative official has erred in their administration or enforcement of the Zoning Code. The case is to immediately be heard by the Board of Zoning Appeals, who has all of the powers of the official whose actions are being appealed available as a course of remedy. The purpose of this is to give due process to members of the community for all of the decisions that government employees must, for expedience sake, do administratively. This appeal was within the 10 days of the written decision, as required to initiate such appeals as defined in the Wauwatosa Municipal Code. Mr. Palm submitted a narrative stating that was an aggrieved person due to errors in law and actions by the Zoning Administrator or their designee, and therefore requested a hearing in front of the Board of Zoning Appeals to consider potential remedies, including the revocation of the conditional use in question. An application fee of \$350 was invoiced to Mr. Palm, and paid that very same day by Mr. Palm. A true and accurate copy of

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that request, invoice, and receipt is attached to the Affidavit of Robin Palm as Exhibit P1.

7. On April 3, 2023, Robin Palm received an email at the address denoted on his application from Arthur Piñon, Wauwatosa planner acting as the Zoning Administrator/designee. In it, Mr. Piñon stated that the City of Wauwatosa was unable to process the request due to a lack of jurisdiction of the City's BOZA to hear appeals of decisions of the Common Council. Mr. Piñon did not state that the application could be revised per WMC 24.13.010(f)(3). A true and accurate copy of that email letter is attached to the Affidavit of Robin Palm as Exhibit P2.

8. On April 3 and again on April 6, Mr. Palm emailed Mr. Piñon clarifying the nature of the appeal, the BOZA's authority to hear it, and the Zoning Administrator's lack of capacity to deny it.

In those emails, Mr. Palm requested the decision be reversed, writing that if it were not, he would submit another administrative appeal, this one of the letter from the Zoning Administrator. No responses to those emails have been received as of the time of this petition. True and accurate copies of those email letters are attached to the Affidavit of Robin Palm as Exhibit P3.

9. On April 6, 2023 Mr. Palm sent emails to the 7 members of the Board of Zoning Appeals, as per 62.23(7)(e)4 explaining the grounds of the appeal and how the appeal should not have been rejected. Only 1 member replied, stating that they did not have the power to compel an issue. This is contrary to 62.23(7)(e)3 which states that meetings shall be at the call of the chairperson. True and accurate copies of those email letters are attached to the Affidavit of Robin Palm as Exhibit P4.

10. On April 13, 2023, Mr. Palm completed application BZA2023-0006, appealing the Zoning Administrator's decision to reject appeal BZA2023-0003 on the grounds of lack of jurisdiction. In the appeal narrative, Mr. Palm asserts that, in general, the zoning administrator cannot and should not deny an appeal of their own actions, citing the WMC's mandatory language present in WMC 24.16.110(G), which mirrors Wis. Stat. §§ 62.23(7)(e)4- §§ 62.23(7)(e)6. Mr. Palm also questioned whether the approval use was actually was an administrative action per WMC 24.16.110(G), and asserted that

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WMC 24.16.110(G) provides the BOZA all the necessary powers to enact the requested remedies by Mr. Palm. An application fee of \$350 was invoiced to Mr. Palm and paid that very same day by Mr. Palm. True and accurate copies of that request, invoice, and receipt are attached to the Affidavit of Robin Palm as Exhibit P5.

11. On Friday, April 14, 2023, Mr. Palm contacted City Clerk Steven Braatz asking why the BOZA hearing for April 26 was reporting as “cancelled” on the City’s website. Mr. Braatz responded via email that there were no applications or other issues to discuss. When Mr. Palm informed Mr. Braatz of the non standard timetables for Administrative Appeal applications shown on the city website, Mr. Braatz referred Mr. Palm to the Zoning Administrator by CC’ing the email message to Tamara Szudy and Arthur Piñon. As of the date of this petition, that email has not been responded to by the zoning administrator. A true and accurate copy of that email exchange attached to the Affidavit of Robin Palm as Exhibit P6.

12. Mr. Palm received a letter dated April 19, 2022 from Alan Kesner, City Attorney for the City of Wauwatosa. In it, Mr. Kesner reiterates that the Board of Zoning Appeals has neither jurisdiction over nor the power to overturn Conditional Use approvals issued by an act of the Common Council. Mr. Kesner also advises that Wisconsin law provides that an aggrieved person can appeal a decision to the issuance of a conditional use permit to Circuit Court. Mr. Kesner does not state the timetables that such review may be obtained. True and accurate copies of that request, invoice, and receipt are attached to the Affidavit of Robin Palm as Exhibit P7.

13. On April 26, 2023, Mr. Palm sent an email letter reply to Mr. Kesner, with copies sent to the mayor, the offices of the administrator, clerk, attorney, and zoning administrator, and all the relevant deputies. In the letter, Mr. Palm stated that the BOZA has not just the authority to hear the appeal application but the obligation to do so because the Common Council’s approval should be considered “administering and enforcing the zoning code” and thus is an administrative action. Mr. Palm went on to state that to do as Mr. Kesner suggested could have resulted in Mr. Palm’s case being dismissed for not exhausting his options for administrative appeal. Mr. Palm cited

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three cases from the Wisconsin Supreme Court: *League of Women Voters v. Outagamie County*, 334 NW 2d 887 - Wis: Supreme Court 1983, *Brandt v. Pewaukee Town Board*, 15 Wis. 2d 6 - Wis: Supreme Court 1961 and *Nodell Inv. Corp. v. Glendale*, 254 NW 2d 310 - Wis: Supreme Court 1977.

Mr. Palm offered three options to resolve the matter: via administrative methods available to the Zoning Administrator, via a BOZA hearing on May 25th, or via court intervention. As of the timing of this petition, no response has been received from any of the addressed parties.

True and accurate copies of that request, invoice, and receipt are attached to the Affidavit of Robin Palm as Exhibit P8.

14. On April 28, 2023, a land transfer and sale was completed for the property of 1300 Glenview place, which was the property at issue in the Mr. Palm's Board of Zoning Appeals application dated March 31, 2023. The property was transferred between Western Building Products Inc to House 7 LLC for the sum of \$5,150,000. This constitutes a legal proceeding per Wis. Stat. §62.23(7)(e)5 that would have been subject to a stay order. True and accurate copies of that DOR online record is attached to the Affidavit of Robin Palm as Exhibit P9.

15. The property in question of the original March 31, 2023 appeal, 1300 Glenview Place in the City of Wauwatosa, is zoned M-1/PUD. PUD indicates that it has a preliminary approved Planned Unit Development application.

16. The PUD preliminary application was extended on June 1, 2022 to June 1, 2023 by the Common Council of Wauwatosa.

17. According to WMC 24.16.050(A) Planned Unit Developments, any modification of the plans requires following the established PUD amendment process.

18. According to WMC 24.15.050(B) Approval of PUD preliminary and final development plans must occur before any building permit is issued and before any development takes place in a /PUD district.

19. PUD plans have not been finalized for 1300 Glenview Place, nor have they been subjected to the PUD amendment process to be revoked.



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20. These facts concerning the PUD process denote the importance of expedient action and the costly consequences of the delays on the part of the city of Wauwatosa by refusing to review Mr. Palm's Administrative review application.

21. Delays in accommodating Mr. Palm's requests and applications are well beyond the "reasonable time" standard, given the timetables for such actions given by Wauwatosa in publications and by the WMC.

22. There is a pressing need for intervention as every day consists of an additional opportunity for the conditional use recipient to pull permits that should have have been stayed by the zoning administrator pending the BOZA hearing result proceeding.

23. On March, 7, 2023 the Wauwatosa Common Council accepted the 2023 Housing Study via Resolution R-23-30. The resolution was approved unanimously. In that report, under the section "Challenges Identified through data analysis" it identified three challenges:

Constrained supply of deed restricted affordable housing for low-income families, seniors, & individuals

- Limited housing options for the local workforce
- Limited starter home options for young families

24. The Development that coincided with the preliminary approved Planned Unit Development plan, named Glenview Place, included over 500 apartments less than a half mile from Milwaukee Regional Medical Center, site to over 16,000 jobs. 77 of those units would have been affordable for people making 60% of the Area Median Income. The Development would have been less than a third of a mile walk to the new Lincoln Elementary School and Wauwatosa East High School, which was recently upgraded thanks to the passed schools referendum.

25. In the 2008-2030 Comprehensive Plan for the city of Wauwatosa, the 10 acre parcel at 1300 Glenview place is the only parcel in the entire City listed in the Future Land Use section as "Multi Family- Urban Density", which is the density most affordable housing multi family projects would require.

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26. The Village of Wauwatosa Business Improvement District lists 120 Businesses currently operating within District.

27. The extension of the Oak Leaf Trail would have been the first direct off street bicycle facility to go directly to the Medical Center, and would have connected it to a county wide system of miles off street bicycle trails. Currently to commute to the Medical Center via Bicycle likely includes contending with the multilane roads that surround the complex.

28. In 2021, the Milwaukee Regional Medical Center finished numerous bicycle and pedestrian infrastructure improvements throughout the campus, including protected bike lanes, curb bump outs, and traffic calming measures.

29. The erroneously approved conditional use application, which the City has refused all attempts to even host a hearing to rightfully appeal, will not have any affordable housing or expanded bicycle access to the most dense job center outside of downtown, but instead it will only contain storage units. A very poor tradeoff for the larger community who desperately needs affordable and fair housing. If the Petitioner's request for relief is not granted, this approval will be considered a huge loss for the community and will be viewed as a wasted opportunity for decades.

### CAUSE OF ACTION

**VIOLATION OF Wis. Stats. §§ 62.23(7)(e)4- §§ 62.23(7)(e)6. Denying the right of a person to seek an appeal from administrative actions in the enforcement of the zoning code.**

23. The preceding paragraphs are hereby incorporated and realleged as if fully stated herein.

24. The Petitioner, being an aggrieved party that alleged errors on behalf of the Zoning Administrator, had a clear and legal right to appeal the decisions of the Zoning Administrator, according to Wis. Stats. §§ 62.23(7)(e)4 and mirrored in WMC 24.16.110. That right was denied by the Respondent, using justification that runs counter to established case law.

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25. The Respondent, acting in their capacity as the Zoning Administrator, had a plain and positive duty to receive the application; verify its completeness and request revision if it was deemed incomplete or otherwise lacking; notify the Board of Zoning Appeals, the property owner, and the Alderperson of the subject property; and schedule a publicly noticed hearing. This is apparent through the multiple instances of mandatory language in Wis. Stats. §§ 62.23(7)(e)4- §§ 62.23(7)(e)6, WMC Chapter 24.16, sections 010 and 110. The Respondent failed to do these duties.

26. Substantial damages will result from the relief not being granted, including but not limited to:

- denial of the Petitioner's right to procedural due process outlined in chapter 62 of Wisconsin statutes,

- the negative effect on the communities' health, safety, welfare, and economic development potential from the erroneously approved land use,

- the loss of public amenities outlined in the ignored Planned Unit Development Plan Approval that were still in effect at the time of the Conditional Use approval,

- and the loss of \$700 from application fees collected by the Respondent and not returned to the petitioner when the applications were rendered void.

This violates Wis. Stat. §§ 66.0628(2), which states that, "Any fee that is imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is paid". As no hearings were held and no notices were sent out, the withholding of those fees after the applications have caused the Petitioner real financial damages.

27. The Petitioner has made multiple attempts to contact the city by phone and email to resolve the matter administratively, none of which have been answered. The Petitioner has appealed the decision using the correct process prescribed by municipal and state law. The Petitioner's initial application was completed, paid, and submitted within the correct time frame, but was nevertheless rejected by the Zoning Administrator's designee. No alternatives to amending or resubmitted the application were given, contrary to WMC 24.13.010(f)(3). The Petitioner then reached out to members of the Board of Zoning Appeals to suggest they could compel the case. No response

**STATE OF WISCONSIN      CIRCUIT COURT      MILWAUKEE COUNTY**

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was given. The Petitioner appealed the April 3, 2023 decision on April 13, 2023, again with a complete application that was paid and submitted within the correct timeframe. It too was rejected, but by letter from the City Attorney, presumably on behalf of the Zoning Administrator, and both applications were voided on the application web portal. The petitioner sent one final email detailing the options which could stave off legal action on April 26, 2023. There has been no response. It is clear that the Petitioner has exhausted all avenues of administrative resolution, leaving no other remedy at law.

**RELIEF REQUESTED**

WHEREFORE, the Petitioner demands a writ of mandamus to issue against the Respondent under Wis. Stat. §62.23(7)(e)4:

1. Compelling the Respondent to immediately schedule and hold the requested hearing of the Board of Zoning Appeals to hear case BZA2023-0003 at the first possible date according to procedures in WMC24.16.110;
2. Declaring the Petitioner's rights and clarifying the jurisdiction of the Board of Zoning Appeals and its available remedies within that jurisdiction to the Respondent;
3. Compelling the Respondent to immediately stay all legal proceedings furthering the action of the conditional use approval being appealed per Wis. Stat. §62.23(7)(e)5
4. Awarding the Petitioner its reasonable attorney fees, damages of not less than \$350, and other actual costs under Wis. Stat. § 19.37(2), and;
5. Awarding such other relief as the Court deems appropriate.
6. In the event the Court finds that the Zoning Administrator did not err in denying the applications on jurisdictional grounds, awarding the Petitioner damages of \$700 for the applications voided by the Zoning Administrator per Wis. Stat. §§ 66.0628(2).
7. In the event the Court finds that the Zoning Administrator did not err in denying the applications on jurisdictional grounds but did err in the approval of the condi-

## STATE OF WISCONSIN      CIRCUIT COURT      MILWAUKEE COUNTY

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tional use, such remedy as the Court deems appropriate, to include as little as guidance on how to conduct future conditional use cases in the manner prescribed by state law.

Dated this May 1, 2023

Respectfully submitted,

Robin Palm, AICP



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05-01-2023

Anna Maria Hodges

Clerk of Circuit Court

2023CV003140

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Foley-14

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STATE OF WISCONSIN      CIRCUIT COURT   MILWAUKEE COUNTY

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ROBIN PALM, AICP

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PAULETTE ENDERS,  
DEVELOPMENT DIRECTOR AND ZONING ADMINISTRATOR FOR  
THE CITY OF WAUWATOSA

Respondent.

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**APPLICATION FOR ALTERNATIVE WRIT**

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Petitioner, Robin Palm, AICP, acting in *pro se*, hereby applies to this Court for the immediate issuance of an alternative writ of mandamus ordering the Respondent, Paulette Enders, in her capacity as Development Director and Zoning Administrator for the City of Wauwatosa, to immediately schedule a Board of Zoning Appeals hearing in response to Petitioner's March 31, 2023 application, or to appear before this Court and show cause to the contrary. The grounds for this application are as set forth in the Petition, accompanying affidavit(s) and as follows:

1. An alternative writ of mandamus is "a mandamus issued upon the first application for relief, commanding the defendant either to perform the act demanded or to appear before the court at a specified time to show cause for not performing it." *State ex rel. Milwaukee Police Ass'n v. Jones*, 2000 WI App 146, ¶7, n. 7, 237 Wis. 2d 840, 615 N.W.2d 190 (quoting BLACK'S LAW DICTIONARY (7<sup>th</sup> Ed. 1999)).

2. Wis. Stat. § 801.02(5) permits commencement of an action by service of a writ of mandamus "if a copy of the writ is filed forthwith."

3. “The usual practice, if a prima facie case is made out by the petition or application, is to issue an alternative writ of mandamus, directed to the person claimed to be under a duty to act, requiring the person, either to act or to show cause why the person should not be compelled to do so.” 9 *Wis. Pleading & Practice Forms*, sec. 85.37 (5<sup>th</sup> Ed. 2017).

4. Courts can issue alternative writs of mandamus immediately in zoning cases. *See, e.g., State ex rel. Poole v. Village of Menomonee Falls*, 55 Wis. 2d 555, 200 N.W.2d 580 (1972) (“This is an appeal by the Village of Menomonee Falls... from a judgement which ordered the issuance of a peremptory writ of mandamus”); *State ex rel. Humble Oil Refining Co. v. Wahner*, 25 Wis.2d 1, 130 N.W.2d 304 (1964). (“Humble... petitioned for a writ of certiorari to reverse the decision of the board denying permission to build, and for an alternative writ of mandamus to compel the Building Inspector to issue a building permit. It ordered the issuance of the writ of mandamus.”);

5. This Petition and supporting Affidavit establish a prima facie case that the Respondent has failed to perform a clear duty mandated by the Zoning Laws in Chapter 62 of the Wisconsin Statutes and Wauwatosa Municipal Code .

6. Plaintiff made applications for an Appeal of Administrative Decisions on March 31, 2023 and April 13, 2023.



7. The City has not scheduled the Board of Zoning Appeals hearing that is mandated under the premise that it lacks jurisdiction.

8. Wis. Stat. § 62.23(7)(e)4 provides that “Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time,”

9. Mandamus lies to compel an official to perform prescribed duties that are clear and unequivocal when the responsibility to act is imperative and the petitioner shows substantial damage will result from failure to perform the act. *Burns v. City of Madison*, 92 Wis. 2d 232, 284 N.W.2d 631 (1979).

Dated this May 01, 2023.

Respectfully submitted,

Robin Palm, AICP

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PAULETTE ENDERS, DEVELOPMENT  
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ADMINISTRATOR FOR THE CITY OF  
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Case No. \_\_\_\_\_

Respondent.

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**AFFIDAVIT OF ROBIN PALM**

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STATE OF WISCONSIN )  
RACINE COUNTY ) SS

Being first duly sworn on oath, I state as follows based on personal knowledge or information and belief:

1. I am an urban planner employed by the Village of Mount Pleasant in Racine County, Wisconsin since 2017. I hold a certification from the American Institute of Certified Planners and have a Master's Degree in Urban and Regional Planning from Virginia Commonwealth University.

2. I reside in the Washington Heights neighborhood of Milwaukee, Wisconsin, immediately adjacent to Wauwatosa. To give perspective, at 2.3 miles away, Wauwatosa's City Hall is half the distance to my residence than Milwaukee's is.

3. I am the Southeast Wisconsin representative for the American Planning Associations Wisconsin chapter, and a member of its legislative policy committee. A portion of my role is to advocate for better planning throughout my district. I've done this many times throughout the region, including previously in Wauwatosa.

Such efforts has even led to the passing of a Wauwatosa ordinance allowing for Reasonable Accommodations for Persons with Disabilities.

4. I'm an expert on zoning. I've drafted zoning laws, done an award winning a full zoning code rewrite, given seminars on zoning at the state planning conference, and am scheduled to participate in a series of web based seminars on the history and future of zoning as it relates to fair housing.

5. On March 25 2023, I read the article by Quinn Clark dated the previous day in the Milwaukee Journal Sentinel "An affordable housing project fell through in Wauwatosa. Storage units are taking its place."

6. I was immediately furious at the poor land use, planning, and outright waste of such a great opportunity. I took to social media and expressed my dismay. In that thread I stated how upset I felt, and particularly lamented the loss of affordable housing and the extension of the county's Oak Leaf Trail from Tosa Village to the Milwaukee Regional Medical Center. The community's housing crisis is something I hear about on a daily basis, and the housing stock in the metro area is at an all time low. As for the trail, I'm an avid user of the County's bicycle trails, and my wife was planning on using that extension to commute to her job at the Medical College of Wisconsin since The Medical Center had recently made upgrades around the campus and had campaigned hard for the trail extension for their employees. This thread is in exhibit P10.

7. I immediately noticed issues in the approval process that stuck out to me. The continued existence of the PUD zoning, the lack of substantial evidence presented in favor of the development, the noticeably brief executive summary, and relatively quick approval process when compared with the previous approvals. My research immediately showed that these weren't just small issues, but actually errors that led to the

conditional use being approved by mistake. Not many people would pick up on these illegalities, but I did. So I felt compelled to act not only for myself, but on behalf of the common good of the wider community.

7. On March 27, 2023, I called the Wauwatosa Planning Department to discuss the case. I received a callback from Arthur Piñon, planner and sometimes designee of the Zoning Administrator role. This was at 3:25 PM and the call lasted 24 minutes. During the call, we discussed the case, and I brought up the inconsistencies with legal procedures and statutes. I focused on the errors in conditional use law and with Wauwatosa's PUD procedures. I also stated that the use was contrary to the approved Master Plan and just poor planning in general. Mr Piñon defended the approval and stated that nothing could be done at that point. I stated that the Zoning Administrator had broad ranging powers to correct issues stemming from approvals or permits issued by error or contrary to law. Mr Piñon disagreed.

8. That remains the last spoken communication with anyone in the Development Department at the City of Wauwatosa.

9. I filed my appeal on March 31st. While filing the appeal, I encountered a technical error that prevented me from uploading my application. I spoke with one of the admins in the Development Department. On the second call with that admin, I was informed that the City Attorney told them to advise me that I needed to immediately file an appeal with circuit court. I replied, "Respectfully, I disagree with the City Attorney's legal opinion on this matter."

In all communications with the City Attorney, he has insisted that I try to appeal the Common Council's decision through Circuit Court, legal advice I feel would have likely have gotten my case tossed out for failing to exhaust my

administrative remedies or failing to meet the time deadlines. Whether he gave this incorrect advice out of ignorance or malice, I do not know.

10. Thereafter events proceeded largely as depicted in the Factual Allegations portion of the Petition.

11. I received no communication from the City or its officials despite multiple calls and emails.

12. By being so keen on pushing me toward litigation, I felt as if the City thought it could get rid of me because I wouldn't be up to the considerable time and financial commitment of legal action.

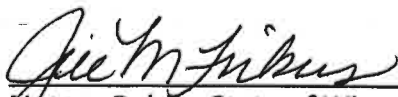
13. In the course of my planning work in the Village of Mount Pleasant, if someone files an appeal or a variance, I'm there to help them every step of the way, telling them how to present their best case to the board, despite me being obligated to defend the code once the hearing begins. So it's no surprise that I have a horrible winning percentage in BOZA cases, but it's the right thing to do, morally and ethically. This goes double for private persons just doing their day to day. They don't know the ins and outs of zoning, and can't be expected to for the one time they have to deal with it, so I help as much I can. To borrow a reference from a 20-year-old Pixar animated film, there's a scene in "The Incredibles" where Mr. Incredible helps an old lady get a successful insurance claim by giving her the inside info on what forms to file, where to file, and how to file them. That's what I aspire to be. In that aspect it feels so profoundly disappointing to be treated so unfairly by a City and fellow public servants when I'm trying to get them to follow their own rulebook designed to yield the best results for the common good for the entire community.

Dated this 1st day of May, 2023.



Robin Palm, AICP  
Petitioner

Subscribed and sworn to before me  
this 1st day of May, 2023.



Notary Public, State of Wisconsin

My Commission expires 12/20/2023



**Resolution R-23-42, concerning the approval of a conditional use at 1300 Glenview Place in the M1/PUD zoning district, should be voided due to several legal, procedural, and technical errors made by the administrators of the zoning code.** I, Robin Palm, am a person aggrieved by these actions. Below is a statement of errors in the administration of the zoning code. It is not exhaustive. I'm seeking remedy in the form of voiding the resolution, conditional use, application, and any building permits submitted, so that proper legal procedures can be followed.

To Wit:

- 1) When approving the conditional use, Wauwatosa code 24.16.040 (G) states that *"The common council may authorize the zoning administrator to issue a conditional use permit if the common council finds that the following conditions exist and so indicates in the minutes of its proceedings:"*. The minutes of the Common Council do not contain that information, nor could they, since those conditions were not discussed in the meeting. Link to minutes: <http://wauwatosa.wi.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=3656&Inline=True>

The minutes of the Plan Commission and testimony of the public hearing also does not contain this information. Furthermore, while it's not material to the procedural fact that this law wasn't followed, the conditional use would not have passed those conditions had they been properly applied, especially conditions 1, 2, and 3, according to the Wauwatosa Comprehensive Long Range Plan.

- 2) In section 24.16.050 A.- Planned Unit Developments, the code states "Modifications to plans in existing /PUD overlay zoning districts follow established PUD plan amendment procedures" The PUD zoning was active and the preliminary plans were still within the development window. Changing the site development entirely would constitute a modification of the plan. Additionally in section 24.16.050 E.2.C it defines a "major amendment" to a PUD as "failure to provide public amenities or public benefit features approved as part of the PUD." The removal of the Oak Leaf Trail extension is a failure to provide approved public amenities. Because no modification to the PUD was approved, the administration erred in approving this resolution.
- 3) In 24.16.050 B.- Planned Unit Developments, it states: "Development Plan Approval Required. Approval of PUD preliminary and final development plans must occur before any building permit is issued and before any development takes place in a /PUD overlay district. Permits may be issued for a development phase if a preliminary development plan has been approved for the entire PUD and a final development plan has been approved for the subject phase." Since a final development plan has not been approved, and the parcel is still under PUD zoning set in place in 2021, and extended in 2022 by council action under 24.16.050 8.a, no building permits may be issued on the site until that time. If any building permits have been issued, they are also in error and should be revoked.
- 4) In 24.05.040.G - /PUD, Planned Unit Development Overlay. It says: "Allowed Uses. The uses to be allowed in a PUD must be identified as part of the PUD approval process along with all applicable conditions or supplemental use regulations that apply to such uses. " In the preliminary PUD plan ([Agenda - Monday, April 12, 2021 \(iqm2.com\)](#)), no other uses were positively identified as allowed in the PUD other than multi-unit residential. Since the ordinance specifically states that the uses to be allowed "must be identified", it cannot be assumed that all M1 uses are still applicable. Therefore any use other than multi-unit residential cannot be allowed until the PUD zoning designation lapses off the site in June 2023, or the PUD plan is amended. Thus the conditional use application should not have been accepted in the first place, constituting an error on the part of an administrator of the zoning code.

Additional signatories of persons aggrieved and evidence to be presented at the hearing are to follow.

Signed,  
Robin Palm, AICP

1559 N 51<sup>st</sup> St Milwaukee WI



Exhibit P1

**INVOICE (INV-00005227)  
FOR CITY OF WAUWATOSA****BILLING CONTACT**

Robin Palm  
1559 N 51st ST  
MILWAUKEE, WI 53208



INVOICE NUMBER	INVOICE DATE	INVOICE DUE DATE	INVOICE STATUS	INVOICE DESCRIPTION
INV-00005227	03/31/2023	Due Upon Receipt	Due	NONE

REFERENCE NUMBER	FEE NAME	TOTAL
BZA2023-0003	Board of Zoning Appeals	\$350.00
1300 Glenview Pl Wauwatosa, WI 53226	<b>SUB TOTAL</b>	\$350.00

REMITTANCE INFORMATION
7725 W North Avenue Wauwatosa, WI 53213

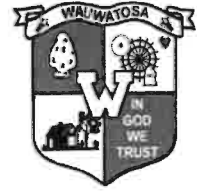
**TOTAL** **\$350.00**

Exhibit P1

RECEIPT (REC-001451-2023)  
FOR CITY OF WAUWATOSA

## BILLING CONTACT

Robin Palm  
1559 N 51St St  
Milwaukee, WI 53208



Payment Date: 03/31/2023

Reference Number	Fee Name	Transaction Type	Payment Method	Amount Paid
BZA2023-0003	Board of Zoning Appeals	Fee Payment	cc Default	\$350.00
1300 Glenview Pl Wauwatosa, WI 53226				SUB TOTAL \$350.00
				TOTAL \$350.00



CITY OF WAUWATOSA

**PLANNING DIVISION**

7725 WEST NORTH AVENUE, WAUWATOSA, WISCONSIN 53213

PHONE (414) 479-8957

FACSIMILE (414) 479-8986

E-MAIL: [tplanning@wauwatosa.net](mailto:tplanning@wauwatosa.net)WEB SITE: [www.wauwatosa.net](http://www.wauwatosa.net)

April 3, 2023

Robin Palm  
1559 N. 51<sup>st</sup> Street  
Milwaukee, WI. 53208

RE: Board of Zoning Appeals (BOZA) Application – BZA2023-0003

Mr. Palm,

The City received your Board of Zoning Appeals (BOZA) application to appeal the Common Council's decision approving Resolution R-23-42, a request for a Conditional Use Permit in the M1/Planned Unit Development District at 1300 Glenview Place for a general warehousing operation. The purpose of this letter is to inform you that the City is unable to process your request. In accordance with the authority parameters outlined in Wauwatosa Municipal Code (WMC) 24.17.010.C, the City's BOZA is without jurisdiction to hear appeals of decisions of the Common Council, and is only authorized to hear and make decisions on appeals of determinations made by administrative officials, design review board, and variance applications. If you have any questions or would like to discuss this determination further, please feel free to contact me.

Thank you,

Art Piñon  
Planner, City of Wauwatosa  
(414) 479-3522



Robin Palm &lt;palmra@gmail.com&gt;

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**Re: BOZA Application**

---

**Robin** <palmra@gmail.com>

Mon, Apr 3, 2023 at 4:04 PM

To: Arthur Pinon &lt;apinon@wauwatosa.net&gt;

Cc: robin.palm@gmail.com

Mr Pinon and to whom it may concern,

If you read the appeal, it lists the administrative actions that it is objecting to, including

- 1) the accepting of the conditional use application as valid when it was not valid
- 2) issuance of any building permits before a final PUD is approved
- 3) acceptance of an invalid application without reworking the PUD
- 4) authorization of the zoning administrator to issue a conditional use permit \*if\* the conditions are outlined in the minutes. They were not.

The council action is the finalization of those administrative actions after which I could actually appeal.

We can take this to BOZA, or I will appeal this decision (obviously by a zoning administrator) to BOZA. It really is up to y'all if you wanna waste a month.

Sincerely,

Robin Palm

On Apr 3, 2023, at 16:37, Arthur Pinon <apinon@wauwatosa.net> wrote:

Mr. Palm,

Please see the attached letter regarding your BOZA application submitted 3/31/2023. As indicated in the attached letter, the City is unable to process the request. If you have any questions, please feel free to contact me.

Thank you,

**Art Piñon** | Planner  
City of Wauwatosa | Development Department

7725 W. North Avenue, Wauwatosa WI 53213  
T: (414) 479-3522

Wauwatosa Self Service Portal: Online Permitting



Robin Palm &lt;palmra@gmail.com&gt;

**Re: BOZA Application**

1 message

Robin &lt;palmra@gmail.com&gt;

Thu, Apr 6, 2023 at 4:10 PM

To: Robin &lt;palmra@gmail.com&gt;

Cc: Arthur Pinon &lt;apinon@wauwatosa.net&gt;, robin.palm@gmail.com

Mr Pinon,

Upon further review, the ordinance does not give the zoning administrator the authority to deny an application of this sort.

Which would make sense, why would a zoning administrator have the authority to deny appeals to their own decisions? That's an inherent conflict of interest.

Copied below are the municipal ordinances that say that the BZA has the power to hear and decide appeals where it is \*alleged\* that there's an error in any order requirement, decision, or determination by an administrative official.

It is a statement of fact that I allege errors by an administrative official at least 6 times in my application.

There is no municipal ordinance that gives anyone the ability to deny an application based on its content but the BZA itself.

So, respectfully, I ask you to rescind your previous letter, send all relevant materials to the BZA immediately, and place this item on this month's BZA meeting, per the municipal code of Wauwatosa.

Sincerely,  
Robin A Palm, AICP

On Apr 3, 2023, at 17:04, Robin <palmra@gmail.com> wrote:

Mr Pinon and to whom it may concern,

If you read the appeal, it lists the administrative actions that it is objecting to, including

- 1) the accepting of the conditional use application as valid when it was not valid
- 2) issuance of any building permits before a final PUD is approved
- 3) acceptance of an invalid application without reworking the PUD
- 4) authorization of the zoning administrator to issue a conditional use permit \*if\* the conditions are outlined in the minutes. They were not.

The council action is the finalization of those administrative actions after which I could actually appeal.

We can take this to BOZA, or I will appeal this decision (obviously by a zoning administrator) to BOZA. It really is up to y'all if you wanna waste a month.

Sincerely,

Robin Palm

On Apr 3, 2023, at 16:37, Arthur Pinon <apinon@wauwatosa.net> wrote:

Mr. Palm,

Please see the attached letter regarding your BOZA application submitted 3/31/2023. As indicated in the attached letter, the City is unable to process the request. If you have any questions, please feel free to contact me.

Thank you,

**Art Piñon** | Planner  
City of Wauwatosa | Development Department  
7725 W. North Avenue, Wauwatosa WI 53213  
T: (414) 479-3522

Wauwatosa Self Service Portal: Online Permitting

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#### 4 attachments



**image0.jpeg**  
706K



**image1.jpeg**  
543K



**ONLINE LICENSES AND PERMITS**  
No more paper. Submit plans from wherever you are.  
Access updates and easily communicate with staff.

**image001.png**  
30K



**BZA\_1300 Glenview\_04032023.pdf**  
187K



Exhibit P4

Robin Palm &lt;palmra@gmail.com&gt;

---

**Wauwatosa Board of Zoning Appeals, Application improperly denied by staff**

---

Robin &lt;palmra@gmail.com&gt;

Thu, Apr 6, 2023 at 3:37 PM

Bcc: bgreenberg@waukeshacounty.gov, mmazmanian@westalliswi.gov, DShinners@sewrpc.org

Hi there,

You're receiving this email because this is the only contact info I could find for the Tosa BZA, as the contact info on Tosa's website all just goes to the planning department.

If you could forward this email the other members, or at the very least provide me with contact information, I'd appreciate it.

I write this not to influence a case one way or another, but merely to be heard in front of your board. In this email, I will not discuss the merits of the actual appeal, but only whether or not it is subject to BOZA's purview.

I submitted an appeal of the 1300 Glenview place conditional use based on errors in law and procedures by administrators of the zoning code.

I was denied a hearing of the BZA for that appeal because staff deemed the conditional use an action by the council.

Both the application and the rejection letter are attached.

My contention is that the BZA should decide what's under their purview, not an arbitrary staff member.

Moreover, the council passed a resolution, not an ordinance. And that resolution (according to the ordinance) authorized the zoning administrator to issue a conditional use permit \*if\*, requirements are met.

The zoning administrator issuing a CU permit appears to be an administrative action, by definition.

Several other administrative actions are brought up in the complaint, such as issuing a building permit, PUD procedures, and allowed applications according to zoning classification.

Staff contends I'm not appealing administrative actions of the zoning code, and so it's not in BOZAs purview. I contend it is. So I'm appealing to you directly.

I'm not sure whether you can compel an item to the agenda, but if you can, I would appreciate that.

If you cannot, let me know if you think appealing the administrative action of the attached letter rejecting my appeal application would be under BZA's purview.

Thanks for your time and consideration,

Respectfully,

Robin Palm, AICP  
1559 N 51st St  
Milwaukee WI  
53208

---

**2 attachments**

Exhibit P4



Robin Palm &lt;palmra@gmail.com&gt;

**RE: Wauwatosa Board of Zoning Appeals, Application improperly denied by staff**

1 message

Mike Mazmanian <MMazmanian@westalliswi.gov>  
To: Robin <palmra@gmail.com>

Good Morning Robin,

As a member of the BOZA I don't believe I have the authority to bring issues forward to the board for review/consideration. Im no attorney, but I think your only avenue for appeal might be to file a suit c concede that this is a disappointing use for such a large parcel in the heart of the city. Id honestly rather see it razed and undeveloped/left as greenspace.

Mike

From: Robin <palmra@gmail.com>  
Sent: Thursday, April 6, 2023 3:38 PM  
Subject: Wauwatosa Board of Zoning Appeals, Application improperly denied by staff

Hi there,

You're receiving this email because this is the only contact info I could find for the Tosa BZA, as the contact info on Tosa's website all just goes to the planning department.

If you could forward this email the other members, or at the very least provide me with contact information, I'd appreciate it.

I write this not to influence a case one way or another, but merely to be heard in front of your board. In this email, I will not discuss the merits of the actual appeal, but only whether or not it is subject to

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I was denied a hearing of the BZA for that appeal because staff deemed the conditional use an action by the council.

Both the application and the rejection letter are attached.

My contention is that the BZA should decide what's under their purview, not an arbitrary staff member.

Moreover, the council passed a resolution, not an ordinance. And that resolution (according to the ordinance) authorized the zoning administrator to issue a conditional use permit \*if\*, requirements are The zoning administrator issuing a CU permit appears to be an administrative action, by definition.

Several other administrative actions are brought up in the complaint, such as issuing a building permit, PUD procedures, and allowed applications according to zoning classification.

Staff contends I'm not appealing administrative actions of the zoning code, and so it's not in BOZAs purview. I contend it is. So I'm appealing to you directly.

I'm not sure whether you can compel an item to the agenda, but if you can, I would appreciate that.

If you cannot, let me know if you think appealing the administrative action of the attached letter rejecting my appeal application would be under BZA's purview.

Thanks for your time and consideration,

Respectfully,

Robin Palm, AICP  
1559 N 51st St  
Milwaukee WI  
53208





Robin Palm &lt;palmra@gmail.com&gt;

**Re: Wauwatosa Board of Zoning Appeals, Application improperly denied by staff**

1 message

Robin &lt;palmra@gmail.com&gt;

To: Mike Mazmanian &lt;MMazmanian@westalliswi.gov&gt;

Mike,

Thanks for the response!

Thing is, I'm pretty confident that staff doesn't have the authority to deny appeals to BOZA, since it's their decisions I'm appealing.

Bear with me a little bit, as I'm gonna quote some code sections. Given your experience though, it's probably NBD.

This section makes it pretty clear that any appeal that *\*alleges\** any errors is to go to BOZA:*1. Powers and Duties. The board of zoning appeals has all of the powers and duties expressly identified in this zoning ordinance, including the following:*

- a. to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or c*
- b. 24.13.02(00);*

It's pretty clear my application alleges errors, cuz it does 6 or 7 times. It's attached below.

Also I think it's pretty clear the zoning administrator whose decision is being appealed isn't allowed to reject an appeal. Check this clause out, note the use of *"must"* here:*A. Transmittal to Board of Zoning Appeals. Upon receipt of a complete notice of appeal, the zoning administrator or other administrative official whose decis*

Lastly, while the resolution states that the CC itself grants the CU permit, the code language is a little different.

*General Review Criteria and Standards. The common council may authorize the zoning administrator to issue a conditi*

So it's kinda arguable whether it's a common council action or an administrative one.

Either way, it's clear the intention of staff and the city attorneys office is to push me toward litigation, where they hope time and money will be a deterrent. I just wanna do the right thing here.

I guess this is a lot to take in, and I don't need you to act in any specific way.

So I guess my only question is: "I'm not completely off base here, right?"

It's a little unnerving to go up against an entire government with just my expertise to go on and for them to go "nope you're completely wrong", so i just need some confirmation that what I'm saying seems like a valid ar

Thanks for your time and consideration,

Robin Palm, AICP

April 13, 2023

To the Board of Zoning Appeals of the City of Wauwatosa,

This application is appealing the administrative decision in a letter dated April 03, 2023 from Planner Art Pinon.

In it, it is stated that the previous application for an administrative appeal on 1300 Glenview Place was rejected because of BOZA's "lack of jurisdiction" on the matter.

This appeal contends that not only is that finding incorrect and BOZA does have jurisdiction regarding the previous application and the powers of remedy, but also that the zoning administrator does not have the authority to reject an appeal application to BOZA, especially one of their own actions.

To wit:

A) This section (24.16.110) makes it clear that any appeal that merely *\*alleges\** any errors is to go to BOZA: *Powers and Duties. The board of zoning appeals has all of the powers and duties expressly identified in this zoning ordinance, including the following:*

- 1) *to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or design review board, in the administration or enforcement of this zoning ordinance (See also Section 24.16.110 and Section 24.13.0100);*

The original application alleges errors, in fact it does at least 6 times. It's attached below. The revocation of the conditional use approval was the remedy sought, not the error claimed.

B) According to the municipal code of Wauwatosa, the zoning administrator whose decision is being appealed isn't allowed to reject an appeal. Nor, does it seem, does anyone. Note the use of *\*must\** here:

*Transmittal to Board of Zoning Appeals. Upon receipt of a complete notice of appeal, the zoning administrator or other administrative official whose decision is being appealed must transmit to the board of zoning appeals all papers constituting the record upon which the action appealed is taken.*

Also, this section (24.16.110)(G) states that "the board of zoning appeals must hold a hearing" on the matter.

Additionally, the zoning administrator's powers are limited to what's expressly written in code, according to 24.17.010 (F)

*Powers and Duties. The zoning administrator is responsible for carrying out those duties and responsibilities expressly assigned by this zoning ordinance and for:*

*...*

*g.receiving, filing and forwarding to the plan commission, the board of zoning appeals and common council all applications for matters on which those respective entities are required to review or take action; and*

*h.keeping the plan commission, board of zoning appeals and common council advised of zoning activities*

C) The rejection letter states that the CU permit is a Common Council action and therefore it cannot be appealed. While that isn't a valid reason to reject the appeal (since as stated in (A) the appeal alleged errors in the actions of officials and as stated in (B) the zoning administrator is not allowed to reject an appeal to their own actions), it is of question whether the approval isn't actually an administrative action.

For one, it is a resolution and not an ordinance, and while the resolution states that the CC itself grants the CU permit, the code language (24.16.040) G is a little different.

*General Review Criteria and Standards. The common council may authorize the zoning administrator to issue a conditional use permit if the common council finds that the following conditions exist and so indicates in the minutes of its proceedings;*

This language indicates that it is the zoning administrator who issues the permit, subject to the listed conditions.

An additional point to consider that this was in fact an administrative action, is that for the council to have taken action on a resolution without having heard it two times, it must be approved by the city administrator per (2.02.110)

D) Lastly, the BOZA not only has the authority to hear the case, but also has the powers to enact the requested remedies. The city ordinance in 24.16.110(G) gives BOZA all the powers of the zoning administrator.

In exercising the appeal power, the board of zoning appeals has all the powers of the administrative official from whom the appeal is taken.

Under this provision, the Board of Zoning Appeals can use the powers enumerated in 24.17.020 (D) to withhold, modify, or revoke all permits, certificates or other forms of authorization when it is found that there is a violation of the zoning code, ordinance, conditions, or other authorization given by the city. This is regardless of who violated the ordinance or who issued the authorization.

In conclusion, the Zoning Administrator erred in denying the appeal application BZA2023-0003 due to:

- 1) The zoning administrator did not have the authority to do so
- 2) The appeal was in fact within BOZA's jurisdiction
- 3) The remedies requested are within BOZA's expressly enumerated powers

If the Board of Zoning appeals moves to grant my appeal, I ask as remedy the following:

- 1) Reversal of the attached administrative decision dated April 03, 2023 rejecting the Board of Zoning Appeals Application BZA2023-0003
- 2) Granting and scheduling of a hearing for BZA2023-003 at the soonest possible convenience, to potentially include immediately following the hearing for this appeal request.
- 3) Reimbursement of any and all fees associated with this application

Thanks for your time and consideration,



Robin Palm, AICP

1559 N 51<sup>st</sup> Street

Milwaukee WI 53208

#### 24.16.110 Appeals of Administrative Decisions.

- A. **Applicability; Authorized Variances.** The board of zoning appeals is authorized to hear and decide appeals when it is **alleged** there has been an error in any order, requirement, decision or determination made by the design review board, the zoning administrator or any other administrative official in the administration, interpretation or enforcement of this zoning ordinance.
- B. **Right to Appeal.** Appeals of administrative decisions may be filed by any person aggrieved by the administrative official's decision or action, including officials, departments, boards or agencies affected by decisions.
- C. **Application Filing.** Appeals of administrative decisions must be filed with the zoning administrator within 10 days of the date of the written decision or order.
- D. **Effect of Filing.** The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed, unless the zoning administrator certifies to the board of zoning appeals, after the appeal is filed, that, because of facts stated in the certification, a stay would cause immediate peril to life or property, in which case the proceedings will not be stayed unless by a restraining order, which may be granted by the board of zoning appeals or by a court of record based on due cause shown.
- E. **Transmittal to Board of Zoning Appeals.** Upon receipt of a complete notice of appeal, the zoning administrator or other administrative official whose decision is being appealed **must transmit** to the board of zoning appeals all papers constituting the record upon which the action appealed is taken.
- F. **Notice of Hearing.**
  - 1. Class 1 notice of the board of zoning appeals' required hearing on an appeal of an administrative decision must be published in accordance with chapter 985 of the Wisconsin Statutes.
  - 2. Notice must be mailed to the subject property owner at least 7 days before the board of zoning appeals' required hearing.
  - 3. Notice of the filing of an appeal must be forwarded to the common council president and the alderperson of the district in which the subject property is located.
- G. **Hearing and Final Decision.**
  - 1. The board of zoning appeals **must hold a hearing** to consider the appeal.
  - 2. Following the close of the hearing, the board of zoning appeals must take action on the appeal. The board's decision must be supported by written findings of fact.
  - 3. In exercising the appeal power, the **board of zoning appeals has all the powers of the administrative official from whom the appeal is taken.** The board of zoning appeals may affirm or may, upon the concurring vote of a simple majority of board members present and voting, reverse, wholly or in part, or modify the decision being appealed.
  - 4. In acting on the appeal the board of zoning appeals must grant to the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant.
- H. **General Review Criteria and Standards.** An administrative decision may be reversed only if the board of zoning appeals finds that the zoning administrator or other administrative official erred.
- I. **Successive Applications.** Once an appeal has been denied by the board of zoning appeals, no rehearing on the same or substantially similar appeal may held except upon a simple majority vote of board members present and voting and a finding that substantial new evidence is submitted that could not reasonably have been presented at the previous hearing.

- J. Review by Court of Record. Any person aggrieved by the decision of the board of zoning appeals may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the decision in the office of the board of zoning appeals.

(Ord. No. O-14-20, Pt. XI, 8-5-2014)

**24.17.010 Review and Decision-Making Bodies.**

- A. Common Council. See Chapter 2.02 of the city code of ordinances.
- B. City Plan Commission. See Chapter 2.24 of the city code of ordinances.
- C. Board of Zoning Appeals.
  - 1. Established. The board of zoning appeals is established by this ordinance for the purpose of making decisions on variance applications and appeals of administrative decisions.
  - 2. Composition.
    - a. The board of zoning appeals consists of 5 regular members, all of whom are appointed by the mayor and subject to confirmation of the common council.
    - b. In addition to the 5 regular members, the mayor may appoint 2 alternate members of the board of zoning appeals, subject to confirmation of the common council. Alternate members have the power to act only when a regular member refuses to vote because of a conflict of interest or when a regular member is absent.
  - 3. Appointment of Officers.
    - a. The mayor has authority to designate a chairperson of the board of zoning appeals.
    - b. The board of zoning appeals is authorized to appoint a secretary.
  - 4. Terms. Regular and alternate members of the board of zoning appeals serve 3-year terms.
  - 5. Powers and Duties. The board of zoning appeals has all of the powers and duties expressly identified in this zoning ordinance, including the following:
    - a. to hear and decide appeals where it is **alleged** there is error in any order, requirement, decision or determination made by an administrative official or design review board, in the administration or enforcement of this zoning ordinance (See also Section 24.16.110 and Section 24.13.0100);
    - b. to authorize (non-use) variances that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit of the zoning ordinance will be observed, public safety and welfare secured and substantial justice done (See also Section 24.16.060); and
    - c. to hear and decide applications for those temporary uses requiring approval of the board of zoning appeals.
  - 6. Assistance. The board of zoning appeals may request assistance from any other city officers, departments, commissions or boards.
  - 7. Oaths and Witnesses. The chairperson of the zoning board has the authority to administer oaths and compel the attendance of witnesses.

F. Zoning Administrator.

1. Powers and Duties. The zoning administrator is responsible for carrying out those duties and responsibilities expressly assigned by this zoning ordinance and for:
  - a. conducting inspections of buildings, structures and land to determine compliance with this zoning ordinance and notifying in writing the person responsible for any violation found;
  - b. ordering the discontinuance of observed violations of this zoning ordinance or taking any other action authorized by law or by this zoning ordinance to ensure compliance with or to prevent violation of zoning ordinance provisions;
  - c. assisting the city attorney in the prosecution of zoning ordinance violations;
  - d. maintaining permanent and current records of this zoning ordinance, including, all maps, amendments, conditional use permits, planned unit developments, variances, appeals, applications and zoning ordinance text;
  - e. advising all persons seeking zoning information of the existence of officially adopted plans;
  - f. providing and maintaining a source of public information relative to all matters arising out of this zoning ordinance;
  - g. receiving, filing and forwarding to the plan commission, the board of zoning appeals and common council all applications for matters on which those respective entities are required to review or take action; and
  - h. keeping the plan commission, board of zoning appeals and common council advised of zoning activities.

(Ord. No. O-14-20, Pt. XII, 8-5-2014)

**Exhibit P5****24.17.020 Violations, Penalties and Enforcement.**

- A. Responsibility for Enforcement. The zoning administrator is responsible for enforcing this zoning ordinance, except as otherwise expressly stated.
- B. Violations. Unless otherwise expressly allowed by this zoning ordinance or state law, any violation of a provision of this zoning ordinance—including but not limited to all of the following—are subject to the remedies and penalties provided for in this zoning ordinance.
1. to use land or buildings in any way not consistent with the requirements of this zoning ordinance;
  2. to erect a building or other structure in any way not consistent with the requirements of this zoning ordinance;
  3. to engage in the use of a building or land or to carry out construction, demolition or any other activity requiring one or more permits, certificates or approvals under this zoning ordinance without obtaining the required permits, certificates or approvals;
  4. to engage in the use of a building or land or to carry out construction, demolition or any other activity requiring one or more permits, certificates or approvals under this zoning ordinance in any way that is inconsistent with the permit, certificate or approval or any conditions imposed on the permit, certificate or approval;
  5. to violate the terms of any permit, certificate or approval granted under this zoning ordinance or any condition imposed on the permit or approval;
  6. to obscure, obstruct or destroy any notice required to be posted or otherwise given under this zoning ordinance;
  7. to violate any lawful order issued by any person or entity under this zoning ordinance; or
  8. to continue any violation after receipt of notice of a violation.
- C. Continuing Violations. Each day that a violation remains uncorrected after receiving notice of the violation from the city constitutes a separate violation of this zoning ordinance.
- D. Remedies and Enforcement Powers. The city has all remedies and enforcement powers allowed by law, including the following:
1. Withhold Permit.
    - a. The zoning administrator may deny or withhold permits, certificates or other forms of authorization on any land or structure or improvements upon which there is an uncorrected violation of a provision of this zoning ordinance or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the city. This enforcement provision may be used regardless of whether the current owner or applicant is responsible for the violation in question.
    - b. The zoning administrator may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by or being developed by a person who owns, developed or otherwise caused an uncorrected violation of a provision of this zoning ordinance or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the city. This enforcement provision may be used regardless of whether the property for which the permit or other approval is sought is the property in violation.



2. Permits Approved with Conditions. Instead of withholding or denying a permit or other authorization as authorized in Section 24.17.020D.1, the zoning administrator may grant such authorization subject to the condition that the violation be corrected.
3. Revoke Permits.
  - a. Any permit, certificate or other form of authorization required under this zoning ordinance may be revoked by the zoning administrator when the zoning administrator determines that any of the following has occurred:
    - (1) that there has been a departure from the plans, specifications, or conditions required under terms of the permit;
    - (2) that the development permit was procured by false representation or was issued by mistake; or
    - (3) that any of the provisions of this zoning ordinance have or are being violated.
  - b. Written notice of revocation must be served upon the owner, the owner's agent or contractor, or upon any person employed on the building or structure for which such permit was issued. If no persons can reasonably be served with notice, the notice must be posted in a prominent location. After delivery or posting of notice, no construction or development may proceed.
4. Stop Work. With or without revoking permits, the zoning administrator may stop work on any building or structure on any land on which there is an uncorrected violation of a provision of this zoning ordinance or of a permit, certificate or other form of authorization issued under the zoning ordinance.
5. Revoke Plan or Other Approval. Where a violation of this zoning ordinance involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the zoning administrator may, upon notice to the applicant and other known interested parties (including any holders of building permits affected) (a) revoke the plan or other approval or (b) condition its continuance on strict compliance with this zoning ordinance or the provision of security to ensure that construction is completed in compliance with approved plans, or such other conditions as the zoning administrator may reasonably impose.
6. Injunctive Relief. The city may seek an injunction or other equitable relief in court to stop any violation of this zoning ordinance or of a permit, certificate or other form of authorization granted under the zoning ordinance.
7. Abatement. The city may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.
8. Other Penalties, Remedies and Powers. The city may seek such other penalties as are provided by Wisconsin law or the general penalty provision in Chapter 1.12 of the city code of ordinances.
- E. Continuation of Previous Enforcement Actions. Nothing in this zoning ordinance prohibits the continuation of previous enforcement actions, undertaken by the city pursuant to previous valid ordinances and laws.
- F. Remedies Cumulative. The remedies and enforcement powers established in this zoning ordinance are cumulative, and the city may exercise them in any combination or order.
- G. Persons Subject to Penalties. The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, or agent, or other person who commits, participates in, assists in, or maintains such violations may each be found guilty of a separate offense and be subject to penalties, remedies and enforcement actions.
- H. Enforcement Procedures.

1. Non-Emergency Matters. In the case of violations of this zoning ordinance that do not constitute an emergency or require immediate attention, the zoning administrator must give notice of the nature of the violation to the property owner or to any other person who is party to the agreement or to any applicant for any relevant permit in the manner stated in this section, after which the persons receiving notice have 10 days to correct the violation before further enforcement action may be taken. Notice must be given in person, by US Mail, or by posting notice on the premises. Notices of violation must state the nature of the violation and the time period for compliance and may state the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.
2. Emergency Matters. In the case of violations of this zoning ordinance that constitute an emergency situation as a result of public health or safety concerns or violations that will create increased problems or costs if not remedied immediately, the city may use the enforcement powers available under this zoning ordinance without prior notice, but the zoning administrator must attempt to give notice simultaneously with beginning enforcement action. Notice may be provided to the property owner, to any other person who is party to the agreement and to applicants for any relevant permit.
3. Appeals. Enforcement actions taken by the zoning administrator may be appealed by the affected party to the board of zoning appeals in accordance with Section 24.16.110.

---

**2.02.110 Action on resolutions.**

No resolution shall be finally acted upon or adopted at the same session of the common council at which such resolution has been introduced, except:

1. Resolutions for the payment of current bills, a list of which has been prepared by the city comptroller briefly and clearly stating the nature and purpose for which incurred and presented to the common council;
2. Resolutions emanating from a committee of the common council or the board of public works if the matters embodied in such resolutions:
  - a. Were referred to such committee or board at a previous meeting of the common council, or
  - b. Upon approval of **the city administrator**, appeared on the written agenda of a regular meeting of such committee or board, and such agenda had been delivered to all members of the common council prior to that meeting;
3. Resolutions emanating from the board of public works for the following:
  - a. Directing the board to prepare plans and specifications,
  - b. Accepting or rejecting bids which the board was previously directed by the common council to obtain,
  - c. Authorizing payments to contractors in connection with contracts previously authorized by the common council,
  - d. Granting permission to construct public improvements under private contract,
  - e. Granting permission to connect to public improvements.

(Ord. 74-33 § 1 (part), 1974)

Exhibit P5

**INVOICE (INV-00005472)  
FOR CITY OF WAUWATOSA****BILLING CONTACT**

Robin Palm  
1559 N 51st ST  
MILWAUKEE, WI 53208



INVOICE NUMBER	INVOICE DATE	INVOICE DUE DATE	INVOICE STATUS	INVOICE DESCRIPTION
INV-00005472	04/13/2023	Due Upon Receipt	Due	NONE

REFERENCE NUMBER	FEE NAME	TOTAL
BZA2023-0006	Board of Zoning Appeals	\$350.00
1300 Glenview Pl Wauwatosa, WI 53226		<b>SUB TOTAL</b> \$350.00

**REMITTANCE INFORMATION**

7725 W North Avenue  
Wauwatosa, WI 53213

**TOTAL** **\$350.00**

Exhibit P5

**RECEIPT (REC-001677-2023)  
FOR CITY OF WAUWATOSA****BILLING CONTACT**

Robin Palm  
1559 N 51st St  
Milwaukee, WI 53208



Payment Date: 04/13/2023

Reference Number	Fee Name	Transaction Type	Payment Method	Amount Paid
BZA2023-0006	Board of Zoning Appeals	Fee Payment	cc Default	\$350.00
1300 Glenview Pl Wauwatosa, WI 53226				
SUB TOTAL				\$350.00
TOTAL				\$350.00



Robin Palm &lt;palmra@gmail.com&gt;

**BOZA Meeting 4/27 canceled?**

1 message

A L &lt;palmra@gmail.com&gt;

Fri, Apr 14, 2023 at 2:00 PM


To: sbraatz@wauwatosa.net

Why is the BOZA hearing listed on 4/27 cancelled?

-  Apr 19, 2023 4:30 PM  
Police and Fire Commission - Regular Meeting
-  Apr 19, 2023 6:30 PM  
Library Board - Regular Meeting
-  Apr 20, 2023 7:00 PM  
Design Review Board - Regular Meeting
-  Apr 24, 2023 5:30 PM  
Bicycle and Pedestrian Facilities Committee - Regular Meeting
-  Apr 25, 2023 12:00 PM  
Common Council - Notice of Informal Gathering
-  Apr 25, 2023 6:30 PM  
Government Affairs Committee - Regular Meeting
-  Apr 25, 2023 6:30 PM  
Transportation Affairs Committee - Regular Meeting
-  Apr 25, 2023 7:30 PM  
Financial Affairs Committee - Regular Meeting
-  Apr 25, 2023 7:30 PM  
Community Affairs Committee - Regular Meeting
-  Apr 27, 2023 6:00 PM  
Board of Zoning Appeals - Regular Meeting
-  Apr 27, 2023 7:00 PM  
Civic Celebration Commission - Regular Meeting

Cancelled

May, 2023

 May 1, 2023 9:30 AM

Robin Palm



Robin Palm &lt;palmra@gmail.com&gt;

---

**RE: [External] BOZA Meeting 4/27 canceled?**

1 message

---

**Steven Braatz** <sbraatz@wauwatosa.net>

Fri, Apr 14, 2023 at 3:14 PM

To: A L &lt;palmra@gmail.com&gt;

Hi Robin-

At this time, there are no applications or other issues to discuss.

Steven A. Braatz, Jr.

City Clerk | City of Wauwatosa

7725 W. North Ave. | Wauwatosa, WI 53213

www.wauwatosa.net

(414) 479-8920

## Wauwatosa Self Serve Portal: Online Permitting

**ONLINE LICENSES AND PERMITS**No more paper. Submit plans from wherever you are.  
Access updates and easily communicate with staff.**From:** A L <palmra@gmail.com>**Sent:** Friday, April 14, 2023 2:00 PM**To:** Steven Braatz <sbraatz@wauwatosa.net>**Subject:** [External] BOZA Meeting 4/27 canceled?



Robin Palm &lt;palmra@gmail.com&gt;

**Re: [External] BOZA Meeting 4/27 canceled?**

1 message

A L &lt;palmra@gmail.com&gt;

Fri, Apr 14, 2023 at 3:46 PM

To: Steven Braatz &lt;sbraatz@wauwatosa.net&gt;

So, one would presume that meeting would be back on the schedule if there were applications to discuss?

BZA only requires a Class 1 notice (one insertion), and 7 days notice to the property owner. We're 13 days out.

Appeals of Administrative decisions are placed on the next available agenda regardless of deadlines according to here :  
<https://www.wauwatosa.net/government/departments/development/board-of-zoning-appeals>

and here:

<https://www.wauwatosa.net/home/showpublisheddocument/4605/638046360382970000>

I've also attached those pages and highlighted the relevant sections for convenience.

Thanks for your time,

Robin Palm

On Fri, Apr 14, 2023 at 3:14 PM Steven Braatz <sbraatz@wauwatosa.net> wrote:

Hi Robin-

At this time, there are no applications or other issues to discuss.

Steven A. Braatz, Jr.

City Clerk | City of Wauwatosa

7725 W. North Ave. | Wauwatosa, WI 53213

[www.wauwatosa.net](http://www.wauwatosa.net)

(414) 479-8920

## Wauwatosa Self Serve Portal: Online Permitting



### ONLINE LICENSES AND PERMITS

No more paper. Submit plans from wherever you are.  
Access updates and easily communicate with staff.

**From:** A L <palmra@gmail.com>

**Sent:** Friday, April 14, 2023 2:00 PM

**To:** Steven Braatz <sbraatz@wauwatosa.net>

**Subject:** [External] BOZA Meeting 4/27 canceled?



Why is the BOZA hearing listed on 4/27 cancelled?

- Apr 19, 2023 4:30 PM  
Police and Fire Commission - Regular Meeting
- Apr 19, 2023 6:30 PM  
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- Apr 20, 2023 7:00 PM  
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- Apr 25, 2023 12:00 PM  
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- Apr 27, 2023 6:00 PM  
Board of Zoning Appeals - Regular Meeting
- Apr 27, 2023 7:00 PM  
Civic Celebration Commission - Regular Meeting

Cancelled

May, 2023

May 1, 2023 8:30 AM

Robin Palm

## 2 attachments



**BOZADeadlines.png**  
406K



**2022 BOZA handout Energov.pdf**  
720K



Robin Palm &lt;palmra@gmail.com&gt;

---

**RE: [External] BOZA Meeting 4/27 canceled?**

---

**Steven Braatz** <sbraatz@wauwatosa.net>

Fri, Apr 14, 2023 at 4:02 PM

To: A L &lt;palmra@gmail.com&gt;

Cc: Tamara Szudy &lt;tszudy@wauwatosa.net&gt;, Arthur Pinon &lt;apinon@wauwatosa.net&gt;

Unfortunately, I am not the Zoning Administrator. I will pass you on to Tammy and Art for a response.

Steven A. Braatz, Jr.

City Clerk | City of Wauwatosa

7725 W. North Ave. | Wauwatosa, WI 53213

[www.wauwatosa.net](http://www.wauwatosa.net)

(414) 479-8920

## Wauwatosa Self Serve Portal: Online Permitting



### ONLINE LICENSES AND PERMITS

No more paper. Submit plans from wherever you are.  
Access updates and easily communicate with staff.

**From:** A L <palmra@gmail.com>**Sent:** Friday, April 14, 2023 3:47 PM**To:** Steven Braatz <sbraatz@wauwatosa.net>**Subject:** Re: [External] BOZA Meeting 4/27 canceled?

So, one would presume that meeting would be back on the schedule if there were applications to discuss?

BZA only requires a Class 1 notice (one insertion), and 7 days notice to the property owner. We're 13 days out.

Appeals of Administrative decisions are placed on the next available agenda regardless of deadlines according to here :  
<https://www.wauwatosa.net/government/departments/development/board-of-zoning-appeals>

and here:

<https://www.wauwatosa.net/home/showpublisheddocument/4605/638046360382970000>

I've also attached those pages and highlighted the relevant sections for convenience.

Thanks for your time.

Robin Palm

Exhibit P7



4/19/2023

Robin Palm  
1559 N. 51<sup>st</sup> Street  
Milwaukee, WI 53208

RE: April 13, 2023 Board of Zoning Appeals (BOZA) Application


Mr. Palm:

As previously described to you, the Board of Zoning Appeals does not have jurisdiction to hear an appeal of the decision of the Common Council regarding conditional use permit approval for the property at 1300 Glenview Place in the City of Wauwatosa. Once the Common Council has acted to approve the conditional use permit, the staff findings are adopted and the action is one from the Common Council. The Board of Zoning Appeals has no power to overturn an action of the Common Council in such a determination. There have been no subsequent staff determinations, other than those related to your appeal itself, as to this property.

Wisconsin law provides that an aggrieved person can appeal a decision of the Common Council regarding the issuance of a conditional use permit to the Circuit Court. If you feel that you have standing to sue as an aggrieved party, that is your course of action to challenge the determination of the Common Council.

There are a number of substantive misunderstandings and incorrect statements in your appeal documents to which the City will reserve the right to object, should a substantive discussion of this appeal be needed at a future date. But given the fact that there is no jurisdiction to hear the appeal, I will not address those substantive objections at this time.

Sincerely,



Alan Kesner  
City Attorney

Alan R. Kesner

Deputy City Attorney  
Hanna Kolberg

Special Assistant  
George M. Schimmel

Wauwatosa, WI.

Dashboard Home Apply My Work Map Fee Estimate Pay Invoice Calendar

Plan Number: BZA2023-0006

Plan Details Fee Estimate My Work

Type: Board of Zoning Appeals  
Administrative Decision

Status: Void

Project Name:

Applied Date: 04/13/2023

Expiration Date:

District: 2

Assigned To:

Completion Date:

Description: This application is appealing the administrative decision in a letter dated April 03, 2023 from Planner Al Piroch.

It is stated that the previous application for an administrative appeal on 1300 Glenview Place was rejected because of BZOA's "lack of jurisdiction".

The applicant contends that not only is that finding incorrect and BZOA does have jurisdiction regarding the previous application, but also that the zoning administrator (for any staff member) does not have the authority to reject an appeal application to BZOA.

Summary Locations **Print** Apply Invoice Calendar

Fee Summary: Board of Zoning Appeals, P in District 2, Main Office

Total Fees: \$350.00

Paid Fees: \$350.00

Unpaid Fees: \$0.00

Remaining Fees

Sort Fee

Fee

Invoice

Completed

Amount Due

No record to display.

Paid Fees

Sort Fee

Board of Zoning Appeals

Invoice: INV00000477

Completed: \$350.00

Wauwatosa, WI.

Dashboard Home Apply My Work Map Fee Estimate Pay Invoice Calendar

Plan Number: BZA2023-0006

Plan Details Fee Estimate My Work

Type: Board of Zoning Appeals  
Administrative Decision

Status: Void

Applied Date: 04/13/2023

Expiration Date:

District: 2

Assigned To:

Description:

Completion Date:

This application is appealing the administrative decision in a letter dated April 03, 2023 from Planner Al Piroch.

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Summary Locations **Print** Apply Invoice Calendar

Plan Details Fee Estimate My Work

Comments

Type: Board of Zoning Appeals  
Administrative Decision  
Status: Void  
Project Name:  
Applied Date: 04/13/2023  
Expiration Date:  
Assigned To:  
Completion Date:  
Description:  
This application is appealing the administrative decision in a letter dated April 03, 2023 from Planner Al Piroch.  
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Results per page: 18 v 1-141

Wauwatosa, WI.

Dashboard Home Apply My Work Map Fee Estimate Pay Invoice Calendar

Plan Number: BZA2023-0006

Plan Details Fee Estimate My Work

Type: Board of Zoning Appeals  
Administrative Decision

Status: Void

Applied Date: 04/13/2023

Expiration Date:

District: 2

Assigned To:

Completion Date:

Description: This application is appealing the administrative decision in a letter dated April 03, 2023 from Planner Al Piroch.





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The applicant contends that not only is that finding incorrect and BZOA does have jurisdiction regarding the previous application, but also that the zoning administrator (for any staff member) does not have the authority to reject an appeal application to BZOA.

Summary Locations **Print** Apply Invoice Calendar

Plan Details Fee Estimate My Work

Sort Fee

Attachment	Attachment	Attachment	Attachment
 Attachment BZA 2023-0006 Board of Zoning Appeals Administrative Decision 04/13/2023 Note: Please Review BZOA's	 Attachment BZA 2023-0006 Board of Zoning Appeals Administrative Decision 04/13/2023 Note: Please Review BZOA's	 Attachment BZA 2023-0006 Board of Zoning Appeals Administrative Decision 04/13/2023 Note: Please Review BZOA's	 Attachment BZA 2023-0006 Board of Zoning Appeals Administrative Decision 04/13/2023 Note: Please Review BZOA's

City of Waawatata, WI									
Dashboard		Home	Aggs	My Work	Help	Fee Calculator	Paid Invoices	Cancellation	
Plan Number: BZA-2023-0003									
<a href="#">Go Back</a>   <a href="#">See Current Map View</a>									
Type:	Bond of Zoning Appeals	Administrative Decision	Appeal						
Applied Date:	03/31/2023	Expiration Date:	Assigned To:						
District:	2	Description:	This is an appeal to extension R-23-47 sponsored by the Common Council on March 21, 2023. The resolution authorized a conditional use approval for 1500 Queen Ave Phase for storage units in the M1 VUD zone.						
The decision issued in appeals involves implementation decisions, interpretations and determinations made by the zoning administrator and other administrative officials for the subdivision plan, interpretation and enforcement of the zoning ordinance.									
Since the application was not legal at the first phase, the entire application should be voided.									
<div>Summary</div> <div> <div>Summary</div> <div> <div>Amount Due</div> <div>Completed</div> <div>Invoice</div> </div> </div>									
Fee Summary									
Total Fees:	\$350.00	Paid Fees:	\$350.00	Unpaid Fees:	\$0.00				
Remaining Fees									
Fee	Invoice	Completed	Amount Due		Sort	Filter			
No records to show									
Paid Fees	Invoice	Completed	Amount Due		Sort	Filter			
Fee	Invoice	Completed	Amount Due		Sort	Filter			
Result per page	10	1 - 1 of 1							

Wauwatosa, WI.									
Dashboard Home Apply My Work Map Fee Estimator Fee Incentive Collector ID									
<b>Plan Number:</b> BZA-2023-0003									
<b>Print Details   Add Comments   Map History</b>									
<b>Type:</b>	<b>Died of Zoonosis</b>	<b>Applied Date:</b>	<b>Expiration Date:</b>	<b>Assigned To:</b>	<b>Completion Date:</b>	<b>Applicant Name:</b>	<b>Phone:</b>	<b>Email:</b>	<b>Address:</b>
	Agencies at Decision Time Decision Applied	03/31/2023							
<b>Description:</b>	This is an appeal to review the \$12,500 assessed by the Common Council on March 21, 2023. The resolution authorized a conditional use approved for 1300 Glenview Place for storage until the MRPD zone.								
The decision considers numerous errors: navigable errors, decisions, procedures and determinations made by the zoning administrator and other administrative entities in the administrative interpretation and enforcement of the zoning ordinance.									
Since the application was not legal in the first place, the entire application should be voided.									
<b>Summary</b>	<b>Locations</b>	<b>Fees</b>	<b>Assessments</b>						
<b>Contact Us Next Step: View Records, Map History</b>									
<b>Contacts</b>									
<b>Type</b>	<b>Company</b>	<b>First Name</b>	<b>Last Name</b>	<b>Title</b>	<b>Confirmation</b>	<b>Billing</b>	<b>Status</b>	<b>Notes</b>	<b>Action</b>
Applcmt		Rachel	Schiff		Active	Yes	Ver		

City of  
Wauwatosa, WI

Dashboard Home Apply My Work Map Fee Estimator Pay Invoices Calendar

Plan Number: BZ2023-0003

Plan Details Fee Estimate Monthly

Type: **Revised Zoning**  
Address: **Apexes**  
Administrative Decision: **Applied**

Applied Date: 03/31/2023

Expiration Date:

District: 2

Assigned To:

Description:

This is an appeal in violation of 22.14 approved by the Common Council on March 21, 2023. The expiration date of the appeal is approximately 1200 Glenview Road for 2023.

The decision contains no appeal or error. In response to the decision, the applicant is required to provide information within the zoning administration and other administrative officials in the administration, interpretation and enforcement of the zoning ordinance.

Since the application was not legal type first plan, the entire application should be voided.

Completion Date:

Inventory

Application

Fee

City

County

Attachments: Next Step: Plan Details: Main Menu

Attachments

Sort: Results: 1 of 1

Attachment

Downloaded: 03/31/2023 14:00:00

Uploaded: 03/31/2023

Notes: User: planmgr

Exhibit P8



Robin Palm <email.robin.palm@gmail.com>

## Response to letter from City Attorney Kesner dated 4/19/2023 concerning the Administrative Appeals for 1300 Glenview Place

1 message

Robin Palm <email.robin.palm@gmail.com>

Wed, Apr 26, 2023 at 4:59 PM

To: Alan Kesner <akesner@wauwatosa.net>

Cc: mayor@wauwatosa.net, jarchambo@wauwatosa.net, Steven Braatz <sbraatz@wauwatosa.net>, penders@wauwatosa.net, hkolberg@wauwatosa.net, mweiss@wauwatosa.net, Tamara Szudy <tszudy@wauwatosa.net>, zkessler@wauwatosa.net, apinon@wauwatosa.net, David.Kern@quarles.com, Yxiong@wauwatosa.net

Mr. Kesner,

Please see the attached letter regarding my BOZA applications submitted 3/31/2023 and 4/13/2023 and your response dated 4/19/2023. As indicated in the attached letter, not only is it within the jurisdiction of BOZA under established Wisconsin Supreme Court case law, but circuit court would likely dismiss the case entirely had I not exhausted my administrative appeal options first.

If you have any questions, please feel free to contact me.

Robin Andre Palm, AICP  
1559 N 51st Street  
Milwaukee, WI  
53208  
(804) 400-0744

PS: Im not sure if I have a current email address for the chair of BOZA, but he is CC'd on this email as well as the staff contact for BOZA.

### 5 attachments



LetterPalmtoKesner04262023.pdf  
83K



Brandt v. Pewaukee Town Board, 15 Wis. ...pdf  
142K



League of Women Voters v. Outagamie Cou...pdf  
271K



Nodell Inv. Corp. v. Glendale, 254 NW 2...pdf  
289K



Attachments.pdf  
2437K

Exhibit P8

4.26.2023

**TO**  
Alan Kesner

**FROM**  
Robin Palm, AICP

**RE**  
Board of Zoning Appeals Application on Conditional Use for 1300 Glenview Place

**CC**  
Dennis McBride, James Archambo, Steven Braatz, Paulette Enders, Hanna Kolberg,  
Melissa Cantarero Weiss, Zachary Kessler, Tamara Szudy, Arthur Piñon, David Kern

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**MR KESNER,**

I am in receipt of your letter dated 4/19/2023 regarding my appeal application of the zoning administrator's decision letter dated 4/3/2023 rejecting my application dated 3/31/2023 appealing the conditional use permit approval of 3/21/2023 for 1300 Glenview place.

I have not received written communication from the Zoning Administrator on this application or its rejection within the 5 working day timeframe as required in Wauwatosa ordinances 24.16.010.4(b) & (c). I will assume that by you writing this letter, you are speaking on the Zoning Administrator's behalf even though that is not stated in the letter. If that is not the case and I should expect another letter from the Zoning Administrator or someone delegated that authority that is under their supervision per Wauwatosa 24.01.100(H), please let me know as soon as possible.

The main contention that your 4/19/2023 letter and the zoning administrator's letter of 4/3/2023 make is that the Board of Zoning Appeals does not have the authority to review a Common Council decision in the form of resolution. Even though it was not stated, I suspect this assertion comes from Wisconsin Statutes 68.03(1), which reads as shown.

68.03 Determinations not subject to review. Except as provided in s. 68.02, the following determinations are not reviewable under this chapter:

(1) A legislative enactment. A legislative enactment is an ordinance, resolution or adopted motion of the governing body of a municipality.

(2) Any action subject to administrative or judicial review procedures under other statutes.

This is an understandable interpretation, given your specialization and extensive experience in municipal law. However, prevailing case law specifically states that the next clause (2) precludes review in that chapter when alternative appeal channels exist, such as there exists in the zoning code. In League of Women Voters v. Outagamie County, 334 NW 2d 887 - Wis: Supreme Court 1983, pages 323 through 325, the Wisconsin Supreme Court cites multiple clauses of Wisconsin Statutes that I myself cited in my 4/13/2023 appeal on the jurisdiction of BOZA and the remedies available to them. Their interpretation is consistent with my own.

Their conclusion is that anyone who is aggrieved can and must take their appeal to the Board of Zoning Appeals. By the phrasing in your letter, I can surmise that the legal opinion of the City Attorney is that I do not have legal standing as an aggrieved person. While that certainly is a worthwhile legal argument to make, it was not given as a reason in writing for voiding either of my applications dated 3/31/2023 and 4/13/2023. Ultimately, since I have asserted that I am, in fact, an

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4.26.2023

Pg.02

aggrieved person, it is up to the Board of Zoning Appeals to adjudicate that claim while ruling on the case. League of Women Voters v. Outagamie County, 334 NW 2d 887 - Wis: Supreme Court 1983 supports this in the following excerpt:

*Thus, persons aggrieved by orders, requirements, decisions, or determinations of an administrative official in the enforcement of shoreland zoning ordinances may appeal to the county board of adjustment.*

*The plaintiffs concede that the zoning committee may be an "administrative official" in some situations. See, Brandt v. Pewaukee Town Board, 15 Wis. 2d 6, 9, 112 N.W.2d 157 (1961) (the town board acted as an administrative officer when it decided not to grant a permit for a nonconforming use). However, plaintiffs argue that they had no right to appeal to the board of adjustment because the zoning committee's action did not involve the enforcement of the Shoreland Ordinance.*

*[2] We conclude that the zoning committee's decision on an application for conditional use permits is a decision in the enforcement of the Shoreland Ordinance within the meaning of sec. 59.99(7) (a), Stats.*

Also note in the above excerpt the definition of "administration official" to include acts of nominally legislative bodies when they participate in enforcement or administration of the zoning code. This applies to this case. The key excerpt from Brandt v. Pewaukee Town Board, 15 Wis. 2d 6 - Wis: Supreme Court 1961 is as follows:

*Ordinance sec. XVIII specifies the creation of a board of appeals and gives to an aggrieved person a right to appeal to such board from any decision of "the administrative officer." Brandt attempted to appeal to this board the Town Board's decision denying renewal of his permit, but the board refused to take jurisdiction. In so doing, the Town Board was acting in its administrative capacity. It makes no difference that the decision is one by an administrative body or an administrative single officer. The administrative decision is the subject of the grievance and the subject of the appeal. We think the board of appeals had jurisdiction under the ordinance and should have exercised it. This constitutes an additional failure to comply with that part of the ordinance relating to the renewal permits and the refusal to grant them.*

Furthermore, in Nodell Inv. Corp. v. Glendale, 254 NW 2d 310 - Wis: Supreme Court 1977, it adds that since administrative options must be exhausted prior to judicial review, and that actions by BOZA are specifically appealable to courts by the ordinance, such avenues **MUST** be exhausted prior to judicial review.

*We believe the sounder rule is that which holds that if a zoning ordinance provides for an appeal to a board of adjustment created pursuant to a statute similar to sec. 59.99 from an adverse ruling of an administrative officer or board in administering the ordinance, and court review of the decision or order of the board of adjustment is specifically provided for by statute, such remedy is exclusive of all other remedies and must be exhausted before a party can resort to the courts for other relief except in cases where the validity of the ordinance itself is attacked."*

The Wisconsin Supreme Court concluded in Glendale by stating that the Legislature of Wisconsin created the board of appeals specifically to handle these types of cases.

*The legislature has fashioned a procedure for the property owner to contest adverse rulings before the board of appeals, the unit of government which is closest to the people and which should be given the opportunity to provide a remedy. If the condition imposed by the plan commission had been found invalid, the board could have, if it believed it necessary or appropriate, imposed a different condition which would be lawful. We believe that the legislature intended this type of dispute to be resolved initially by the local administrative agency and thereafter, if necessary, in court by writ of certiorari.*

My request, if the city is still unwilling to correct the errors at an administrative level, is to let that process occur, with the possible measures for remedy plainly stated.



4.26.2023

Pg.03

My intention has never been a protracted legal battle and my actions show that. My first action was to call the Department of Planning and Zoning and discuss the errors present in the approval of the conditional use. I presented options to correct those errors that could be undertaken expediently while following proper zoning laws. I was told to file an appeal. The letter in response stated that it was unable to process my request and that I should go to Circuit Court to overturn a council decision. I disagreed, did my research, and then appealed that letter, hoping to stave off litigation for a city that already has more than its fair share of it. Then came your letter dated 4/19/2023 in response, again stating lack of BOZA authority and suggesting litigation as the sole recourse. That letter did not give timeframes for such court actions, as required by Wisconsin Statutes 68.07, but since that chapter isn't applicable, it's moot.

I do not intend to subvert the will of the council or overturn the Wauwatosa zoning code. I'm seeking to ensure that Wauwatosa's provisions and laws, created in the interest of public welfare, are followed. This would ensure that the council is presented with comprehensive information for which to make an educated decision, such is their charge.

For if we as public servants do not follow the law, who are we to insist that others should?

In summation:

If the city wishes to meet to discuss resolving this matter administratively without resorting to litigation or the public spectacle of a Board of Zoning Appeals hearing, I would love to do so and I have plenty of options at the ready.

If the city is happy with the outcome of the CUP approval and sees nothing objectionable about the process used to achieve it, then let us deliberate that at the next Board of Zoning Appeals meeting per municipal and state law.

If the city wishes to stand firm on the conditional use and denial of the administrative appeal despite the substantial case law I've presented in this letter as well as the references to Wauwatosa Municipal Code and Wisconsin Statutes in my applications, then I will do as suggested by your office of City Attorney and defend my rights in court.

I hope you reach a conclusion in the best interest of the entire community.

Amicably,



Robin Andre Palm, AICP

1559 N 51<sup>st</sup> Street  
Milwaukee, WI 53208

Attachments<sup>1</sup>

-Administrative appeal BZA2023-0003

-Letter from Arthur Pifon to Robin Palm dated 4/03/2023

-Administrative appeal BZA2023-0006,

-Decision: League of Women Voters v. Outagamie County, 334 NW 2d 887 - Wis: Supreme Court 1983

-Letter from Alan Kesner to Robin Palm dated 4/19/2023

-Decision: Nodell Inv. Corp. v. Glendale, 254 NW 2d 310 - Wis: Supreme Court 1977

-Decision: Brandt v. Pewaukee Town Board, 15 Wis. 2d 6 - Wis: Supreme Court 1961

Exhibit P9

County: MILWAUKEE

WAUWATOSA, CITY OF

1300 GLENVIEW PL

**Grantor (Seller)**

Name: WESTERN BUILDING PRODUCTS, INC.  
Address: 7007 N 115TH ST MILWAUKEE 53224  
Relationship with grantee(s):  
Grantor type: Corporation  
Ownership interest transferred: Full  
Owner interest other note:  
Grantor retains the right: None  
Grantor rights other note:

**Grantee (Buyer)**

Name: HOUSE 7, LLC  
Address: 2880 N 112TH ST MILWAUKEE 53222  
Grantee type: Limited Liability Company  
Grantee certification date: 04/28/2023

**Recording Information**

County document number: 11333238  
Date recorded: 04/28/2023  
Volume/jacket:  
Page/Image:

**Parcel**

County: MILWAUKEE  
Property legal description: (short - first 200 characters)  
All of parcel 371-0154-005 in the WAUWATOSA, CITY OF  
Physical property address: 1300 GLENVIEW PL  
Section/township/baseline/  
range/meridian: 21/7/21/E  
Subdivision or condo/lot or unit#/block: //  
Primary residence of grantee: No

Exhibit P9

**Fee Computation**

Total value of real estate transferred:	\$5,150,000.00
Value subject to fee:	\$5,150,000.00
Transfer fee due:	\$15,450.00
Transfer fee exemption number:	
Personal property value excluded from total value:	\$0.00
Property value exempt from local property tax:	\$0.00

**Tax Bill Mailing Address**

Send tax bill to:

Name:	HOUSE 7, LLC
Street Address:	2880 N 112TH ST
City, State Zip:	MILWAUKEE, WI 53222

**Transfer and Financing**

Transfer type:	Warranty/Condo Deed / Org Sale
Transfer type other note:	
Conveyance document type:	Warranty/Condo Deed
Conveyance code other note:	
Conveyance date:	04/26/2023
Grantee financing:	Conventional

**Physical Description**

Property type:	Land and Buildings
Predominant use:	Commercial
Lot square footage:	0
Total acres:	9.9
MFL/PFC acres:	0
Feet of water frontage:	0
Number of units:	0

## Agent and Preparer

Grantor agent: MARK HANSON % WESTERN BUILDING PRODUCTS,  
INC., 7007 N 115TH ST, MILWAUKEE, WI 53224  
Grantee agent: HOUSE 7, LLC % PETER J HANSEN, 2880 N 112TH ST,  
MILWAUKEE, WI 53222  
Preparer name: REINHART BOERNER VAN DEUREN SC

## Weatherization

Subject to residential  
rental weatherization standards:  
Energy exclusion: W-11

## System Information

Recording information added on: 04/28/2023  
Document locator number: 202303289995199  
Previous document number:

## Full Legal Description

PARCEL A: Part of Lots 1, 2 and 3 in Assessor's Plat No. 25 and part of Lots 1 and 23 in Assessor's Plat No. 26, in the Southeast 1/4 of Section 21, Town 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at a point in the South line of said 1/4 Section, 180 feet from the Southwest corner of said 1/4 Section; thence North 33.01 feet to a point in the North line of Chestnut Street, as now laid out, said point having been described as the Southwest corner of Lot 2, Assessor's Plat No. 25 in a description of a parcel of land conveyed by the Lutheran Children's Friend Society of Wisconsin to Chicago, Milwaukee, St. Paul and Pacific Railroad Company by Warranty Deed dated July 2, 1952 and recorded in Volume 3036, Page 593, as Document No. 3123755; continuing thence North 1,073.10 feet to the point of beginning of the lands about to be described; thence North 71° 14' 00" West, 190.06 feet to a point in the West line of said 1/4 Section; thence North along the West line of said 1/4 Section, 69.06 feet to a point in the South right-of-way line of the Chicago,

feet to a point in the South right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, said point being 42.00 feet from the centerline of the South main track as measured at right angles thereto; thence Southeasterly along said South right-of-way line (being 42.00 feet Southerly at right angles and parallel to the center line of the South main track) being a curved line with its center to the North (having a radius of 3,066.98 feet and a chord 770.56 feet in length which bears South 83° 16' 45" East) an arc distance of 772.60 feet to a point of tangency; thence North 89° 30' 15" East along said right-of-way line 827.60 feet to a point of curve; thence Southeasterly along a curved line with its center to the South (having a radius of 3,586.61 feet and a chord 485.25 feet in length which bears South 86° 37' 00" East) an arc distance of 485.62 feet to a point in a Northerly extension of the Easterly line of Lot 1, Assessor's Plat No. 26; said line being drawn on said plat as North 12° 37' East 33 feet; thence along the boundaries of said Lots 1 and 23 in Assessor's Plat No. 26, as follows: South 8° 40' 30" West along said extension of the East line of Lot 1, 50.44 feet to a point, at the most Southerly corner of said Lot 1; thence North 62° 03' 00" West, 27.07 feet to a point; thence North 79° 04' 00" West, 51.46 feet to a point; thence North 88° 35' 00" West, 121.18 feet to a point; thence South 5° 43' 00" East, 22.84 feet to a point; thence South 69° 03' 00" West, 132.00 feet to a point; thence South 59° 19' 15" West and parallel to the North line of Harwood Avenue, 99.00 feet to a point; thence South 71° 00' 30" West, 318.44 feet to a point; thence North 77° 49' 45" West, 147.34 feet to the most Northerly corner of Lot 24, in Assessor's Plat No. 26; thence South 30° 42' 15" East, 15.84 feet to a point; thence North 89° 17' 30" West, 392.70 feet to the Easterly line of Assessor's Plat No. 25; thence North 21° 42' 45" West along the Easterly line of said Assessor's Plat No. 25, 21.33 feet to a point, said point being the Southeast corner of Lot 2, Assessor's Plat No. 25; thence North 80° 44' 30" West along the South line of said Lot 3, 190.00 feet to a point; thence North 71° 14' 00" West, 486.79 feet to the point of beginning. EXCEPTING therefrom those lands conveyed in Quit Claim Deed recorded as Document No. 5392541 and conveyed in Warranty Deed recorded as Document No. 6490222. PARCEL B: All of Lot 24 and that part of Lot 22, in Assessor's Plat No. 26, in the Southeast 1/4 of Section 21, Town 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Northeast corner of said Lot 22; running thence South 36° 15' East, 34.16 feet to a point, said point also being the Southwest corner of Lot 24; running thence South 63° 30' 40" West 162.12 feet to a point; thence North 28° 31' West, 100 feet to a point in the North line of said Lot 22; thence North 86° 02' East, along the Northerly line of said lot, 172.50 feet to the place of beginning. PARCEL C: All that part of Lot 22 in Assessor's Plat No. 26 in the Southeast 1/4 of Section 21, Town 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin, bounded and described as

follows: Commencing at the Southeast corner of said Lot; running thence South 53° 45' West along the Southerly line of said Lot 150 feet to a point; thence South 76° 35' West along said Southerly line 27.06 feet to a point, said point being in the centerline of Glenview Place; thence North 28° 31' West, 115.30 feet to a point; thence North 63° 30' 40" East, 162.12 feet to a point, being the Southwest corner of Lot 24; and thence South 36° 15' East, along the Easterly line of Lot 22, 97.75 feet to the place of beginning. PARCELS D: Lot 22 in Assessor's Plat No. 26, in the Southeast 1/4 of Section 21, Town 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin, EXCEPT that part of said Lot 22 bounded and described as follows: Commencing at the Northeast corner of said Lot 2 running thence South 36° 15' East along the Easterly line of said Lot 22, 131.61 feet to the Southeast corner of said Lot 22; thence South 53° 45' West along the Southerly line of said Lot 22, 150 feet to a point; thence South 76° 35' West along said Southerly line, 27.06 feet to a point, said point being in the center line of Glenview Place; thence North 28° 31' West 215.30 feet to a point in the Northerly line of said Lot 22; thence North 86° 02' East, 172.50 feet to the place of beginning. PARCELS A, B, C & D ARE SURVEYED AS: P: of Lots 1, 2 and 3 in Assessor's Plat No. 25 and part of Lot 1 and 23 and all of Lots 22 and 24 in Assessor's Plat No. 26, all in the Southwest 1/4 and Southeast 1/4 of the Southeast 1/4 of Section 21, Town 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin, which is bounded and described as follows: Commencing at a point on the Southwest corner of the Southeast 1/4 of Section 21, thence North 01°09'26" West along the West line of said Southeast 1/4 a distance of 1170.13 feet to the point of beginning of the lands hereinafter described; thence continuing North 01°09'26" West along said West line and the East line of Certified Survey Map No. 9252 a distance of 68.97 feet to a point on the South line of the Soo Line / Canadian Pacific Railroad right-of-way; thence Southeasterly 766.42 along said South line and arc of a curve, whose center lies to the North, whose radius is 3066.98 feet and whose chord bears South 64°38'16" East 766.41 feet to a point; thence North 88°11'04" East along said South line 827.60 feet to a point; thence Southeasterly 308.08 along said South line and arc of a curve, whose center lies to the South, whose radius is 3586.61 feet and whose chord bears South 89°21'17" East 307.99 feet to a point on the West line of Harmony Avenue; thence South 37°45'50" West along said West line 17.79 feet to a point; thence South 52°14'10" East along said West line 6.47 feet to a point; thence South 37°50'42" West along said West line 31.12 feet to a point; thence South 89°53'05" West along said West line 8.14 feet to a point; thence South 37°45'50" West along said West line 50.67 feet to a point on the North line of Lots 10-19 in Assessor's Plat No. 26; thence South 67°31'05" West along said North line 86.47 feet to a point; thence South 57°49'25" West along said North line 98.94 feet to a point; thence South 69°30'18"

West along said North line 318.56 feet to a point; thence North 79°15'11" West along said North line 73.83 feet to a point; thence South 58°50'29" West along said North line 54.80 feet to a point on the West line of Lot 19 aforesaid; thence South 32°01'31" East along said West line 98.75 feet to a point on the North line of Lot 9 in A. Rollmans Subdivision; thence South 58°01'08" West along said North line 149.83 feet to a point on the East line of Glenview Place; thence South 81°05'20" West along the North line of Glenview place 54.35 feet to a point on the West line of Glenview Place, said point also being the Northeast corner of Lot 8 in A. Rollmans Subdivision; thence South 58°00'20" West along the North line of said Lot 184.81 feet to a point on the East line of Parcel 1 in Certified Survey Map No. 7003; thence North 23°00'24" West along said East line 325.20 feet to a point on the North line of said Parcel; thence North 78°13'50" West along said North line 190.64 feet to a point; thence North 72°30'13" West along said North line and its extension 684.07 feet to the point of beginning.

## Exhibit P10



**Robin Palm, AICP** (@BourbonPlanner@urbanists.social)  
@BourbonPlanner

Furious. This is walking distance from Tosa village and MRMC. If it meets the plan you should have CHANGED THE PLAN.

This likely also scuttles the planned Oak Leaf Trail connection to the Medical Center.

@meindl4tosa, you mentioned the housing crisis? This is what not to do.



**Isaac Rowlett** @IsaacRowlett · Mar 26  
jsnline.com/story/communit...

12:39 PM · Mar 26, 2023 · 11.3K Views

View Tweet analytics

6 Retweets 3 Quotes 34 Likes



Tweet your reply



**Robin Palm, AICP** (@BourbonPlanner@urba... @Bourbon... · Mar 26  
Currently researching the zoning change they approved in 2021. The zoning did not revert due to the lack of project moving forward and if they didn't specifically allow storage in the PUD, this is not legal unless they remove the PUD.

1 4 537



**Robin Palm, AICP** (@BourbonPlanner@urba... @Bourbon... · Mar 26  
This is why I hate Planned Unit Development Overlays, and Munis that use them are lazy and asking for trouble.

The zoning "was" changed. But no where does it say that all other M-1 standards apply. It even says the PUD's goal is to match the comp plan. Which... Isn't industrial.

#### Planned Unit Development

This site is currently zoned M-1 Industrial. The Developer is requesting a PUD Overlay to match the Comprehensive Plan's long-term objectives and goals with respect to the 36A. The current use of the site for industrial purposes no longer meets the City's long-range plans. A comparison of the M-1 zoning requirements and the Project are set forth in the chart below.

Use and Building Standards	District Comparison	
	M-1 (Existing)	Proposed PUD
Minimum lot/acre (if any)		
Front	200'	10
Side Street	10'	10
Side Interior	300'	8
Rear	25'	15
Maximum height	No Max	36' Max (2)
Maximum Building Coverage (% of lot area)	80	10

- (1) Minimum front setback is 15 feet if any portion of the proposed street front is a residential street (RMTT).
- (2) Maximum interior side setback is 10 feet if a street is 25 feet (RMTT).
- (3) Interior setback of 8 feet exists along Highway of adjacent parcel 2220 - parcel line.
- (4) The building height is designed to be approximately 20 ft. above the level of primary entry.

Maximum 20 ft.	District Comparison	
	M-1 (Existing)	Proposed PUD
Maximum lot/acre		
Maximum building	Not Permitted	Permitted

Parking Requirements	
Existing Requirements	Proposed Requirements
Minimum Residential Standards for Multi-unit Building	
Single	1.0 spaces per dwelling unit
One Bedroom	1.0 spaces per dwelling unit
Two Bedrooms	1.5 spaces per dwelling unit
Three or more Bedrooms	1.5 spaces per dwelling unit

Attachment: PUD - Developer Statement of Intent (Showing New Amenities) - 1200 Main Street - 3rd Floor - 3rd Floor



**Robin Palm, AICP** (@BourbonPlanner@urba... @Bourbon... · Mar 26  
But Tosa has some kind of "Final PUD Approval" process that I'm assuming they never did? Here's a request for an extension in May of last year.

PROTIP: Best Practices indicate that figuring out what your zoning overlay actually does is preferable BEFORE enacting it

#### GENERAL CAPITAL

GENERAL CAPITAL

1111 N. STATE STREET, SUITE 100  
MILWAUKEE, WI 53233  
414.224.2144  
F. 414.224.2144

May 17, 2022

Ms. Tanya Kucy  
Manager of Planning & Zoning  
City of Milwaukee  
Development Case Team  
7720 W. North Avenue  
Milwaukee, WI 53233

RE: PUD Final Application Decision Extension Request

Dear Tanya:

General Capital Acquisitions, LLC applied for preliminary plans for a proposed Unit Development in 2020. The City of Milwaukee Planning Commission approved the preliminary plans on May 12, 2021, and subsequently approved the General Capital Acquisitions, LLC on May 12, 2021.

The project has been approved in plan with the exception of the General Capital Acquisitions, LLC. Due to several factors including the cost of the affordable housing units, the General Capital Acquisitions, LLC has been unable to secure the necessary financing to move forward with the project. Therefore, General Capital Acquisitions, LLC respectfully requests a one-year extension for filing the final PUD plans.

Please let us know if you have any additional questions.

Respectfully submitted,

Michael J. Miller  
Vice President

Permit

cc: Patrick Linder  
Development Director

#### Thread



**Robin Palm, AICP** (@BourbonPlanner@urba... @Bourbon... · Mar 26  
"If there are any significant changes, it would have to go back through the approval process. The applicant can make a few changes in the design plans, but those changes need to be in their final PUD approval plans."

I would count "not doing the thing," as a significant change.

RECOMMENDED FOR APPROVAL (UNANIMOUS)	Meeting: 3/26/22 10:30 PM
FOR:	Common Council
BY:	Scott L. McCall, Megan O'Reilly
AGAINST:	Joseph M. Mielke II, Alderperson Robert J. Frazee, Michael Dabrowski, Michael J. Lee, O'Reilly, Muegel
EXCUSED:	Wito

#### 2. Request by Michael Weiss, General Capital Acquisitions, for a Preliminary Planned Unit Development approval extension for 1200 Main Street.

Ms. Enderby briefly introduced the item to the Committee.

Present in favor:

Linda Gassman-Lovey, 6930 N. State Street, Milwaukee, WI, Fox Point, WI

Present for committee questions:

Don Driver, 7230 W. Sun St., Wauwatosa, WI expressed his concerns about the plan changing in terms of building size, its footprint and/or a new design plan.

Ms. Enderby stated that if there were any design changes, the applicant would have to re-submit the request prior to submitting their final PUD. If there are any significant changes, it would have to go back through the approval process. The applicant also notes a few changes in the design plan, but those changes need to be in their final PUD approval plans.

City of Milwaukee

Page 2

Updated 5/17/2022 10:30 PM

Minutes

Committee/Advisory Committee

May 21, 2022

Ald. Mielke II expressed his concern about being a new Alder and haven't yet received a complete packet of information to make a sound decision. He prefers that this be tabled until he and the new Alder receive or can access the complete packet of information for review.

Ms. Enderby, Ald. O'Reilly, and Ms. Enderby addressed Ald. Mielke II's concerns. He was stated that there is enough time to review the plan now via agenda packet until the next Common Council meeting. Ald. O'Reilly emphasized that it is best to keep the project moving along and to not table this item. Ms. Enderby assured the Committee that all needed information will be put in the agenda packet for Council to review.



**Robin Palm, AICP** (@BourbonPlanner@urba... @Bourbon... · Mar 26  
Mind you, if they dropped the PUD overlay through a rezone, or if the PUD overlay had an expiration clause on it, it would revert to the base zoning. They're acting like it did that, but that's not the case. The PUD rules/plans still apply.

1 6 521

## Exhibit P10



**Robin Palm, AICP (BourbonPlanner@urba... @Bourbon...** · Mar 26 ...

Mind you, if they dropped the PUD overlay through a rezone, or if the PUD overlay had a expiration clause on it, it would revert to the base zoning. They're acting like it did that, but that's not the case. The PUD rules/plans still apply.

1 6 522



**Robin Palm, AICP (BourbonPlanner@urba... @Bourbon...** · Mar 26 ...

What's hilarious is that the very item before, mayor @Dennis4Tosa mentions that Tosa is the "4th largest city during the day b/c of all the workers".

Then proceeds to approve storage units within walking distance of the Village of Tosa and 16,000 jobs of the MRMC.

2 10 449



Add another Tweet



**Robin Palm, AICP (BourbonPlanner@urba... @Bourbon...** · Mar 26 ...

The only "out" would be a challenge that they didn't complete or void the PUD process, and the PUD doesn't allow for this use, let alone conditional use.

6 240



**Andrew Meindl @meindl4tosa** · Mar 26 ...

I'm concerned about the macroeconomic layer atm. We already had a housing project there fail; PUD issues you mentioned before aside, I was not in favor of keeping it vacant during an economic downturn. It could be better, but the parcel is staying active.

Thank you for engaging.

5 1 609



**Robin Palm, AICP (BourbonPlanner@urba... @Bourbon...** · Mar 26 ...

Storage units are not "active", it essentially locks it as a dead zone for years. The planners should have told you that. Tosa village isn't gonna turn into skid row b/c y'all wait for a better user. And "economic downturn" aside, you've admitted we're in a housing crisis.

1 10 179



**Robin Palm, AICP (BourbonPlanner@urba... @Bourbon...** · Mar 26 ...

2) the project there didn't "fail", they ran the numbers and the powers that be (their owners and lenders), decided it didn't make them enough ROI. Simple as that. How much was Tosa willing to put up in TIF?  
3) and yeah, it looks like proper procedures were not followed here.

4 124





STATE OF WISCONSIN, CIRCUIT COURT, MILWAUKEE COUNTY

IN THE INTEREST OF

☐ AmendedRobin Palm, AICP

Name

04/21/1981

Date of Birth

**Affidavit of Service  
(Chapter 48 and 938)**Case No. 2023CV003140

I, [Name] \_\_\_\_\_ of [City] \_\_\_\_\_, State of Wisconsin,  
being sworn, state that on [Date] 5/2/2023, I provided copies of the following documents:

1. Electronic Filing Notice - Enders, Paulette (Document 1)
2. Petition for Writ of Mandamus, Palm v Enders (Document 2)
3. Palm Affidavit for Petitioner and exhibits P1-P10 (Document 3)
4. Proposed - Palm Application for Alternative Writ (Document 4)

The following names and addresses:

☐ See attached

1. Name:
- Paulette Enders, Development Director City of Wauwatosa

Address: 7725 West North Ave Wauwatosa WI 53213Type of Service: ☐ Mail ☒ Personal Service ☐ Certified mail ☐ Registered mail with return receipt requested ☐ Publication

2. Name:
- Robin Palm, AICP

Address: 1559 N 51<sup>st</sup> Street Milwaukee WI 53208Type of Service: ☐ Mail ☒ Personal Service ☐ Certified mail ☐ Registered mail with return receipt requested ☐ Publication

3. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Type of Service: ☐ Mail ☐ Personal Service ☐ Certified mail ☐ Registered mail with return receipt requested ☐ Publication

4. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Type of Service: ☐ Mail ☐ Personal Service ☐ Certified mail ☐ Registered mail with return receipt requested ☐ Publication

5. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Type of Service: ☐ Mail ☐ Personal Service ☐ Certified mail ☐ Registered mail with return receipt requested ☐ Publication

6. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Type of Service: ☐ Mail ☐ Personal Service ☐ Certified mail ☐ Registered mail with return receipt requested ☐ Publication

7. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Type of Service: ☐ Mail ☐ Personal Service ☐ Certified mail ☐ Registered mail with return receipt requested ☐ Publication**Refer to Wisconsin Statutes for proper manner of service.**State of Wisconsin

County of \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_

Notary Public/Court Official

Name Printed or Typed

My commission/term expires: \_\_\_\_\_

☐ This notarial act involved the use of communication technology.

Signature

Name Printed or Typed

Address

Email Address

Telephone Number

Date



STATE OF WISCONSIN, CIRCUIT COURT, MILWAUKEE COUNTY

IN THE INTEREST OF

☐ Amended

Robin Palm, AICP

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(Chapter 48 and 938)**

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2. Name: Robin Palm, AICP

Address: 1559 N 51<sup>st</sup> Street Milwaukee WI 53208

Type of Service: ☐ Mail ☒ Personal Service ☐ Certified mail ☐ Registered mail with return receipt requested ☐ Publication

3. Name: \_\_\_\_\_

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**Refer to Wisconsin Statutes for proper manner of service.**

State of Wisconsin

County of \_\_\_\_\_

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\_\_\_\_\_  
Notary Public/Court Official

\_\_\_\_\_  
Name Printed or Typed

My commission/term expires: \_\_\_\_\_

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
Address

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date



STATE OF WISCONSIN, CIRCUIT COURT, MILWAUKEE COUNTY

IN THE INTEREST OF

☐ Amended

Robin Palm, AICP

Name

04/21/1981

Date of Birth

**Affidavit of Service  
(Chapter 48 and 938)**

Case No. 2023CV003140

I, [Name] \_\_\_\_\_ of [City] \_\_\_\_\_, State of Wisconsin,  
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2. Name: Robin Palm, AICP  
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Type of Service: ☐ Mail ☒ Personal Service ☐ Certified mail ☐ Registered mail with return receipt requested ☐ Publication
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**Refer to Wisconsin Statutes for proper manner of service.**

State of Wisconsin

County of \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_

\_\_\_\_\_  
Notary Public/Court Official

\_\_\_\_\_  
Name Printed or Typed

My commission/term expires: \_\_\_\_\_

☐ This notarial act involved the use of communication technology.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
Address

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date



STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

---

ROBIN PALM, AICP

Case No. 2023CV003140

Petitioner,

v.

PAULETTE ENDERS, DEVELOPMENT DIRECTOR AND ZONING  
ADMINISTRATOR FOR THE CITY OF WAUWATOSA

Respondent.

---

**AFFIDAVIT OF ROBIN PALM**

---

STATE OF WISCONSIN )

) SS

RACINE COUNTY )

Being first duly sworn on oath, I state as follows based on personal  
knowledge or information and belief:

1. I am an urban planner employed by the Village of Mount Pleasant in Racine County, Wisconsin since 2017. I hold a certification from the American Institute of Certified Planners and have a master's degree in urban and regional planning from Virginia Commonwealth University.

2. I reside in the Washington Heights neighborhood of Milwaukee, Wisconsin, immediately adjacent to Wauwatosa. To give perspective, at 2.3 miles away, Wauwatosa's City Hall is half the distance to my residence that

Milwaukee's is.

3. I am the Southeast Wisconsin Representative for the American Planning Association's Wisconsin chapter, and a member of its legislative policy committee. A portion of my role is to advocate for better planning throughout my district. I've done this many times throughout the region, including previously in Wauwatosa. Such efforts have even led to the passing of a Wauwatosa ordinance allowing for Reasonable Accommodations for Persons with Disabilities.

4. I'm an expert on zoning. I've drafted zoning laws, done an award-winning full zoning code rewrite, given seminars on zoning at the state planning conference, and am scheduled to participate in a series of web-based seminars on the history and future of zoning as it relates to fair housing.

5. On March 25, 2023, I read the article by Quinn Clark, dated the previous day in the Milwaukee Journal Sentinel, "An affordable housing project fell through in Wauwatosa. Storage units are taking its place."

6. I was immediately furious at the poor land use, planning, and outright waste of such a great opportunity. I took to social media and expressed my dismay. In that thread, I stated how upset I felt, and particularly lamented the loss of affordable housing and the extension of the county's Oak Leaf Trail from The Village of Wauwatosa to the Milwaukee Regional Medical Center. The community's housing crisis is something I hear about daily, and the housing stock in the metro area is at an all-time low. As for the trail, I'm an avid user of the County's bicycle trails, and my wife was planning on using that extension to commute to her job at the Medical College of Wisconsin seeing as The Medical Center had recently made upgrades around the campus and had campaigned hard for the trail extension for their employees. This thread is in exhibit P10.

7. I immediately noticed problems with the approval process. The continued existence of the PUD zoning, the lack of substantial evidence presented in favor of the development, the noticeably brief executive summary, and quick approval process when compared with the previous approvals. My research immediately showed that these weren't just small issues, but actual errors that led to the



conditional use being approved by mistake. Not many people would pick up on these illegalities, but I did. So, I felt compelled to act not only for myself, but on behalf of the common good of the wider community. On March 27, 2023, I called the Wauwatosa Planning Department to discuss the case. I received a call back from Arthur Piñon, planner and sometimes designee of the Zoning Administrator role. This was at 3:25 PM and the call lasted 24 minutes. During the call, we discussed the case, and I brought up the inconsistencies with legal procedures and statutes. I focused on the errors in conditional use law and with Wauwatosa's PUD procedures. I also stated that the use was contrary to the approved Master Plan and just poor planning in general. Mr. Piñon defended the approval and stated that nothing could be done at that point. I stated that the Zoning Administrator had broad ranging powers to correct issues stemming from approvals or permits issued by error or contrary to law. Mr. Piñon disagreed.

8. That remains the last spoken communication with anyone in the Development Department in the City of Wauwatosa.

9. I also noticed some misconceptions and incorrect statements in the council hearing approving the resolution. The council members seemed to be under the impression that they had to approve the use despite not liking it due to the law. One misconception concerned legal nonconforming status or "grandfather" status, when a council member inquired that the previous use was manufacturing, and The City Attorney said that they were similar. Legal non-conforming status expires after one year of vacancy. Another was that The City Attorney advised that substantial evidence was needed to deny a conditional use application per Wis. Stats. 62.23(7)(de)2.b but did not indicate that substantial evidence is also needed to approve according to the same clause.

10. I filed my appeal on March 31st. While filing the appeal, I encountered a technical error that prevented me from uploading my application. I spoke with one of the admins in the Development Department. On the second call with that admin, I was informed that the City Attorney told them to advise me that I needed to immediately file an appeal with circuit court. I replied, "Respectfully, I disagree

with the City Attorney's legal opinion on this matter."

11. In all communications with the City Attorney, he has insisted that I try to appeal the Common Council's decision through Circuit Court, legal advice I feel would have gotten my case tossed out for failing to exhaust my administrative remedies or failing to meet the time deadlines. Whether he gave this incorrect advice out of ignorance or malice, I do not know.

12. Thereafter, events proceeded as depicted in the Factual Allegations portion of the Petition.

13. I received no communication from the City or its officials despite multiple calls and emails.

14. By being so keen to push me toward litigation, I felt as if the City thought it could get rid of me thinking I wouldn't be up to the considerable time and financial commitment of legal action.

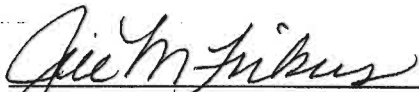
15. During my planning work at the Village of Mount Pleasant, if someone files an appeal or a variance, I'm there to help them every step of the way, telling them how to present their best case to the board, despite me being obligated to defend the code once the hearing begins. So, it's no surprise that I have a horrible winning percentage in BOZA cases, but it's the right thing to do, morally and ethically. This goes double for private persons filing for the first time. They don't know the ins and outs of zoning and can't be expected to for the one time they have to deal with it, so I help as much I can. To borrow a reference from a 20-year-old Pixar animated film, there's a scene in "The Incredibles" where Mr. Incredible helps an old lady get a successful insurance claim by giving her the inside info on what forms to file, where to file, and how to file them. That's what I aspire to be. In that aspect it feels so profoundly disappointing to be treated so unfairly by a City and fellow public servants when I'm trying to get them to follow their own rulebook designed to yield the best results for the common good for the entire community.

Dated this 1st day of May, 2023.



Robin Palm, AICP  
Petitioner

Subscribed and sworn to before me  
this 1st day of May, 2023.



Notary Public, State of Wisconsin

My Commission expires 12/20/2023



## Exhibit P1

**Resolution R-23-42 ,concerning the approval of a conditional use at 1300 Glenview Place in the M1/PUD zoning district, should be voided due to several legal, procedural, and technical errors made by the administrators of the zoning code.** I, Robin Palm, am a person aggrieved by these actions. Below is a statement of errors in the administration of the zoning code. It is not exhaustive. I'm seeking remedy in the form of voiding the resolution, conditional use, application, and any building permits submitted, so that proper legal procedures can be followed.

To Wit:

- 1) When approving the conditional use, Wauwatosa code 24.16.040 (G) states that *"The common council may authorize the zoning administrator to issue a conditional use permit if the common council finds that the following conditions exist and so indicates in the minutes of its proceedings:"*. The minutes of the Common Council do not contain that information, nor could they, since those conditions were not discussed in the meeting. Link to minutes:  
<http://wauwatosacitywi.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=3656&Inline=True>

The minutes of the Plan Commission and testimony of the public hearing also does not contain this information. Furthermore, while it's not material to the procedural fact that this law wasn't followed, the conditional use would not have passed those conditions had they been properly applied, especially conditions 1, 2, and 3, according to the Wauwatosa Comprehensive Long Range Plan.

- 2) In section 24.16.050 A.- Planned Unit Developments, the code states "Modifications to plans in existing /PUD overlay zoning districts follow established PUD plan amendment procedures" The PUD zoning was active and the preliminary plans were still within the development window. Changing the site development entirely would constitute a modification of the plan. Additionally in section 24.16.050 E.2.C it defines a "major amendment" to a PUD as "failure to provide public amenities or public benefit features approved as part of the PUD." The removal of the Oak Leaf Trail extension is a failure to provide approved public amenities. Because no modification to the PUD was approved, the administration erred in approving this resolution.
- 3) In 24.16.050 B,- Planned Unit Developments, it states: "Development Plan Approval Required. Approval of PUD preliminary and final development plans must occur before any building permit is issued and before any development takes place in a /PUD overlay district. Permits may be issued for a development phase if a preliminary development plan has been approved for the entire PUD and a final development plan has been approved for the subject phase." Since a final development plan has not been approved, and the parcel is still under PUD zoning set in place in 2021, and extended in 2022 by council action under 24.16.050 8.a, no building permits may be issued on the site until that time. If any building permits have been issued, they are also in error and should be revoked.
- 4) In 24.05.040.G - /PUD, Planned Unit Development Overlay. It says: "Allowed Uses. The uses to be allowed in a PUD must be identified as part of the PUD approval process along with all applicable conditions or supplemental use regulations that apply to such uses. " In the preliminary PUD plan ([Agenda - Monday, April 12, 2021 \(iqm2.com\)](#)), no other uses were positively identified as allowed in the PUD other than multi-unit residential. Since the ordinance specifically states that the uses to be allowed "must be identified", it cannot be assumed that all M1 uses are still applicable. Therefore any use other than multi-unit residential cannot be allowed until the PUD zoning designation lapses off the site in June 2023, or the PUD plan is amended. Thus the conditional use application should not have been accepted in the first place, constituting an error on the part of an administrator of the zoning code.

Additional signatories of persons aggrieved and evidence to be presented at the hearing are to follow.

Signed,  
Robin Palm, AICP

1559 N 51<sup>st</sup> St Milwaukee WI

**INVOICE (INV-00005227)  
FOR CITY OF WAUWATOSA****BILLING CONTACT**

Robin Palm  
1559 N 51st ST  
MILWAUKEE, WI 53208



INVOICE NUMBER	INVOICE DATE	INVOICE DUE DATE	INVOICE STATUS	INVOICE DESCRIPTION
INV-00005227	03/31/2023	Due Upon Receipt	Due	NONE

REFERENCE NUMBER	FEE NAME	TOTAL
BZA2023-0003	Board of Zoning Appeals	\$350.00
1300 Glenview Pl Wauwatosa, WI 53226	<b>SUB TOTAL</b>	<b>\$350.00</b>

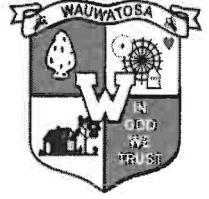
REMITTANCE INFORMATION
7725 W North Avenue Wauwatosa, WI 53213

**TOTAL** **\$350.00**

RECEIPT (REC-001451-2023)  
FOR CITY OF WAUWATOSA

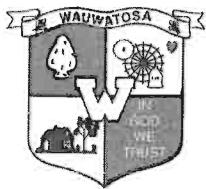
## BILLING CONTACT

Robin Palm  
1559 N 51st St  
Milwaukee, WI 53208



Payment Date: 03/31/2023

Reference Number	Fee Name	Transaction Type	Payment Method	Amount Paid
BZA2023-0003	Board of Zoning Appeals	Fee Payment	cc Default	\$350.00
1300 Glenview Pl Wauwatosa, WI 53226				<b>SUB TOTAL</b>
				<b>\$350.00</b>
				<b>TOTAL</b>
				<b>\$350.00</b>



CITY OF WAUWATOSA  
**PLANNING DIVISION**  
7725 WEST NORTH AVENUE, WAUWATOSA, WISCONSIN 53213

PHONE (414) 479-8957  
FACSIMILE (414) 479-8986  
E-MAIL: [tplanning@wauwatosa.net](mailto:tplanning@wauwatosa.net)  
WEB SITE: [www.wauwatosa.net](http://www.wauwatosa.net)

April 3, 2023

Robin Palm  
1559 N. 51<sup>st</sup> Street  
Milwaukee, WI. 53208

RE: Board of Zoning Appeals (BOZA) Application – BZA2023-0003

Mr. Palm,

The City received your Board of Zoning Appeals (BOZA) application to appeal the Common Council's decision approving Resolution R-23-42, a request for a Conditional Use Permit in the M1/Planned Unit Development District at 1300 Glenview Place for a general warehousing operation. The purpose of this letter is to inform you that the City is unable to process your request. In accordance with the authority parameters outlined in Wauwatosa Municipal Code (WMC) 24.17.010.C, the City's BOZA is without jurisdiction to hear appeals of decisions of the Common Council, and is only authorized to hear and make decisions on appeals of determinations made by administrative officials, design review board, and variance applications. If you have any questions or would like to discuss this determination further, please feel free to contact me.

Thank you,

Art Piñon  
Planner, City of Wauwatosa  
(414) 479-3522



Robin Palm &lt;palmra@gmail.com&gt;

---

**Re: BOZA Application**

---

Robin &lt;palmra@gmail.com&gt;

Mon, Apr 3, 2023 at 4:04 PM

To: Arthur Pinon &lt;apinon@wauwatosa.net&gt;

Cc: robin.palm@gmail.com

Mr Pinon and to whom it may concern,

If you read the appeal, it lists the administrative actions that it is objecting to, including

- 1) the accepting of the conditional use application as valid when it was not valid
- 2) issuance of any building permits before a final PUD is approved
- 3) acceptance of an invalid application without reworking the PUD
- 4) authorization of the zoning administrator to issue a conditional use permit \*if\* the conditions are outlined in the minutes. They were not.

The council action is the finalization of those administrative actions after which I could actually appeal.

We can take this to BOZA, or I will appeal this decision (obviously by a zoning administrator) to BOZA. It really is up to y'all if you wanna waste a month.

Sincerely,

Robin Palm

On Apr 3, 2023, at 16:37, Arthur Pinon <apinon@wauwatosa.net> wrote:

Mr. Palm,

Please see the attached letter regarding your BOZA application submitted 3/31/2023. As indicated in the attached letter, the City is unable to process the request. If you have any questions, please feel free to contact me.

Thank you,

**Art Piñon** | Planner

City of Wauwatosa | Development Department

7725 W. North Avenue, Wauwatosa WI 53213

T: (414) 479-3522

Wauwatosa Self Service Portal: Online Permitting





Robin Palm &lt;palmra@gmail.com&gt;

**Re: BOZA Application**

1 message

**Robin** <palmra@gmail.com>

Thu, Apr 6, 2023 at 4:10 PM

To: Robin &lt;palmra@gmail.com&gt;

Cc: Arthur Pinon &lt;apinon@wauwatosa.net&gt;, robin.palm@gmail.com

Mr Pinon,

Upon further review, the ordinance does not give the zoning administrator the authority to deny an application of this sort.

Which would make sense, why would a zoning administrator have the authority to deny appeals to their own decisions? That's an inherent conflict of interest.

Copied below are the municipal ordinances that say that the BZA has the power to hear and decide appeals where it is \*alleged\* that there's an error in any order requirement, decision, or determination by an administrative official.

It is a statement of fact that I allege errors by an administrative official at least 6 times in my application.

There is no municipal ordinance that gives anyone the ability to deny an application based on its content but the BZA itself.

So, respectfully, I ask you to rescind your previous letter, send all relevant materials to the BZA immediately, and place this item on this month's BZA meeting, per the municipal code of Wauwatosa.

Sincerely,  
Robin A Palm, AICP

On Apr 3, 2023, at 17:04, Robin <palmra@gmail.com> wrote:

Mr Pinon and to whom it may concern,

If you read the appeal, it lists the administrative actions that it is objecting to, including

- 1) the accepting of the conditional use application as valid when it was not valid
- 2) issuance of any building permits before a final PUD is approved
- 3) acceptance of an invalid application without reworking the PUD
- 4) authorization of the zoning administrator to issue a conditional use permit \*if\* the conditions are outlined in the minutes. They were not.

The council action is the finalization of those administrative actions after which I could actually appeal.

We can take this to BOZA, or I will appeal this decision (obviously by a zoning administrator) to BOZA. It really is up to y'all if you wanna waste a month.

Sincerely,

Robin Palm

On Apr 3, 2023, at 16:37, Arthur Pinon <apinon@wauwatosa.net> wrote:

Mr. Palm,

Please see the attached letter regarding your BOZA application submitted 3/31/2023. As indicated in the attached letter, the City is unable to process the request. If you have any questions, please feel free to contact me.

Thank you,

**Art Piñon** | Planner  
City of Wauwatosa | Development Department

7725 W. North Avenue, Wauwatosa WI 53213  
T: (414) 479-3522

Wauwatosa Self Service Portal: Online Permitting

#### 4 attachments



image0.jpeg  
706K



image1.jpeg  
543K



ONLINE LICENSES AND PERMITS  
No more paper. Submit plans from wherever you are.  
Access updates and easily communicate with staff.

image001.png  
30K



BZA\_1300 Glenview\_04032023.pdf  
187K



Exhibit P4

Robin Palm &lt;palmra@gmail.com&gt;

---

**Wauwatosa Board of Zoning Appeals, Application improperly denied by staff**

---

Robin &lt;palmra@gmail.com&gt;

Thu, Apr 6, 2023 at 3:37 PM

Bcc: bgreenberg@waukeshacounty.gov, mmazmanian@westallswi.gov, DShinners@sewrpc.org

Hi there,

You're receiving this email because this is the only contact info I could find for the Tosa BZA, as the contact info on Tosa's website all just goes to the planning department.

If you could forward this email the other members, or at the very least provide me with contact information, I'd appreciate it.

I write this not to influence a case one way or another, but merely to be heard in front of your board. In this email, I will not discuss the merits of the actual appeal, but only whether or not it is subject to BOZA's purview.

I submitted an appeal of the 1300 Glenview place conditional use based on errors in law and procedures by administrators of the zoning code.

I was denied a hearing of the BZA for that appeal because staff deemed the conditional use an action by the council.

Both the application and the rejection letter are attached.

My contention is that the BZA should decide what's under their purview, not an arbitrary staff member.

Moreover, the council passed a resolution, not an ordinance. And that resolution (according to the ordinance) authorized the zoning administrator to issue a conditional use permit \*if\*, requirements are met.

The zoning administrator issuing a CU permit appears to be an administrative action, by definition.

Several other administrative actions are brought up in the complaint, such as issuing a building permit, PUD procedures, and allowed applications according to zoning classification.

Staff contends I'm not appealing administrative actions of the zoning code, and so it's not in BOZAs purview. I contend it is. So I'm appealing to you directly.

I'm not sure whether you can compel an item to the agenda, but if you can, I would appreciate that.

If you cannot, let me know if you think appealing the administrative action of the attached letter rejecting my appeal application would be under BZA's purview.

Thanks for your time and consideration,

Respectfully,

Robin Palm, AICP  
1559 N 51st St  
Milwaukee WI  
53208

---

**2 attachments**



Exhibit P4

Robin Palm &lt;palmra@gmail.com&gt;

**RE: Wauwatosa Board of Zoning Appeals, Application improperly denied by staff**

1 message

Mike Mazmanian <MMazmanian@westallwi.gov>  
To: Robin <palmra@gmail.com>

Good Morning Robin,

As a member of the BOZA I don't believe I have the authority to bring issues forward to the board for review/consideration. Im no attorney, but I think your only avenue for appeal might be to file a suit c  
concede that this is a disappointing use for such a large parcel in the heart of the city. Id honestly rather see it razed and undeveloped/left as greenspace.

Mike

From: Robin <palmra@gmail.com>  
Sent: Thursday, April 6, 2023 3:38 PM  
Subject: Wauwatosa Board of Zoning Appeals, Application improperly denied by staff

Hi there,

You're receiving this email because this this is the only contact info I could find for the Tosa BZA, as the contact info on Tosa's website all just goes to the planning department.

If you could forward this email the other members, or at the very least provide me with contact information, I'd appreciate it.

I write this not to influence a case one way or another, but merely to be heard in front of your board. In this email, I will not discuss the merits of the actual appeal, but only whether or not it is subject to

I submitted an appeal of the 1300 Glenview place conditional use based on errors in law and procedures by administrators of the zoning code.

I was denied a hearing of the BZA for that appeal because staff deemed the conditional use an action by the council.

Both the application and the rejection letter are attached.

My contention is that the BZA should decide what's under their purview, not an arbitrary staff member.

Moreover, the council passed a resolution, not an ordinance. And that resolution (according to the ordinance) authorized the zoning administrator to issue a conditional use permit "if", requirements are  
The zoning administrator issuing a CU permit appears to be an administrative action, by definition.

Several other administrative actions are brought up in the complaint, such as issuing a building permit, PUD procedures, and allowed applications according to zoning classification.

Staff contends I'm not appealing administrative actions of the zoning code, and so it's not in BOZAs purview. I contend it is. So I'm appealing to you directly.

I'm not sure whether you can compel an item to the agenda, but if you can, I would appreciate that.

If you cannot, let me know if you think appealing the administrative action of the attached letter rejecting my appeal application would be under BZA's purview.

Thanks for your time and consideration,

Respectfully,

Robin Palm, AICP  
1559 N 51st St  
Milwaukee WI  
53208



Robin Palm &lt;palmra@gmail.com&gt;

**Re: Wauwatosa Board of Zoning Appeals, Application improperly denied by staff**

1 message

Robin &lt;palmra@gmail.com&gt;

To: Mike Mazmanian &lt;MMazmanian@westalliswi.gov&gt;

Mike,

Thanks for the response!

Thing is, I'm pretty confident that staff doesn't have the authority to deny appeals to BOZA, since it's their decisions I'm appealing.

Bear with me a little bit, as I'm gonna quote some code sections. Given your experience though, it's probably NBD.

This section makes it pretty clear that any appeal that "alleges" any errors is to go to BOZA:

1. Powers and Duties. The board of zoning appeals has all of the powers and duties expressly identified in this zoning ordinance, including the following:
- a. to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or c
  - b. 24.13.0100;

It's pretty clear my application alleges errors, cuz it does 6 or 7 times. It's attached below.

Also I think it's pretty clear the zoning administrator whose decision is being appealed isn't allowed to reject an appeal. Check this clause out, note the use of "must" here:

A. Transmittal to Board of Zoning Appeals. Upon receipt of a complete notice of appeal, the zoning administrator or other administrative official whose decision is being appealed must forward the appeal to the board of zoning appeals. Lastly, while the resolution states that the CC itself grants the CU permit, the code language is a little different.

General Review Criteria and Standards. The common council may authorize the zoning administrator to issue a conditional use permit.

So it's kinda arguable whether it's a common council action or an administrative one.

Either way, it's clear the intention of staff and the city attorneys office is to push me toward litigation, where they hope time and money will be a deterrent. I just wanna do the right thing here.

I guess this is a lot to take in, and I don't need you to act in any specific way.

So I guess my only question is: "I'm not completely off base here, right?"

It's a little unnerving to go up against an entire government with just my expertise to go on and for them to go "nope you're completely wrong", so I just need some confirmation that what I'm saying seems like a valid argument.

Thanks for your time and consideration,

Robin Palm, AICP

To the Board of Zoning Appeals of the City of Wauwatosa,

This application is appealing the administrative decision in a letter dated April 03, 2023 from Planner Art Pinon.

In it, it is stated that the previous application for an administrative appeal on 1300 Glenview Place was rejected because of BOZA's "lack of jurisdiction" on the matter.

This appeal contends that not only is that finding incorrect and BOZA does have jurisdiction regarding the previous application and the powers of remedy, but also that the zoning administrator does not have the authority to reject an appeal application to BOZA, especially one of their own actions.

To wit:

A) This section (24.16.110) makes it clear that any appeal that merely *\*alleges\** any errors is to go to BOZA: *Powers and Duties. The board of zoning appeals has all of the powers and duties expressly identified in this zoning ordinance, including the following:*

- 1) *to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or design review board, in the administration or enforcement of this zoning ordinance (See also Section 24.16.110 and Section 24.13.0100);*

The original application alleges errors, in fact it does at least 6 times. It's attached below. The revocation of the conditional use approval was the remedy sought, not the error claimed.

B) According to the municipal code of Wauwatosa, the zoning administrator whose decision is being appealed isn't allowed to reject an appeal. Nor, does it seem, does anyone. Note the use of *\*must\** here:

*Transmittal to Board of Zoning Appeals. Upon receipt of a complete notice of appeal, the zoning administrator or other administrative official whose decision is being appealed must transmit to the board of zoning appeals all papers constituting the record upon which the action appealed is taken.*

Also, this section (24.16.110)(G) states that "the board of zoning appeals must hold a hearing" on the matter.

Additionally, the zoning administrator's powers are limited to what's expressly written in code, according to 24.17.010 (F)

*Powers and Duties. The zoning administrator is responsible for carrying out those duties and responsibilities expressly assigned by this zoning ordinance and for:*

- ...
  - g. receiving, filing and forwarding to the plan commission, the board of zoning appeals and common council all applications for matters on which those respective entities are required to review or take action; and
  - h. keeping the plan commission, board of zoning appeals and common council advised of zoning activities

C) The rejection letter states that the CU permit is a Common Council action and therefore it cannot be appealed. While that isn't a valid reason to reject the appeal (since as stated in (A) the appeal alleged errors in the actions of officials and as stated in (B) the zoning administrator is not allowed to reject an appeal to their own actions), it is of question whether the approval isn't actually an administrative action.

For one, it is a resolution and not an ordinance, and while the resolution states that the CC itself grants the CU permit, the code language (24.16.040) G is a little different.

*General Review Criteria and Standards. The common council may authorize the zoning administrator to issue a conditional use permit if the common council finds that the following conditions exist and so indicates in the minutes of its proceedings:*

This language indicates that it is the zoning administrator who issues the permit, subject to the listed conditions.

Exhibit P5

An additional point to consider that this was in fact an administrative action, is that for the council to have taken action on a resolution without having heard it two times, it must be approved by the city administrator per (2.02.110)

D) Lastly, the BOZA not only has the authority to hear the case, but also has the powers to enact the requested remedies. The city ordinance in 24.16.110(G) gives BOZA all the powers of the zoning administrator.

In exercising the appeal power, the board of zoning appeals has all the powers of the administrative official from whom the appeal is taken.

Under this provision, the Board of Zoning Appeals can use the powers enumerated in 24.17.020 (D) to withhold, modify, or revoke all permits, certificates or other forms of authorization when it is found that there is a violation of the zoning code, ordinance, conditions, or other authorization given by the city. This is regardless of who violated the ordinance or who issued the authorization.

In conclusion, the Zoning Administrator erred in denying the appeal application BZA2023-0003 due to:

- 1) The zoning administrator did not have the authority to do so
- 2) The appeal was in fact within BOZA's jurisdiction
- 3) The remedies requested are within BOZA's expressly enumerated powers

If the Board of Zoning appeals moves to grant my appeal, I ask as remedy the following:

- 1) Reversal of the attached administrative decision dated April 03, 2023 rejecting the Board of Zoning Appeals Application BZA2023-0003
- 2) Granting and scheduling of a hearing for BZA2023-003 at the soonest possible convenience, to potentially include immediately following the hearing for this appeal request.
- 3) Reimbursement of any and all fees associated with this application

Thanks for your time and consideration,



Robin Palm, AICP

1559 N 51<sup>st</sup> Street

Milwaukee WI 53208

#### 24.16.110 Appeals of Administrative Decisions.

- A. Applicability; Authorized Variances. The board of zoning appeals is authorized to hear and decide appeals when it is **alleged** there has been an error in any order, requirement, decision or determination made by the design review board, the zoning administrator or any other administrative official in the administration, interpretation or enforcement of this zoning ordinance.
- B. Right to Appeal. Appeals of administrative decisions may be filed by any person aggrieved by the administrative official's decision or action, including officials, departments, boards or agencies affected by decisions.
- C. Application Filing. Appeals of administrative decisions must be filed with the zoning administrator within 10 days of the date of the written decision or order.
- D. Effect of Filing. The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed, unless the zoning administrator certifies to the board of zoning appeals, after the appeal is filed, that, because of facts stated in the certification, a stay would cause immediate peril to life or property, in which case the proceedings will not be stayed unless by a restraining order, which may be granted by the board of zoning appeals or by a court of record based on due cause shown.
- E. Transmittal to Board of Zoning Appeals. Upon receipt of a complete notice of appeal, the zoning administrator or other administrative official whose decision is being appealed **must transmit** to the board of zoning appeals all papers constituting the record upon which the action appealed is taken.
- F. Notice of Hearing.
  - 1. Class 1 notice of the board of zoning appeals' required hearing on an appeal of an administrative decision must be published in accordance with chapter 985 of the Wisconsin Statutes.
  - 2. Notice must be mailed to the subject property owner at least 7 days before the board of zoning appeals' required hearing.
  - 3. Notice of the filing of an appeal must be forwarded to the common council president and the alderperson of the district in which the subject property is located.
- G. Hearing and Final Decision.
  - 1. The board of zoning appeals **must hold a hearing** to consider the appeal.
  - 2. Following the close of the hearing, the board of zoning appeals must take action on the appeal. The board's decision must be supported by written findings of fact.
  - 3. In exercising the appeal power, the **board of zoning appeals has all the powers of the administrative official from whom the appeal is taken**. The board of zoning appeals may affirm or may, upon the concurring vote of a simple majority of board members present and voting, reverse, wholly or in part, or modify the decision being appealed.
  - 4. In acting on the appeal the board of zoning appeals must grant to the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant.
- H. General Review Criteria and Standards. An administrative decision may be reversed only if the board of zoning appeals finds that the zoning administrator or other administrative official erred.
- I. Successive Applications. Once an appeal has been denied by the board of zoning appeals, no rehearing on the same or substantially similar appeal may held except upon a simple majority vote of board members present and voting and a finding that substantial new evidence is submitted that could not reasonably have been presented at the previous hearing.



- J. Review by Court of Record. Any person aggrieved by the decision of the board of zoning appeals may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the decision in the office of the board of zoning appeals.

(Ord. No. O-14-20, Pt. XI, 8-5-2014)

#### **24.17.010 Review and Decision-Making Bodies.**

- A. Common Council. See Chapter 2.02 of the city code of ordinances.
- B. City Plan Commission. See Chapter 2.24 of the city code of ordinances.
- C. Board of Zoning Appeals.
  - 1. Established. The board of zoning appeals is established by this ordinance for the purpose of making decisions on variance applications and appeals of administrative decisions.
  - 2. Composition.
    - a. The board of zoning appeals consists of 5 regular members, all of whom are appointed by the mayor and subject to confirmation of the common council.
    - b. In addition to the 5 regular members, the mayor may appoint 2 alternate members of the board of zoning appeals, subject to confirmation of the common council. Alternate members have the power to act only when a regular member refuses to vote because of a conflict of interest or when a regular member is absent.
  - 3. Appointment of Officers.
    - a. The mayor has authority to designate a chairperson of the board of zoning appeals.
    - b. The board of zoning appeals is authorized to appoint a secretary.
  - 4. Terms. Regular and alternate members of the board of zoning appeals serve 3-year terms.
  - 5. Powers and Duties. The board of zoning appeals has all of the powers and duties expressly identified in this zoning ordinance, including the following:
    - a. to hear and decide appeals where it is **alleged** there is error in any order, requirement, decision or determination made by an administrative official or design review board, in the administration or enforcement of this zoning ordinance (See also Section 24.16.110 and Section 24.13.0100);
    - b. to authorize (non-use) variances that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit of the zoning ordinance will be observed, public safety and welfare secured and substantial justice done (See also Section 24.16.060); and
    - c. to hear and decide applications for those temporary uses requiring approval of the board of zoning appeals.
  - 6. Assistance. The board of zoning appeals may request assistance from any other city officers, departments, commissions or boards.
  - 7. Oaths and Witnesses. The chairperson of the zoning board has the authority to administer oaths and compel the attendance of witnesses.

F. Zoning Administrator.

1. Powers and Duties. The zoning administrator is responsible for carrying out those duties and responsibilities expressly assigned by this zoning ordinance and for:
  - a. conducting inspections of buildings, structures and land to determine compliance with this zoning ordinance and notifying in writing the person responsible for any violation found;
  - b. ordering the discontinuance of observed violations of this zoning ordinance or taking any other action authorized by law or by this zoning ordinance to ensure compliance with or to prevent violation of zoning ordinance provisions;
  - c. assisting the city attorney in the prosecution of zoning ordinance violations;
  - d. maintaining permanent and current records of this zoning ordinance, including, all maps, amendments, conditional use permits, planned unit developments, variances, appeals, applications and zoning ordinance text;
  - e. advising all persons seeking zoning information of the existence of officially adopted plans;
  - f. providing and maintaining a source of public information relative to all matters arising out of this zoning ordinance;
  - g. receiving, filing and forwarding to the plan commission, the board of zoning appeals and common council all applications for matters on which those respective entities are required to review or take action; and
  - h. keeping the plan commission, board of zoning appeals and common council advised of zoning activities.

(Ord. No. O-14-20, Pt. XII, 8-5-2014)

#### **24.17.020 Violations, Penalties and Enforcement.**

- A. Responsibility for Enforcement. The zoning administrator is responsible for enforcing this zoning ordinance, except as otherwise expressly stated.
- B. Violations. Unless otherwise expressly allowed by this zoning ordinance or state law, any violation of a provision of this zoning ordinance—including but not limited to all of the following—are subject to the remedies and penalties provided for in this zoning ordinance.
  - 1. to use land or buildings in any way not consistent with the requirements of this zoning ordinance;
  - 2. to erect a building or other structure in any way not consistent with the requirements of this zoning ordinance;
  - 3. to engage in the use of a building or land or to carry out construction, demolition or any other activity requiring one or more permits, certificates or approvals under this zoning ordinance without obtaining the required permits, certificates or approvals;
  - 4. to engage in the use of a building or land or to carry out construction, demolition or any other activity requiring one or more permits, certificates or approvals under this zoning ordinance in any way that is inconsistent with the permit, certificate or approval or any conditions imposed on the permit, certificate or approval;
  - 5. to violate the terms of any permit, certificate or approval granted under this zoning ordinance or any condition imposed on the permit or approval;
  - 6. to obscure, obstruct or destroy any notice required to be posted or otherwise given under this zoning ordinance;
  - 7. to violate any lawful order issued by any person or entity under this zoning ordinance; or
  - 8. to continue any violation after receipt of notice of a violation.
- C. Continuing Violations. Each day that a violation remains uncorrected after receiving notice of the violation from the city constitutes a separate violation of this zoning ordinance.
- D. Remedies and Enforcement Powers. The city has all remedies and enforcement powers allowed by law, including the following:
  - 1. Withhold Permit.
    - a. The zoning administrator may deny or withhold permits, certificates or other forms of authorization on any land or structure or improvements upon which there is an uncorrected violation of a provision of this zoning ordinance or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the city. This enforcement provision may be used regardless of whether the current owner or applicant is responsible for the violation in question.
    - b. The zoning administrator may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by or being developed by a person who owns, developed or otherwise caused an uncorrected violation of a provision of this zoning ordinance or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the city. This enforcement provision may be used regardless of whether the property for which the permit or other approval is sought is the property in violation.

2. Permits Approved with Conditions. Instead of withholding or denying a permit or other authorization as authorized in Section 24.17.020D.1, the zoning administrator may grant such authorization subject to the condition that the violation be corrected.
3. Revoke Permits.
  - a. Any permit, certificate or other form of authorization required under this zoning ordinance may be revoked by the zoning administrator when the zoning administrator determines that any of the following has occurred:
    - (1) that there has been a departure from the plans, specifications, or conditions required under terms of the permit;
    - (2) that the development permit was procured by false representation or was issued by mistake; or
    - (3) that any of the provisions of this zoning ordinance have or are being violated.
  - b. Written notice of revocation must be served upon the owner, the owner's agent or contractor, or upon any person employed on the building or structure for which such permit was issued. If no persons can reasonably be served with notice, the notice must be posted in a prominent location. After delivery or posting of notice, no construction or development may proceed.
4. Stop Work. With or without revoking permits, the zoning administrator may stop work on any building or structure on any land on which there is an uncorrected violation of a provision of this zoning ordinance or of a permit, certificate or other form of authorization issued under the zoning ordinance.
5. Revoke Plan or Other Approval. Where a violation of this zoning ordinance involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the zoning administrator may, upon notice to the applicant and other known interested parties (including any holders of building permits affected) (a) revoke the plan or other approval or (b) condition its continuance on strict compliance with this zoning ordinance or the provision of security to ensure that construction is completed in compliance with approved plans, or such other conditions as the zoning administrator may reasonably impose.
6. Injunctive Relief. The city may seek an injunction or other equitable relief in court to stop any violation of this zoning ordinance or of a permit, certificate or other form of authorization granted under the zoning ordinance.
7. Abatement. The city may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.
8. Other Penalties, Remedies and Powers. The city may seek such other penalties as are provided by Wisconsin law or the general penalty provision in Chapter 1.12 of the city code of ordinances.
- E. Continuation of Previous Enforcement Actions. Nothing in this zoning ordinance prohibits the continuation of previous enforcement actions, undertaken by the city pursuant to previous valid ordinances and laws.
- F. Remedies Cumulative. The remedies and enforcement powers established in this zoning ordinance are cumulative, and the city may exercise them in any combination or order.
- G. Persons Subject to Penalties. The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, or agent, or other person who commits, participates in, assists in, or maintains such violations may each be found guilty of a separate offense and be subject to penalties, remedies and enforcement actions.
- H. Enforcement Procedures.

1. Non-Emergency Matters. In the case of violations of this zoning ordinance that do not constitute an emergency or require immediate attention, the zoning administrator must give notice of the nature of the violation to the property owner or to any other person who is party to the agreement or to any applicant for any relevant permit in the manner stated in this section, after which the persons receiving notice have 10 days to correct the violation before further enforcement action may be taken. Notice must be given in person, by US Mail, or by posting notice on the premises. Notices of violation must state the nature of the violation and the time period for compliance and may state the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.
2. Emergency Matters. In the case of violations of this zoning ordinance that constitute an emergency situation as a result of public health or safety concerns or violations that will create increased problems or costs if not remedied immediately, the city may use the enforcement powers available under this zoning ordinance without prior notice, but the zoning administrator must attempt to give notice simultaneously with beginning enforcement action. Notice may be provided to the property owner, to any other person who is party to the agreement and to applicants for any relevant permit.
3. Appeals. Enforcement actions taken by the zoning administrator may be appealed by the affected party to the board of zoning appeals in accordance with Section 24.16.110.

## 2.02.110 Action on resolutions.

No resolution shall be finally acted upon or adopted at the same session of the common council at which such resolution has been introduced, except:

1. Resolutions for the payment of current bills, a list of which has been prepared by the city comptroller briefly and clearly stating the nature and purpose for which incurred and presented to the common council;
2. Resolutions emanating from a committee of the common council or the board of public works if the matters embodied in such resolutions:
  - a. Were referred to such committee or board at a previous meeting of the common council, or
  - b. Upon approval of **the city administrator**, appeared on the written agenda of a regular meeting of such committee or board, and such agenda had been delivered to all members of the common council prior to that meeting;
3. Resolutions emanating from the board of public works for the following:
  - a. Directing the board to prepare plans and specifications,
  - b. Accepting or rejecting bids which the board was previously directed by the common council to obtain,
  - c. Authorizing payments to contractors in connection with contracts previously authorized by the common council,
  - d. Granting permission to construct public improvements under private contract,
  - e. Granting permission to connect to public improvements.

(Ord. 74-33 § 1 (part), 1974)

Exhibit P5

**INVOICE (INV-00005472)  
FOR CITY OF WAUWATOSA**

**BILLING CONTACT**

Robin Palm  
1559 N 51st ST  
MILWAUKEE, WI 53208



INVOICE NUMBER	INVOICE DATE	INVOICE DUE DATE	INVOICE STATUS	INVOICE DESCRIPTION
INV-00005472	04/13/2023	Due Upon Receipt	Due	NONE

REFERENCE NUMBER	FEE NAME	TOTAL
BZA2023-0006	Board of Zoning Appeals	\$350.00
1300 Glenview Pl Wauwatosa, WI 53226		<b>SUB TOTAL</b> \$350.00

REMITTANCE INFORMATION
7725 W North Avenue Wauwatosa, WI 53213

**TOTAL** **\$350.00**



RECEIPT (REC-001677-2023)  
FOR CITY OF WAUWATOSA

## BILLING CONTACT

Robin Palm  
1559 N 51st St  
Milwaukee, WI 53208



Payment Date: 04/13/2023

Reference Number	Fee Name	Transaction Type	Payment Method	Amount Paid
BZA2023-0006	Board of Zoning Appeals	Fee Payment	cc Default	\$350.00
1300 Glenview Pl Wauwatosa, WI 53226				
SUB TOTAL				\$350.00
TOTAL				\$350.00



Robin Palm &lt;palmra@gmail.com&gt;

**BOZA Meeting 4/27 canceled?**

1 message

AL <palmra@gmail.com>  
To: sbraatz@wauwatosa.net

Fri, Apr 14, 2023 at 2:00 PM

Why is the BOZA hearing listed on 4/27 cancelled?

-  Apr 19, 2023 4:30 PM  
Police and Fire Commission - Regular Meeting
-  Apr 19, 2023 6:30 PM  
Library Board - Regular Meeting      Agenda Outline    Agenda Packet
-  Apr 20, 2023 7:00 PM  
Design Review Board - Regular Meeting
-  Apr 24, 2023 5:30 PM  
Bicycle and Pedestrian Facilities Committee - Regular Meeting
-  Apr 25, 2023 12:00 PM  
Common Council - Notice of Informal Gathering      Agenda Outline    Agenda Packet
-  Apr 25, 2023 6:30 PM  
Government Affairs Committee - Regular Meeting
-  Apr 25, 2023 6:30 PM  
Transportation Affairs Committee - Regular Meeting
-  Apr 25, 2023 7:30 PM  
Financial Affairs Committee - Regular Meeting
-  Apr 25, 2023 7:30 PM  
Community Affairs Committee - Regular Meeting
-  Apr 27, 2023 6:00 PM  
Board of Zoning Appeals - Regular Meeting
-  Apr 27, 2023 7:00 PM  
Civic Celebration Commission - Regular Meeting

Cancelled

May, 2023

May 1, 2023 8:30 AM

Robin Palm



Robin Palm &lt;palmra@gmail.com&gt;

**RE: [External] BOZA Meeting 4/27 canceled?**

1 message

**Steven Braatz** <sbraatz@wauwatosa.net>

Fri, Apr 14, 2023 at 3:14 PM

To: A L &lt;palmra@gmail.com&gt;

Hi Robin-

At this time, there are no applications or other issues to discuss.

Steven A. Braatz, Jr.

City Clerk | City of Wauwatosa

7725 W. North Ave. | Wauwatosa, WI 53213

www.wauwatosa.net

(414) 479-8920

**Wauwatosa Self Serve Portal: Online Permitting****ONLINE LICENSES AND PERMITS**No more paper. Submit plans from wherever you are.  
Access updates and easily communicate with staff.**From:** A L <palmra@gmail.com>**Sent:** Friday, April 14, 2023 2:00 PM**To:** Steven Braatz <sbraatz@wauwatosa.net>**Subject:** [External] BOZA Meeting 4/27 canceled?



Robin Palm &lt;palmra@gmail.com&gt;

**Re: [External] BOZA Meeting 4/27 canceled?**

1 message

A L &lt;palmra@gmail.com&gt;

Fri, Apr 14, 2023 at 3:46 PM

To: Steven Braatz &lt;sbraatz@wauwatosa.net&gt;

So, one would presume that meeting would be back on the schedule if there were applications to discuss?

BZA only requires a Class 1 notice (one insertion), and 7 days notice to the property owner. We're 13 days out.

Appeals of Administrative decisions are placed on the next available agenda regardless of deadlines according to here :  
<https://www.wauwatosa.net/government/departments/development/board-of-zoning-appeals>

and here:

<https://www.wauwatosa.net/home/showpublisheddocument/4605/638046360382970000>

I've also attached those pages and highlighted the relevant sections for convenience.

Thanks for your time,

Robin Palm

On Fri, Apr 14, 2023 at 3:14 PM Steven Braatz <sbraatz@wauwatosa.net> wrote:

Hi Robin-

At this time, there are no applications or other issues to discuss.

Steven A. Braatz, Jr.

City Clerk | City of Wauwatosa

7725 W. North Ave. | Wauwatosa, WI 53213

[www.wauwatosa.net](http://www.wauwatosa.net)

(414) 479-8920

## Wauwatosa Self Serve Portal: Online Permitting

**ONLINE LICENSES AND PERMITS**

No more paper. Submit plans from wherever you are.

Access updates and easily communicate with staff.












**From:** A L <palmra@gmail.com>

**Sent:** Friday, April 14, 2023 2:00 PM

**To:** Steven Braatz <sbraatz@wauwatosa.net>

**Subject:** [External] BOZA Meeting 4/27 canceled?

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Civic Celebration Commission - Regular Meeting

May, 2023

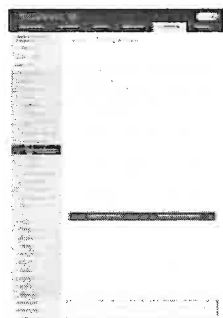
 May 1, 2023 9:30 AM

Cancelled

Robin Palm

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## 2 attachments



**BOZADeadlines.png**  
406K



**2022 BOZA handout Energov.pdf**  
720K



Robin Palm &lt;palmra@gmail.com&gt;

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**RE: [External] BOZA Meeting 4/27 canceled?**

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**Steven Braatz** <sbraatz@wauwatosa.net>

Fri, Apr 14, 2023 at 4:02 PM

To: A L &lt;palmra@gmail.com&gt;

Cc: Tamara Szudy &lt;tszudy@wauwatosa.net&gt;, Arthur Pinon &lt;apinon@wauwatosa.net&gt;

Unfortunately, I am not the Zoning Administrator. I will pass you on to Tammy and Art for a response.

Steven A. Braatz, Jr.

City Clerk | City of Wauwatosa

7725 W. North Ave. | Wauwatosa, WI 53213

[www.wauwatosa.net](http://www.wauwatosa.net)

(414) 479-8920

## Wauwatosa Self Serve Portal: Online Permitting



### ONLINE LICENSES AND PERMITS

No more paper. Submit plans from wherever you are.  
Access updates and easily communicate with staff.

**From:** A L <palmra@gmail.com>**Sent:** Friday, April 14, 2023 3:47 PM**To:** Steven Braatz <sbraatz@wauwatosa.net>**Subject:** Re: [External] BOZA Meeting 4/27 canceled?

So, one would presume that meeting would be back on the schedule if there were applications to discuss?

BZA only requires a Class 1 notice (one insertion), and 7 days notice to the property owner. We're 13 days out.

Appeals of Administrative decisions are placed on the next available agenda regardless of deadlines according to here :  
<https://www.wauwatosa.net/government/departments/development/board-of-zoning-appeals>

and here:

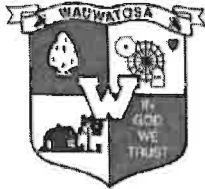
<https://www.wauwatosa.net/home/showpublisheddocument/4605/638046360382970000>

I've also attached those pages and highlighted the relevant sections for convenience.

Thanks for your time,

Robin Palm

Exhibit P7



## Wauwatosa City Attorney

Alan R. Kesner

Deputy City Attorney  
Hanna Kolberg

Special Assistant  
George M. Schimmel

4/19/2023

Robin Palm  
1559 N. 51<sup>st</sup> Street  
Milwaukee, WI 53208

RE: April 13, 2023 Board of Zoning Appeals (BOZA) Application


Mr. Palm:

As previously described to you, the Board of Zoning Appeals does not have jurisdiction to hear an appeal of the decision of the Common Council regarding conditional use permit approval for the property at 1300 Glenview Place in the City of Wauwatosa. Once the Common Council has acted to approve the conditional use permit, the staff findings are adopted and the action is one from the Common Council. The Board of Zoning Appeals has no power to overturn an action of the Common Council in such a determination. There have been no subsequent staff determinations, other than those related to your appeal itself, as to this property.

Wisconsin law provides that an aggrieved person can appeal a decision of the Common Council regarding the issuance of a conditional use permit to the Circuit Court. If you feel that you have standing to sue as an aggrieved party, that is your course of action to challenge the determination of the Common Council.

There are a number of substantive misunderstandings and incorrect statements in your appeal documents to which the City will reserve the right to object, should a substantive discussion of this appeal be needed at a future date. But given the fact that there is no jurisdiction to hear the appeal, I will not address those substantive objections at this time.

Sincerely,

  
Alan Kesner  
City Attorney

# Exhibit P7

Wauwatosa, WI.

Dashboard Home Apply My Work Map Fee Estimator Pay Invoices Contacts

Plan Number: BZA2023-0006

Board Details - Board Members (Main Menu)

**Type:** Board of Zoning Appeals - Administrative Decision  
**Project Name:**  
**Applied Date:** 04/13/2023  
**Expiration Date:**  
**Director:** 2  
**Assigned to:**

**Completion Date:**  
**Description:** This application is appealing the administrative decision to a letter dated April 03, 2023 from Planner A11 from:

In it is stated that the previous application for an administrative appeal on 1500 Glenview Place was rejected because of BOZA's "lack of jurisdiction"

This appeal contends that not only is the finding incorrect and BOZA does have jurisdiction regarding the previous application, but also that the zoning administrator (or any staff member) does not have the authority to reject an appeal application to BOZA.

Dashboard Home Apply My Work Map Fee Estimator Pay Invoices Contacts

Tools

Fee Summary Board of Zoning Appeals - Board Details - Main Menu

**Total Fees:** \$520.00  
**Unpaid Fees:** \$0.00  
**Paid Fees:** \$520.00

**Resolving Fees**

No need to apply

Fee	Invoice	Completed	Amount Due	Sort
<b>Paid Fees</b>				
<b>Fee</b>	<b>Invoice</b>	<b>Completed</b>	<b>Amount Due</b>	<b>Sort</b>
Board of Zoning Appeals	INV-2023-047	Completed	\$520.00	

Wauwatosa, WI.

Dashboard Home Apply My Work Map Fee Estimator Pay Invoices Contacts

Plan Number: BZA2023-0006

Board Details - Board Members (Main Menu)

**Type:** Board of Zoning Appeals - Administrative Decision  
**Project Name:**  
**Applied Date:** 04/13/2023  
**Expiration Date:**  
**Director:** 2  
**Assigned to:**

**Completion Date:**

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Dashboard Home Apply My Work Map Fee Estimator Pay Invoices Contacts

Tools

Fee Summary Board of Zoning Appeals - Board Details - Main Menu

Total Fees: \$520.00  
 Unpaid Fees: \$0.00  
 Paid Fees: \$520.00

Wauwatosa, WI.

Dashboard Home Apply My Work Map Fee Estimator Pay Invoices Contacts

Plan Number: BZA2023-0006

Board Details - Board Members (Main Menu)

**Type:** Board of Zoning Appeals - Administrative Decision  
**Project Name:**  
**Applied Date:** 04/13/2023  
**Expiration Date:**  
**Director:** 2  
**Assigned to:**

**Completion Date:**

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Dashboard Home Apply My Work Map Fee Estimator Pay Invoices Contacts

Tools

Fee Summary Board of Zoning Appeals - Board Details - Main Menu

**Total Fees:** \$520.00  
**Unpaid Fees:** \$0.00  
**Paid Fees:** \$520.00

Attachment	Attachment	Attachment	Attachment
Attachment	Attachment	Attachment	Attachment
Attachment	Attachment	Attachment	Attachment
Attachment	Attachment	Attachment	Attachment



# Exhibit P7



Plan Number: BZA2023-0003

Plan Details | Tab Forward | Main Menu

**Type:** Board of Zoning Appeals - Administrative Decision Appeal

**Applied Date:** 03/31/2023 **Expiration Date:** **Project Name:**

**District:** 2 **Assigned To:** **Completion Date:**

**Description:** This is an appeal to resolution R-23-42 approved by the Common Council on March 21, 2023. The resolution authorized a conditional use approval for 1300 Glenview Place for storage units in the M1/PUD zone.

The decision contains numerous errors in requirements, decisions, procedures and determinations made by the zoning administrator and other administrative officials in the administration, interpretation and enforcement of the zoning ordinance.

Since the application was not legal in the first place, the entire application should be voided.

Summary | Comments | **Fees** | Attachments | Calendar

Comments | Attachments | Board of Zoning Appeals | Main Menu

## Fee Summary

**Total Fees:** \$350.00 **Paid Fees:** \$350.00 **Unpaid Fees:** \$0.00

**Remaining Fees** Sort Fee

Fee	Invoice	Completed	Amount Due
No records to display.			

**Paid Fees** Sort Fee

Fee	Invoice	Completed
Board of Zoning Appeals	INV-000000022	\$350.00

Results per page: 10 1-1 of 1



Plan Number: BZA2023-0003

Plan Details | Tab Forward | Main Menu

**Type:** Board of Zoning Appeals - Administrative Decision Appeal

**Applied Date:** 03/31/2023 **Expiration Date:** **Project Name:**

**District:** 2 **Assigned To:** **Completion Date:**

**Description:** This is an appeal to resolution R-23-42 approved by the Common Council on March 21, 2023. The resolution authorized a conditional use approval for 1300 Glenview Place for storage units in the M1/PUD zone.

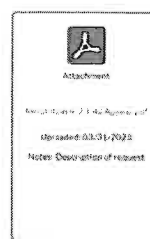
The decision contains numerous errors in requirements, decisions, procedures and determinations made by the zoning administrator and other administrative officials in the administration, interpretation and enforcement of the zoning ordinance.

Since the application was not legal in the first place, the entire application should be voided.

Summary | Comments | **Fees** | **Attachments** | Calendar

Attachments | Board of Zoning Appeals | Main Menu

## Attachments



Plan Number: BZA2023-0003

Plan Details | Tab Forward | Main Menu

**Type:** Board of Zoning Appeals - Administrative Decision Appeal

**Applied Date:** 03/31/2023 **Expiration Date:** **Project Name:**

**District:** 2 **Assigned To:** **Completion Date:**

**Description:** This is an appeal to resolution R-23-42 approved by the Common Council on March 21, 2023. The resolution authorized a conditional use approval for 1300 Glenview Place for storage units in the M1/PUD zone.

The decision contains numerous errors in requirements, decisions, procedures and determinations made by the zoning administrator and other administrative officials in the administration, interpretation and enforcement of the zoning ordinance.

Since the application was not legal in the first place, the entire application should be voided.

Summary | Comments | **Fees** | **Attachments** | **Contacts**

Comments | Attachments | Board of Zoning Appeals | Main Menu

## Contacts

Type	Company	First Name	Last Name	Title	City-At-Location	Working
Applicant		Robin	Palm		Active	Yes

Results per page: 10 1-1 of 1

Exhibit P8



Robin Palm &lt;email.robin.palm@gmail.com&gt;

---

**Response to letter from City Attorney Kesner dated 4/19/2023 concerning the Administrative Appeals for 1300 Glenview Place**

1 message

---

**Robin Palm** <email.robin.palm@gmail.com>

Wed, Apr 26, 2023 at 4:59 PM

To: Alan Kesner &lt;akesner@wauwatosa.net&gt;

Cc: mayor@wauwatosa.net, jarchambo@wauwatosa.net, Steven Braatz &lt;sbraatz@wauwatosa.net&gt;, penders@wauwatosa.net, hkolberg@wauwatosa.net, mweiss@wauwatosa.net, Tamara Szudy &lt;tszudy@wauwatosa.net&gt;, zkessler@wauwatosa.net, apinon@wauwatosa.net, David.Kern@quarles.com, Yxiong@wauwatosa.net

Mr. Kesner,

Please see the attached letter regarding my BOZA applications submitted 3/31/2023 and 4/13/2023 and your response dated 4/19/2023. As indicated in the attached letter, not only is it within the jurisdiction of BOZA under established Wisconsin Supreme Court case law, but circuit court would likely dismiss the case entirely had I not exhausted my administrative appeal options first.

If you have any questions, please feel free to contact me.

Robin Andre Palm, AICP  
1559 N 51st Street  
Milwaukee, WI  
53208  
(804) 400-0744

PS: Im not sure if I have a current email address for the chair of BOZA, but he is CC'd on this email as well as the staff contact for BOZA.

---

**5 attachments** **LetterPalmtoKesner04262023.pdf**  
83K **Brandt v. Pewaukee Town Board, 15 Wis. ....pdf**  
142K **League of Women Voters v. Outagamie Cou...pdf**  
271K **Nodell Inv. Corp. v. Glendale, 254 NW 2...pdf**  
289K **Attachments.pdf**  
2437K

4.26.2023

**TO**  
Alan Kesner  
**RE**  
Board of Zoning Appeals Application on Conditional Use for 1300 Glenview Place

**FROM**  
Robin Palm, AICP

**CC**  
Dennis McBride, James Archambo, Steven Braatz, Paulette Enders, Hanna Kolberg.  
Melissa Cantarero Weiss, Zachary Kessler, Tamara Szudy, Arthur Piñon, David Kern

**MR KESNER,**

I am in receipt of your letter dated 4/19/2023 regarding my appeal application of the zoning administrator's decision letter dated 4/3/2023 rejecting my application dated 3/31/2023 appealing the conditional use permit approval of 3/21/2023 for 1300 Glenview place.

I have not received written communication from the Zoning Administrator on this application or its rejection within the 5 working day timeframe as required in Wauwatosa ordinances 24.16.010.4(b) & (c). I will assume that by you writing this letter, you are speaking on the Zoning Administrator's behalf even though that is not stated in the letter. If that is not the case and I should expect another letter from the Zoning Administrator or someone delegated that authority that is under their supervision per Wauwatosa 24.01.100(H), please let me know as soon as possible.

The main contention that your 4/19/2023 letter and the zoning administrator's letter of 4/3/2023 make is that the Board of Zoning Appeals does not have the authority to review a Common Council decision in the form of resolution. Even though it was not stated, I suspect this assertion comes from Wisconsin Statutes 68.03(1), which reads as shown.

*68.03 Determinations not subject to review. Except as provided in s. 68.02, the following determinations are not reviewable under this chapter:*  
*(1) A legislative enactment. A legislative enactment is an ordinance, resolution or adopted motion of the governing body of a municipality.*  
*(2) Any action subject to administrative or judicial review procedures under other statutes.*

This is an understandable interpretation, given your specialization and extensive experience in municipal law. However, prevailing case law specifically states that the next clause (2) precludes review in that chapter when alternative appeal channels exist, such as there exists in the zoning code. In League of Women Voters v. Outagamie County, 334 NW 2d 887 - Wis: Supreme Court 1983, pages 323 through 325, the Wisconsin Supreme Court cites multiple clauses of Wisconsin Statutes that I myself cited in my 4/13/2023 appeal on the jurisdiction of BOZA and the remedies available to them. Their interpretation is consistent with my own.

Their conclusion is that anyone who is aggrieved can and must take their appeal to the Board of Zoning Appeals. By the phrasing in your letter, I can surmise that the legal opinion of the City Attorney is that I do not have legal standing as an aggrieved person. While that certainly is a worthwhile legal argument to make, it was not given as a reason in writing for voiding either of my applications dated 3/31/2023 and 4/13/2023. Ultimately, since I have asserted that I am, in fact, an

aggrieved person, it is up to the Board of Zoning Appeals to adjudicate that claim while ruling on the case. League of Women Voters v. Outagamie County, 334 NW 2d 887 - Wis: Supreme Court 1983 supports this in the following excerpt:

*Thus, persons aggrieved by orders, requirements, decisions, or determinations of an administrative official in the enforcement of shoreland zoning ordinances may appeal to the county board of adjustment.*

*The plaintiffs concede that the zoning committee may be an "administrative official" in some situations. See, Brandt v. Pewaukee Town Board, 15 Wis. 2d 6, 9, 112 N.W.2d 157 (1961) (the town board acted as an administrative officer when it decided not to grant a permit for a nonconforming use). However, plaintiffs argue that they had no right to appeal to the board of adjustment because the zoning committee's action did not involve the enforcement of the Shoreland Ordinance.*

*[2] We conclude that the zoning committee's decision on an application for conditional use permits is a decision in the enforcement of the Shoreland Ordinance within the meaning of sec. 59.99(7) (a), Stats.*

Also note in the above excerpt the definition of "administration official" to include acts of nominally legislative bodies when they participate in enforcement or administration of the zoning code. This applies to this case. The key excerpt from Brandt v. Pewaukee Town Board, 15 Wis. 2d 6 - Wis: Supreme Court 1961 is as follows:

*Ordinance sec. XVIII specifies the creation of a board of appeals and gives to an aggrieved person a right to appeal to such board from any decision of "the administrative officer." Brandt attempted to appeal to this board the Town Board's decision denying renewal of his permit, but the board refused to take jurisdiction. In so doing, the Town Board was acting in its administrative capacity. It makes no difference that the decision is one by an administrative body or an administrative single officer. The administrative decision is the subject of the grievance and the subject of the appeal. We think the board of appeals had jurisdiction under the ordinance and should have exercised it. This constitutes an additional failure to comply with that part of the ordinance relating to the renewal permits and the refusal to grant them.*

Furthermore, in Nodell Inv. Corp. v. Glendale, 254 NW 2d 310 - Wis: Supreme Court 1977, it adds that since administrative options must be exhausted prior to judicial review, and that actions by BOZA are specifically appealable to courts by the ordinance, such avenues MUST be exhausted prior to judicial review.

*We believe the sounder rule is that which holds that if a zoning ordinance provides for an appeal to a board of adjustment created pursuant to a statute similar to sec. 59.99 from an adverse ruling of an administrative officer or board in administering the ordinance, and court review of the decision or order of the board of adjustment is specifically provided for by statute, such remedy is exclusive of all other remedies and must be exhausted before a party can resort to the courts for other relief except in cases where the validity of the ordinance itself is attacked."*

The Wisconsin Supreme Court concluded in Glendale by stating that the Legislature of Wisconsin created the board of appeals specifically to handle these types of cases.

*The legislature has fashioned a procedure for the property owner to contest adverse rulings before the board of appeals, the unit of government which is closest to the people and which should be given the opportunity to provide a remedy. If the condition imposed by the plan commission had been found invalid, the board could have, if it believed it necessary or appropriate, imposed a different condition which would be lawful. We believe that the legislature intended this type of dispute to be resolved initially by the local administrative agency and thereafter, if necessary, in court by writ of certiorari.*

My request, if the city is still unwilling to correct the errors at an administrative level, is to let that process occur, with the possible measures for remedy plainly stated.

4.26.2023

Pg.03

My intention has never been a protracted legal battle and my actions show that. My first action was to call the Department of Planning and Zoning and discuss the errors present in the approval of the conditional use. I presented options to correct those errors that could be undertaken expediently while following proper zoning laws. I was told to file an appeal. The letter in response stated that it was unable to process my request and that I should go to Circuit Court to overturn a council decision. I disagreed, did my research, and then appealed that letter, hoping to stave off litigation for a city that already has more than its fair share of it. Then came your letter dated 4/19/2023 in response, again stating lack of BOZA authority and suggesting litigation as the sole recourse. That letter did not give timeframes for such court actions, as required by Wisconsin Statutes 68.07, but since that chapter isn't applicable, it's moot.

I do not intend to subvert the will of the council or overturn the Wauwatosa zoning code. I'm seeking to ensure that Wauwatosa's provisions and laws, created in the interest of public welfare, are followed. This would ensure that the council is presented with comprehensive information for which to make an educated decision, such is their charge.

For if we as public servants do not follow the law, who are we to insist that others should?

In summation:

If the city wishes to meet to discuss resolving this matter administratively without resorting to litigation or the public spectacle of a Board of Zoning Appeals hearing, I would love to do so and I have plenty of options at the ready.

If the city is happy with the outcome of the CUP approval and sees nothing objectionable about the process used to achieve it, then let us deliberate that at the next Board of Zoning Appeals meeting per municipal and state law.

If the city wishes to stand firm on the conditional use and denial of the administrative appeal despite the substantial case law I've presented in this letter as well as the references to Wauwatosa Municipal Code and Wisconsin Statutes in my applications, then I will do as suggested by your office of City Attorney and defend my rights in court.

I hope you reach a conclusion in the best interest of the entire community.

Amicably,



Robin Andre Palm, AICP

1559 N 51<sup>st</sup> Street  
Milwaukee, WI 53208

Attachments<sup>1</sup>

-Administrative appeal BZA2023-0003

-Letter from Arthur Piñon to Robin Palm dated 4/03/2023

-Administrative appeal BZA2023-0006,

-Decision: League of Women Voters v. Outagamie County, 334 NW 2d 887 - Wis: Supreme Court 1983

-Letter from Alan Kesner to Robin Palm dated 4/19/2023

-Decision: Nodell Inv. Corp. v. Glendale, 254 NW 2d 310 - Wis: Supreme Court 1977

-Decision: Brandt v. Pewaukee Town Board, 15 Wis. 2d 6 - Wis: Supreme Court 1961

County: MILWAUKEE

WAUWATOSA, CITY OF

1300 GLENVIEW PL

**Grantor (Seller)**

Name: WESTERN BUILDING PRODUCTS, INC.  
Address: 7007 N 115TH ST MILWAUKEE 53224  
Relationship with grantee(s):  
Grantor type: Corporation  
Ownership interest transferred: Full  
Owner interest other note:  
Grantor retains the right: None  
Grantor rights other note:

**Grantee (Buyer)**

Name: HOUSE 7, LLC  
Address: 2880 N 112TH ST MILWAUKEE 53222  
Grantee type: Limited Liability Company  
Grantee certification date: 04/28/2023

**Recording Information**

County document number: 11333238  
Date recorded: 04/28/2023  
Volume/jacket:  
Page/Image:

**Parcel**

County: MILWAUKEE  
Property legal description: (short - first 200 characters)  
All of parcel 371-0154-005 in the WAUWATOSA, CITY OF  
Physical property address: 1300 GLENVIEW PL  
Section/township/baseline/  
range/meridian: 21/7/21/E  
Subdivision or condo/lot or unit#/block: //  
Primary residence of grantee: No

### Fee Computation

Total value of real estate transferred:	\$5,150,000.00
Value subject to fee:	\$5,150,000.00
Transfer fee due:	\$15,450.00
Transfer fee exemption number:	
Personal property value excluded from total value:	\$0.00
Property value exempt from local property tax:	\$0.00

### Tax Bill Mailing Address

Send tax bill to:

Name:	HOUSE 7, LLC
Street Address:	2880 N 112TH ST
City, State Zip:	MILWAUKEE, WI 53222

### Transfer and Financing

Transfer type:	Warranty/Condo Deed / Org Sale
Transfer type other note:	
Conveyance document type:	Warranty/Condo Deed
Conveyance code other note:	
Conveyance date:	04/26/2023
Grantee financing:	Conventional

### Physical Description

Property type:	Land and Buildings
Predominant use:	Commercial
Lot square footage:	0
Total acres:	9.9
MFL/PFC acres:	0
Feet of water frontage:	0
Number of units:	0

**Agent and Preparer**

Grantor agent: MARK HANSON % WESTERN BUILDING PRODUCTS,  
INC., 7007 N 115TH ST, MILWAUKEE, WI 53224

Grantee agent: HOUSE 7, LLC % PETER J HANSEN, 2880 N 112TH ST,  
MILWAUKEE, WI 53222

Preparer name: REINHART BOERNER VAN DEUREN SC

**Weatherization**

Subject to residential  
rental weatherization standards:

Energy exclusion: W-11

**System Information**

Recording information added on: 04/28/2023

Document locator number: 202303289995199

Previous document number:

**Full Legal Description**

PARCEL A: Part of Lots 1, 2 and 3 in Assessor's Plat No. 25 and part of Lots 1 and 23 in Assessor's Plat No. 26, in the Southeast 1/4 of Section 21, Town 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at a point in the South line of said 1/4 Section, 180 feet from the Southwest corner of said 1/4 Section; thence North 33.01 feet to a point in the North line of Chestnut Street, as now laid out, said point having been described as the Southwest corner of Lot 2, Assessor's Plat No. 25 in a description of a parcel of land conveyed by the Lutheran Children's Friend Society of Wisconsin to Chicago, Milwaukee, St. Paul and Pacific Railroad Company by Warranty Deed dated July 2, 1952 and recorded in Volume 3036, Page 593, as Document No. 3123755; continuing thence North 1,073.10 feet to the point of beginning of the lands about to be described; thence North 71° 14' 00" West, 190.06 feet to a point in the West line of said 1/4 Section; thence North along the West line of said 1/4 Section, 69.06 feet to a point in the South right-of-way line of the Chicago,



feet to a point in the South right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, said point being 42.00 feet from the centerline of the South main track as measured at right angles thereto; thence Southeasterly along said South right-of-way line (being 42.00 feet Southerly at right angles and parallel to the center line of the South main track) being a curved line with its center to the North (having a radius of 3,066.98 feet and a chord 770.56 feet in length which bears South 83° 16' 45" East) an arc distance of 772.60 feet to a point of tangency; thence North 89° 30' 15" East along said right-of-way line 827.60 feet to a point of curve; thence Southeasterly along a curved line with its center to the South (having a radius of 3,586.61 feet and a chord 485.25 feet in length which bears South 86° 37' 00" East) an arc distance of 485.62 feet to a point in a Northerly extension of the Easterly line of Lot 1, Assessor's Plat No. 26; said line being drawn on said plat as North 12° 37' East 33 feet; thence along the boundaries of said Lots 1 and 23 in Assessor's Plat No. 26, as follows: South 8° 40' 30" West along said extension of the East line of Lot 1, 50.44 feet to a point, at the most Southerly corner of said Lot 1; thence North 62° 03' 00" West, 27.07 feet to a point; thence North 79° 04' 00" West, 51.46 feet to a point; thence North 88° 35' 00" West, 121.18 feet to a point; thence South 5° 43' 00" East, 22.84 feet to a point; thence South 69° 03' 00" West, 132.00 feet to a point; thence South 59° 19' 15" West and parallel to the North line of Harwood Avenue, 99.00 feet to a point; thence South 71° 00' 30" West, 318.44 feet to a point; thence North 77° 49' 45" West, 147.34 feet to the most Northerly corner of Lot 24, in Assessor's Plat No. 26; thence South 30° 42' 15" East, 15.84 feet to a point; thence North 89° 17' 30" West, 392.70 feet to the Easterly line of Assessor's Plat No. 25; thence North 21° 42' 45" West along the Easterly line of said Assessor's Plat No. 25, 21.33 feet to a point, said point being the Southeast corner of Lot 2, Assessor's Plat No. 25; thence North 80° 44' 30" West along the South line of said Lot 3, 190.00 feet to a point; thence North 71° 14' 00" West, 488.79 feet to the point of beginning. EXCEPTING therefrom those lands conveyed in Quit Claim Deed recorded as Document No. 5392541 and conveyed in Warranty Deed recorded as Document No. 6490222.

PARCEL B: All of Lot 24 and that part of Lot 22, in Assessor's Plat No. 26, in the Southeast 1/4 of Section 21, Town 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Northeast corner of said Lot 22; running thence South 36° 15' East, 34.16 feet to a point, said point also being the Southwest corner of Lot 24; running thence South 63° 30' 40" West 162.12 feet to a point; thence North 28° 31' West, 100 feet to a point in the North line of said Lot 22; thence North 86° 02' East, along the Northerly line of said Lot, 172.50 feet to the place of beginning. PARCEL C: All that part of Lot 22 in Assessor's Plat No. 26 in the Southeast 1/4 of Section 21, Town 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin, bounded and described as

follows: Commencing at the Southeast corner of said Lot; running thence South 53° 45' West along the Southerly line of said Lot 150 feet to a point; thence South 76° 35' West along said Southerly line 27.06 feet to a point, said point being in the centerline of Glenview Place; thence North 28° 31' West, 115.30 feet to a point; thence North 63° 30' 40" East, 162.12 feet to a point, being the Southwest corner of Lot 24; and thence South 36° 15' East, along the Easterly line of Lot 22, 97.75 feet to the place of beginning. PARCELS D: Lot 22 in Assessor's Plat No. 26, in the Southeast 1/4 of Section 21, Town 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin. EXCEPT that part of said Lot 22 bounded and described as follows: Commencing at the Northeast corner of said Lot 2 running thence South 36° 15' East along the Easterly line of said Lot 22, 131.91 feet to the Southeast corner of said Lot 22; thence South 53° 45' West along the Southerly line of said Lot 22, 150 feet to a point; thence South 76° 35' West along said Southerly line, 27.06 feet to a point, said point being in the center line of Glenview Place; thence North 28° 31' West 215.30 feet to a point in the Northerly line of said Lot 22; thence North 86° 02' East, 172.50 feet to the place beginning. PARCELS A, B, C & D ARE SURVEYED AS: Part of Lots 1, 2 and 3 in Assessor's Plat No. 25 and part of Lot 1 and 23 and all of Lots 22 and 24 in Assessor's Plat No. 26, all in the Southwest 1/4 and Southeast 1/4 of the Southeast 1/4 of Section 21, Town 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin, which is bounded and described as follows: Commencing at a point on the Southwest corner of the Southeast 1/4 of Section 21, thence North 01° 09' 26" West along the West line of said Southeast 1/4 a distance of 1170.13 feet to the point of beginning of the lands hereinafter described; thence continuing North 01° 09' 26" West along said West line and the East line of Certified Survey Map No. 9252 a distance of 68.97 feet to a point on the South line of the Soo Line / Canadian Pacific Railroad right-of-way; thence Southeasterly 768.42 along said South line and arc of a curve, whose center lies to the North, whose radius is 3066.98 feet and whose chord bears South 84° 38' 16" East 766.41 feet to a point; thence North 88° 11' 04" East along said South line 827.60 feet to a point; thence Southeasterly 308.08 along said South line and arc of a curve, whose center lies to the South, whose radius is 3586.61 feet and whose chord bears South 89° 21' 17" East 307.99 feet to a point on the West line of Harmony Avenue; thence South 37° 45' 50" West along said West line 17.79 feet to a point; thence South 52° 14' 10" East along said West line 6.47 feet to a point; thence South 37° 50' 42" West along said West line 31.12 feet to a point; thence South 89° 53' 05" West along said West line 8.14 feet to a point; thence South 37° 45' 50" West along said West line 50.67 feet to a point on the North line of Lots 10-19 in Assessor's Plat No. 26; thence South 67° 31' 05" West along said North line 86.47 feet to a point; thence South 57° 49' 25" West along said North line 98.94 feet to a point; thence South 69° 30' 18"

West along said North line 318.56 feet to a point; thence North 79° 15' 11" West along said North line 73.83 feet to a point; thence South 58° 50' 29" West along said North line 54.80 feet to a point on the West line of Lot 19 aforesaid; thence South 32° 01' 31" East along said West line 98.75 feet to a point on the North line of Lot 9 in A. Rollmans Subdivision; thence South 58° 01' 08" West along said North line 149.83 feet to a point on the East line of Glenview Place; thence South 81° 05' 20" West along the North line of Glenview place 54.35 feet to a point on the West line of Glenview Place, said point also being the Northeast corner of Lot 8 in A. Rollmans Subdivision; thence South 58° 00' 20" West along the North line of said Lot 184.81 feet to a point on the East line of Parcel 1 in Certified Survey Map No. 7003; thence North 23° 00' 24" West along said East line 325.20 feet to a point on the North line of said Parcel; thence North 78° 13' 50" West along said North line 190.64 feet to a point; thence North 72° 30' 13" West along said North line and its extension 684.07 feet to the point of beginning.



**Robin Palm, AICP (BourbonPlanner@urba... @Bourbon...** · Mar 26 ...

Mind you, if they dropped the PUD overlay through a rezone, or if the PUD overlay had a expiration clause on it, it would revert to the base zoning. They're acting like it did that, but that's not the case. The PUD rules/plans still apply.



1



6



522

**Robin Palm, AICP (BourbonPlanner@urba... @Bourbon...** · Mar 26 ...

What's hilarious is that the very item before, mayor @Dennis4Tosa mentions that Tosa is the "4th largest city during the day b/c of all the workers".

Then proceeds to approve storage units within walking distance of the Village of Tosa and 16,000 jobs of the MPMC.



2



10



449



Add another Tweet

**Robin Palm, AICP (BourbonPlanner@urba... @Bourbon...** · Mar 26 ...

The only "out" would be a challenge that they didn't complete or void the PUD process, and the PUD doesn't allow for this use, let alone conditional use.



6



240

**Andrew Meindl @meindl4tosa** · Mar 26 ...

I'm concerned about the macroeconomic layer atm. We already had a housing project there fail; PUD issues you mentioned before aside, I was not in favor of keeping it vacant during an economic downturn. It could be better, but the parcel is staying active.

Thank you for engaging.



5



1



609

**Robin Palm, AICP (BourbonPlanner@urba... @Bourbon...** · Mar 26 ...

Storage units are not "active", it essentially locks it as a dead zone for years. The planners should have told you that. Tosa village isn't gonna turn into skid row b/c y'all wait for a better user. And "economic downturn" aside, you've admitted we're in a housing crisis.



1



10



179

**Robin Palm, AICP (BourbonPlanner@urba... @Bourbon...** · Mar 26 ...

2) the project there didn't "fail", they ran the numbers and the powers that be (their owners and lenders), decided it didn't make them enough ROI. Simple as that. How much was Tosa willing to put up in TIF?  
3) and yeah, it looks like proper procedures were not followed here.



4



124



ROBIN PALM, AICP

Petitioner,

Petition for Writ of Mandamus

Case Code: 30952

Case No. 2023CV003140

PAULETTE ENDERS,

DEVELOPMENT DIRECTOR AND ZONING

ADMINISTRATOR FOR THE CITY OF WAUWATOSA

Respondent.

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**APPLICATION FOR ALTERNATIVE WRIT**

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Petitioner, Robin Palm, AICP, acting in *pro se*, hereby applies to this Court for the immediate issuance of an alternative writ of mandamus ordering the Respondent, Paulette Enders, in her capacity as Development Director and Zoning Administrator for the City of Wauwatosa, to immediately schedule a Board of Zoning Appeals hearing in response to Petitioner's March 31, 2023 application, or to appear before this Court and show cause to the contrary. The grounds for this application are as set forth in the Petition, accompanying affidavit(s) and as follows:

1. An alternative writ of mandamus is "a mandamus issued upon the first application for relief, commanding the defendant either to perform the act demanded or to appear before the court at a specified time to show cause for not performing it." *State ex rel. Milwaukee Police Ass'n v. Jones*, 2000 WI App 146, ¶7, n. 7, 237 Wis. 2d 840, 615 N.W.2d 190 (quoting BLACK'S LAW DICTIONARY (7th Ed. 1999)).

2. Wis. Stat. § 801.02(5) permits commencement of an action by service of a

writ of mandamus “if a copy of the writ is filed forthwith.”

3. “The usual practice, if a prima facie case is made out by the petition or application, is to issue an alternative writ of mandamus, directed to the person claimed to be under a duty to act, requiring the person, either to act or to show cause why the person should not be compelled to do so.” 9 *Wis. Pleading & Practice Forms*, sec. 85.37 (5th Ed. 2017).

4. Courts can issue alternative writs of mandamus immediately in zoning cases. See, e.g., *State ex rel. Humble Oil Refining Co. v. Wahner*, 25 Wis.2d 1, 130 N.W.2d 304 (1964). (“Humble... petitioned for a writ of certiorari to reverse the decision of the board denying permission to build, and for an alternative writ of mandamus to compel the Building Inspector to issue a building permit. It ordered the issuance of the writ of mandamus.”). *State ex rel. Poole v. Village of Menomonee Falls*, 55 Wis. 2d 555, 200 N.W.2d 580 (1972) (“This is an appeal by the Village of Menomonee Falls... from a judgement which ordered the issuance of a peremptory writ of mandamus”);

5. This Petition and supporting Affidavit establish a prima facie case that the Respondent has failed to perform a clear duty mandated by the Zoning Laws in Chapter 62 of the Wisconsin Statutes and Wauwatosa Municipal Code.

6. Plaintiff made applications for an Appeal of Administrative Decisions on March 31, 2023 and April 13, 2023.

7. The City has not scheduled the Board of Zoning Appeals hearing that is mandated under the premise that it lacks jurisdiction.

8. Wis. Stat. § 62.23(7)(e)4 provides that “Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time.”

9. Mandamus lies to compel an official to perform prescribed duties that are clear and unequivocal when the responsibility to act is imperative, and the petitioner shows substantial damage will result from failure to perform the act. *Burns v. City of Madison*, 92 Wis. 2d 232, 284 N.W.2d 631 (1979).

Dated this May 01, 2023.

Respectfully  
submitted,

Robin Palm, AICP

## SUMMONS

Robin Palm, AICP  
1559 N 51st St  
Milwaukee, WI 53208,

Petitioner,  
v.

Case Class: Petition for Writ of  
Mandamus  
Case Code: 30952  
Case No.  
2023CV003140

Paulette Enders, Development Director, Zoning Administrator City of Wauwatosa  
7725 W North Ave, Wauwatosa, WI 53213

Respondent.

### THE STATE OF WISCONSIN

To each person named above as a Respondent:

You are hereby notified that the Petitioner named above has filed a lawsuit or other legal action against you. The Petition, which is attached, states the nature and basis of the legal action.

Within 18 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Petition. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: Clerk of Circuit Court, Milwaukee County, 9901 North 9th Street, Room 104 Milwaukee, Wisconsin 53233 and to the Petitioner, whose address is: 1559 N 51st Street, Milwaukee, WI 53208.

You may have an attorney help or represent you.

If you do not provide a proper answer within 18 days, the court may grant judgment against you for the award of money or other legal action requested in the Petition, and you may lose your right to object to anything that is or may be incorrect in the Petition. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Respectfully submitted,  
Robin Palm, AICP  
(804)400-0744; palmra@gmail.com  
1559 N 51st St  
Milwaukee, WI 53208,

Robin Palm, AICP  
1559 N 51st St  
Milwaukee, WI 53208,

Case Class: Petition for  
Writ of Mandamus  
Case Code: 30952  
Case No. 2023CV003140

Petitioner, v.

Paulette Enders, Development Director, Zoning Administrator  
City of Wauwatosa

7725 W North Ave, Wauwatosa, WI 53213

Respondent.

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### PETITION FOR WRIT OF MANDAMUS

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This is an action to enforce Wisconsin's Zoning Law, Wis. Stat. §§ 62.23(7)(e)4-§§ 62.23(7)(e)6. State law declares it the public policy of this state that any person who is aggrieved by any decision of the administrative officer is presumptively entitled to an appeal within a reasonable time.

Petitioner hereby petitions this Court for a writ of mandamus directing the Respondent, Paulette Enders in her capacity as the zoning administrator of the City of Wauwatosa, to schedule a hearing of the Board of Zoning Appeals ("BOZA") within a reasonable time as requested by the Petitioner, alleging to the Court as follows:



**FACTUAL ALLEGATIONS**

***Parties***

1. Petitioner Robin Palm, AICP, acting in Pro Se, is an AICP certified urban planner, and is resident of the City of Milwaukee, in Milwaukee County, Wisconsin with a home address of 1559 N 51st Street, Milwaukee, Wisconsin 53208. He also serves on the board of the American Planning Association's Wisconsin chapter, in the role of Southeast Wisconsin representative.

2. Respondent Paulette Enders, in her capacity as the current title holder of Development Director of the City of Wauwatosa, the position also named as the Zoning Administrator in Wauwatosa Municipal Code ("WMC") 24.18.020.

3. The Zoning Administrator role can be designated and/or delegated by the Development Director per WMC 24.18.020 and WMC 24.01.100 to others over whom they have authority.

**Venue & Jurisdiction**

4. This Court has jurisdiction to hear this matter under Wis. Stat. § 62.23(7)(e)10, which provides aggrieved persons an ability to appeal any decision of the board of zoning appeals within 30 days by certiorari to the circuit court. This establishes the circuit court as the proper appellate court for all matters normally under the jurisdiction of a Board of Zoning Appeals.

5. Venue is proper in this County under Wis. Stat. § 801.50(2)(a) to (c)

**Mr. Palm's Request for an Administrative Appeal**

6. On March 31, 2023, Robin Palm, an urban planner, sent an application BZA2023-0003 for an Administrative Appeal to the City of Wauwatosa via its online

portal. An Administrative Appeal is when an aggrieved person feels that an administrative official has erred in their administration or enforcement of the Zoning Code. The case is to immediately be heard by the Board of Zoning Appeals, who has all of the powers of the official whose actions are being appealed available as a course of remedy. The purpose of this is to give due process to members of the community for all of the decisions that government employees must, for sake of expediency, do administratively. This appeal was within the 10 days of the written decision, as required to initiate such appeals, as defined in the WMC. An application fee of \$350 was invoiced to Mr. Palm and paid the same day by Mr. Palm. A true and accurate copy of that request, invoice, and receipt is attached to the Affidavit of Robin Palm as Exhibit P1.

7. Mr. Palm submitted a narrative that:

- stated that he was an aggrieved person
- alleged errors in the Planned Unit Development and Conditional Use laws of the WMC and Wis. Stats. involving actions or decisions by the Zoning Administrator or their designee
- requested a hearing in front of the Board of Zoning Appeals to consider potential remedies, including the revocation of the conditional use in question.

8. On April 3, 2023, Robin Palm received an email at the address denoted on his application from Arthur Piñon, Wauwatosa planner acting as the Zoning Administrator/designee. In it, Mr. Piñon stated that the City of Wauwatosa was unable to process the request due to the lack of jurisdiction of the City's BOZA to hear appeals of decisions of the Common Council. Mr. Piñon did not state that the application could be revised per WMC 24.13.010(f)(3). A true and accurate copy of that email letter is attached to the Affidavit of Robin Palm as Exhibit P2.

9. On April 3 and, again, on April 6, Mr. Palm emailed Mr. Piñon clarifying the nature of the appeal, the BOZA's authority to hear it, and the Zoning Administrator's lack of capacity to deny it. In those emails, Mr. Palm requested the decision be reversed, writing that if it were not, he would submit another

administrative appeal to appeal the decision in the April 3 letter. No responses to those emails have been received as of the time of this petition. True and accurate copies of those email letters are attached to the Affidavit of Robin Palm as Exhibit P3.

10. On April 6, 2023, Mr. Palm sent emails to the seven members of the Board of Zoning Appeals, as per 62.23(7)(e)4 explaining the grounds of the appeal and that the appeal should not have been rejected. Only one member replied, Mr Mike Mazmanian, stating that they did not have the power to compel the issue. This is contrary to 62.23(7)€3 which states that meetings shall be at the call of the chairperson. True and accurate copies of those email letters are attached to the Affidavit of Robin Palm as Exhibit P4.

11. On April 13, 2023, Mr. Palm completed application BZA2023-0006, appealing the Zoning Administrator's decision to reject appeal BZA2023-0003 on the grounds of lack of jurisdiction. In the appeal narrative, Mr. Palm asserts that, in general, the zoning administrator cannot and should not deny an appeal of their own actions, citing the WMC's mandatory language present in WMC 24.16.110(G), which mirrors Wis. Stat.

12. §§ 62.23(7)€4- §§ 62.23(7)€6. Mr. Palm also questioned whether the approval use was actually an administrative action per WMC 24.16.110(G), and asserted that WMC 24.16.110(G) provides the BOZA all the necessary powers to enact the requested remedies. An application fee of \$350 was invoiced to Mr. Palm and paid the same day. True and accurate copies of that request, invoice, and receipt are attached to the Affidavit of Robin Palm as Exhibit P5.

13. On Friday, April 14, 2023, Mr. Palm contacted City Clerk Steven Braatz asking why the BOZA hearing for April 26 was reporting as "cancelled" on the City's website. Mr. Braatz responded via email that there were no applications or other issues to discuss. When Mr. Palm informed Mr. Braatz of the non-standard timetables for Administrative Appeal applications shown on the city's website, Mr. Braatz referred Mr. Palm to the Zoning Administrator by CC'ing the email message to Tamara Szudy and Arthur Piñon. As of the date of this petition, that email has

not been responded to by the zoning administrator. A true and accurate copy of that email exchange is attached to the Affidavit of Robin Palm as Exhibit P6.

14. Mr. Palm received a letter dated April 19, 2023, from Alan Kesner, City Attorney for the City of Wauwatosa. In it, Mr. Kesner reiterates that the Board of Zoning Appeals has neither jurisdiction over nor the power to overturn Conditional Use approvals issued by an act of the Common Council. Mr. Kesner also advises that Wisconsin law provides that an aggrieved person can appeal a decision to the issuance of a conditional use permit to Circuit Court. Mr. Kesner did not make a determination on that aggrieved status, nor did the previous rejection letter from Mr. Piñon. Mr. Kesner also does not state the timetables that such a review may be obtained. True and accurate copies of that letter and a capture of the web portal status are attached to the Affidavit of Robin Palm as Exhibit P7.

15. On April 26, 2023, Mr. Palm sent an email letter reply to Mr. Kesner, with copies sent to the mayor, the offices of the administrator, clerk, attorney, and zoning administrator, and all the relevant deputies. In the letter, Mr. Palm stated that the BOZA has not just the authority to hear the appeal application but the obligation to do so because the Common Council's approval should be considered "administering and enforcing the zoning code" and thus is an administrative action. Mr. Palm went on to state that to do as Mr. Kesner suggested could have resulted in Mr. Palm's case being dismissed for not exhausting his options for administrative appeal. Mr. Palm cited three cases from the Wisconsin Supreme Court: *League of Women Voters v. Outagamie County*, 334 NW 2d 887 – Wis: Supreme Court 1983, *Brandt v. Pewaukee Town Board*, 15 Wis. 2d 6 – Wis: Supreme Court 1961 and *Nodell Inv. Corp. v. Glendale*, 254 NW 2d 310 – Wis: Supreme Court 1977.

16. Mr. Palm offered three options to resolve the matter: via administrative methods available to the Zoning Administrator, via a BOZA hearing scheduled for May 25<sup>th</sup>, or via court intervention. As of the timing of this petition, no response has been received from any of the addressed parties.

True and accurate copies of that request, invoice, and receipt are attached to the Affidavit of Robin Palm as Exhibit P8.

17. On April 28, 2023, a land transfer and sale was completed for the property of 1300 Glenview place, which was the property at issue in Mr. Palm's Board of Zoning Appeals application dated March 31, 2023. The property was transferred between Western Building Products Inc. to House 7 LLC for the sum of \$5,150,000. This constitutes a legal proceeding per Wis. Stat. §62.23(7) €5 that would have been subject to a stay order had zoning officials followed the law. True and accurate copies of that DOR online record is attached to the Affidavit of Robin Palm as Exhibit P9.

18. The property in question in the original March 31, 2023, appeal, 1300 Glenview Place in the City of Wauwatosa, is zoned M-1/PUD. PUD still indicates that it has a preliminary approved Planned Unit Development application as of this writing.

19. The PUD preliminary application was extended from June 1, 2022 to June 1, 2023 by the Common Council of Wauwatosa.

20. According to WMC 24.16.050(A) Planned Unit Developments, any modification of the approved plans requires following the established PUD amendment process.

21. According to WMC 24.15.050(B), Approval of PUD preliminary and final development plans must occur before any building permit is issued and before any development takes place in a PUD district.

22. PUD plans have not been finalized for 1300 Glenview Place, nor have they been subjected to the PUD amendment process for the purpose of being revoked.

23. These facts concerning the PUD process denote the importance of expedient action and the costly consequences of the delays on the part of the City of Wauwatosa by refusing to review Mr. Palm's Administrative review application.

24. Delays in accommodating Mr. Palm's requests and applications are well beyond the "reasonable time" standard, given the timetables for such actions given by Wauwatosa in publications and by the WMC.

25. There is a pressing need for intervention as every day consists of an additional opportunity for the conditional use recipient to pull permits that should

have been stayed by the zoning administrator pending the BOZA hearing result proceeding.

26. On March 7, 2023 the Wauwatosa Common Council accepted the 2023 Housing Study via Resolution R-23-30. The resolution was approved unanimously. In that report, under the section “Challenges Identified through data analysis” it identified three challenges:

- Constrained supply of deed restricted affordable housing for low-income families, seniors, & individuals
- Limited housing options for the local workforce
- Limited starter home options for young families

27. The Development that coincided with the preliminarily approved Planned Unit Development plan, named Glenview Place, included over 500 apartments less than a half mile from Milwaukee Regional Medical Center, site to over 16,000 jobs. Seventy-seven of those units would have been affordable for people making 60% of the Area Median Income. The Development would have been less than a third of a mile walk to the new Lincoln Elementary School and Wauwatosa East High School, which were recently upgraded thanks to the passed school referendum.

28. In the 2008-2030 Comprehensive Plan for the city of Wauwatosa, the 10-acre parcel at 1300 Glenview place is the only parcel in the entire City listed in the Future Land Use section as “Multi Family- Urban Density”, which is the density most affordable housing multi-family projects would require.

29. The Village of Wauwatosa Business Improvement District lists 120 Businesses currently operating within District, all of which rely on local customers.

30. The extension of the Oak Leaf Trail would have been the first direct off-street bicycle facility to go directly to the Medical Center and would have connected it to a county wide system of over one hundred miles of off-street bicycle trails. Currently, commuting to the Medical Center via bicycle likely includes contending with the multilane roads that surround the complex.

31. In 2021, the Milwaukee Regional Medical Center finished numerous



bicycle and pedestrian infrastructure improvements throughout the campus, including protected bike lanes, curb bump outs, and traffic calming measures.

32. The erroneously approved conditional use application, which the City has refused to host a hearing to rightfully appeal, does not include any affordable housing or expanded bicycle access to the most dense job center outside of downtown. Instead, it contains storage units, a very poor tradeoff for the larger community which desperately needs affordable and fair housing. If the Petitioner's request for relief is not granted, this approval will be a huge loss for the community and will be viewed as a wasted opportunity for decades.

### **CAUSE OF ACTION**

#### **VIOLATION OF Wis. Stats. §§ 62.23(7)(e)4- §§ 62.23(7)(e)6. Denying the right of a person to seek an appeal from administrative actions in the enforcement of the zoning code.**

33. The preceding paragraphs are hereby incorporated and realleged as if fully stated herein.

34. The Petitioner, being an aggrieved party that alleged errors on behalf of the Zoning Administrator, had a clear and legal right to appeal the decisions of the Zoning Administrator, according to Wis. Stats. §§ 62.23(7)(e)4 and mirrored in WMC

35. 24.16.110. That right was denied by the Respondent, using justification that runs counter to established case law.

36. The Respondent, acting in their capacity as the Zoning Administrator, had a plain and positive duty to receive the application; verify its completeness and request revision if it was deemed incomplete or otherwise lacking; notify the Board of Zoning Appeals, the property owner, and the Alderperson of the subject property; and schedule a publicly-noticed hearing. This is apparent through the multiple instances of mandatory language in Wis. Stats. §§ 62.23(7)(e)4- §§ 62.23(7)(e)6,

WMC Chapter 24.16, sections 010 and 110. The Respondent failed to do these duties.

37. Substantial damages will result from the relief not being granted, including but not limited to:

- denial of the Petitioner's right to procedural due process outlined in chapter 62 of Wisconsin statutes and the WMC zoning code,
- the negative effect on the community's health, safety, welfare, and economic development potential from the erroneously approved land use,
- the loss of public amenities outlined in the ignored Planned Unit Development Plan Approval that were still in effect at the time of the Conditional Use approval, and
- the loss of \$700 from application fees collected by the Respondent and not returned to the petitioner when the applications were rendered void.

38. This violates Wis. Stat. §§ 66.0628(2), which states that, "Any fee that is imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is paid." As no hearings were held and no notices were sent out, the withholding of those fees after the applications have caused the Petitioner real financial damages.

39. The Petitioner has made multiple attempts to contact the city by phone and email to resolve the matter administratively, none of which have been answered. The Petitioner has appealed the decision using the correct process prescribed by municipal and state law. The Petitioner's initial application was completed, paid for, and submitted within the correct time frame, but was nevertheless rejected by the Zoning Administrator's designee. No alternatives to amending or resubmitting the application were given, contrary to WMC 24.13.010(f)(3). The Petitioner then reached out to members of the Board of Zoning Appeals to suggest they could compel the case. No response was given. The Petitioner appealed the April 3, 2023, decision on April 13, 2023, again with a complete application that was paid and submitted within the correct timeframe. It too was rejected, but by letter from the City Attorney, presumably on behalf of the Zoning Administrator, and both applications were voided on the application web portal. The petitioner sent one final email



detailing the options which could stave off legal action on April 26, 2023. There has been no response. It is clear that the Petitioner has exhausted all avenues of administrative resolution, leaving no other remedy at law.

### **RELIEF REQUESTED**

WHEREFORE, the Petitioner demands a writ of mandamus to issue against the Respondent under Wis. Stat. §62.23(7)(e)4:

1. Compelling the Respondent to immediately schedule and hold the requested hearing of the Board of Zoning Appeals to hear case BZA2023-0003 at the first possible date according to procedures in WMC24.16.110;

2. Declaring the Petitioner's rights and clarifying the jurisdiction of the Board of Zoning Appeals and its available remedies within that jurisdiction to the Respondent;

3. Compelling the Respondent to immediately stay all legal proceedings furthering the action of the conditional use approval being appealed per Wis. Stat. §62.23(7)(e)5;

4. Awarding the Petitioner its reasonable attorney fees, damages of not less than

5. \$350, and other actual costs under Wis. Stat. § 19.37(2), and;

6. Awarding such other relief as the Court deems appropriate.

7. In the event the Court finds that the Zoning Administrator did not err in denying the applications on jurisdictional grounds, awarding the Petitioner damages of \$700 for the applications voided by the Zoning Administrator per Wis. Stat. § 66.0628(2).

8. In the event the Court finds that the Zoning Administrator did not err in denying the applications on jurisdictional grounds but did err in the approval of the conditional use, such remedy as the Court deems appropriate, to include as little as guidance on how to conduct future conditional use cases in the manner prescribed

by state law.

Dated this May 1, 2023

Respectfully submitted,

Robin Palm, AICP