

MINUTES

VILLAGE OF YORKVILLE
VILLAGE BOARD
COMMUNITY ROOM (1ST FLOOR)
UNION GROVE MUNICIPAL CENTER
THURSDAY, MAY 28, 2020

Call to Order

Village Board President Douglas Nelson called the meeting to order at 6:00 p.m.

Roll Call

The following Village Board members were present: Douglas Nelson, Robert Funk, Daniel Maurice, Steve Nelson and Cory Bartlett. Also present were John Kurt representing The Annex, LLC, Steven Jenkins, Andrew Shaw representing Shaw Law Offices, Daniel Oakes, Sherry Gruhn representing the Central Racine County Health Department, Scott Butler, Building Inspector James DeLuca, Code Enforcement Officer Terrence O'Brien, Attorney Tyler Helsel, Engineer Mark Madsen and Administrator/Clerk Michael McKinney.

Approval of Village Invoices

Motion (S. Nelson, Maurice) to approve payment of Village invoices as presented in the amount of \$269,473.23, Motion Carried (MC).

Approval of Stormwater Invoices

Motion (Funk, S. Nelson) to approve payment of Stormwater invoices as presented in the amount of \$251.62, MC.

New and Unfinished Business - Discussion and possible action on the following:

Appeal request filed by The Annex, LLC (with John Kurt as applicant/agent) pursuant to Section 26-31 of the Village of Yorkville Code of Ordinances regarding the enforcement of fire alarm system requirements under Section 26-22(q)(2) of the Village of Yorkville Code of Ordinances related to the construction of an approximately 7,320-square foot multi-tenant commercial building on the property located at 4514 Jack Pine Lane (Parcel ID # 194-03-21-31-018-019) and for two properties located at 20911 White Ash Road (Parcel ID # 194-03-21-31-018-014) and 20917 White Ash Road (Parcel ID # 194-03-21-31-018-015)

John Kurt stated that he filed this appeal to request a waiver of the Village's fire alarm system requirements for these properties, to request a review of the Village's permitting process and to request a review of the Village's fire alarm system ordinance requirements. He noted that occupancy was granted for the two buildings located on White Ash Road in 2015 and 2018, adding that neither building has been in noncompliance since. He stated that he was not made aware of the Village's fire alarm system requirements until construction of the building located on Jack Pine Lane was almost complete, adding that his plans for all three buildings were

reviewed and approved by the state. He noted that he understands that the building currently under construction on Jack Pine Lane is not in compliance with the Village's fire alarm system requirements.

James DeLuca stated that issues often come up with the state and fire department reviews of commercial building plans, adding that applicants often only obtain state approval of building plans without submitting the plans for fire department review, which is required under Village ordinances. He added that fire alarm and suppression system requirements are based on the size of the building that is being reviewed.

No formal action was taken by the Village Board on this agenda item.

Closed Session: Appeal request filed by The Annex, LLC (with John Kurt as applicant/agent) pursuant to Section 26-31 of the Village of Yorkville Code of Ordinances regarding the enforcement of fire alarm system requirements under Section 26-22(q)(2) of the Village of Yorkville Code of Ordinances related to the construction of an approximately 7,320-square foot multi-tenant commercial building on the property located at 4514 Jack Pine Lane (Parcel ID # 194-03-21-31-018-019) and for two properties located at 20911 White Ash Road (Parcel ID # 194-03-21-31-018-014) and 20917 White Ash Road (Parcel ID # 194-03-21-31-018-015)

Motion (Maurice, S. Nelson) to enter into closed session at 6:34 p.m., pursuant to Wisconsin Statutes Section 19.85(1)(a) for the purposes of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body, specifically regarding an appeal request filed by The Annex, LLC (with John Kurt as applicant/agent) pursuant to Section 26-31 of the Village of Yorkville Code of Ordinances regarding the enforcement of fire alarm system requirements under Section 26-22(q)(2) of the Village of Yorkville Code of Ordinances related to the construction of an approximately 7,320-square foot multi-tenant commercial building on the property located at 4514 Jack Pine Lane (Parcel ID # 194-03-21-31-018-019) and for two properties located at 20911 White Ash Road (Parcel ID # 194-03-21-31-018-014) and 20917 White Ash Road (Parcel ID # 194-03-21-31-018-015). Roll Call - Bartlett, Yes; S. Nelson, Yes; D. Nelson, Yes; Maurice, Yes; Funk, Yes. Motion Carried.

The Village Board met in closed session to discuss the appeal request filed by The Annex, LLC (with John Kurt as applicant/agent) pursuant to Section 26-31 of the Village of Yorkville Code of Ordinances regarding the enforcement of fire alarm system requirements under Section 26-22(q)(2) of the Village of Yorkville Code of Ordinances related to the construction of an approximately 7,320-square foot multi-tenant commercial building on the property located at 4514 Jack Pine Lane (Parcel ID # 194-03-21-31-018-019) and for two properties located at 20911 White Ash Road (Parcel ID # 194-03-21-31-018-014) and 20917 White Ash Road (Parcel ID # 194-03-21-31-018-015).

Motion (Bartlett, Maurice) to return to open session at 6:50 p.m., MC.

Appeal request filed by The Annex, LLC (with John Kurt as applicant/agent) pursuant to Section 26-31 of the Village of Yorkville Code of Ordinances regarding the enforcement of fire alarm system requirements under Section 26-22(q)(2) of the Village of Yorkville

Code of Ordinances related to the construction of an approximately 7,320-square foot multi-tenant commercial building on the property located at 4514 Jack Pine Lane (Parcel ID # 194-03-21-31-018-019) and for two properties located at 20911 White Ash Road (Parcel ID # 194-03-21-31-018-014) and 20917 White Ash Road (Parcel ID # 194-03-21-31-018-015)

Motion (Bartlett, Maurice) to reverse the Building Inspector's order and grant the appeal filed by The Annex, LLC (with John Kurt as applicant/agent) pursuant to Section 26-31 of the Village of Yorkville Code of Ordinances regarding the enforcement of fire alarm system requirements under Section 26-22(q)(2) of the Village of Yorkville Code of Ordinances related to the construction of an approximately 7,320-square foot multi-tenant commercial building on the property located at 4514 Jack Pine Lane (Parcel ID # 194-03-21-31-018-019), MC.*

Motion (Bartlett, Maurice) to reverse the Building Inspector's order and grant the appeal filed by The Annex, LLC (with John Kurt as applicant/agent) pursuant to Section 26-31 of the Village of Yorkville Code of Ordinances regarding the enforcement of fire alarm system requirements under Section 26-22(q)(2) of the Village of Yorkville Code of Ordinances related to the multi-tenant commercial building on the property located at 20911 White Ash Road (Parcel ID # 194-03-21-31-018-014), MC.*

Motion (Bartlett, Maurice) to reverse the Building Inspector's order and grant the appeal filed by The Annex, LLC (with John Kurt as applicant/agent) pursuant to Section 26-31 of the Village of Yorkville Code of Ordinances regarding the enforcement of fire alarm system requirements under Section 26-22(q)(2) of the Village of Yorkville Code of Ordinances related to the multi-tenant commercial building on the property located at 20917 White Ash Road (Parcel ID # 194-03-21-31-018-015), MC.*

* See attached appeal decision for more information on these actions.

17806 Spring Street (CTH C) property maintenance

Discussion focused on the results of the site visit that was conducted on this property on March 6. Andrew Shaw stated that his client has removed some items from the property, adding that his client is about one month behind in his work on the property but still wants to adhere to his proposal to complete all work on the property by the end of this year's building season. James DeLuca stated that the barn appears to have structural issues but added that he could not conduct a more thorough inspection of the barn due to the number of items stored in it.

Motion (Maurice, Bartlett) to require that the owner of the property located at 17806 Spring Street (CTH C) have all items and debris not currently stored within any buildings on the property removed from the property prior to the Village Board meeting on July 27, 2020, and to instruct the Village's code enforcement officer to conduct a site inspection on the property during the week prior to that meeting, MC.

Land disturbing construction activity permit approved on May 11, 2020 for Daniel Oakes for the vacant parcel immediately to the north of 2431 Queens Brook Lane (Parcel ID # 194-03-21-02-001-100)

Discussion focused on the traffic volume, road damage and dust resulting from the activity covered under this permit. Daniel Oakes stated that he met with neighboring property owners yesterday to discuss these issues. Oakes stated that the damaged portion of the roadway on Queens Brook Lane should be repaved. Helsel stated that the applicant would be financially responsible for any road damage that resulted from the activity covered under this permit.

No formal action was taken by the Village Board on this agenda item.

Central Racine County Health Department status update

Sherry Gruhn provided an update to the Village Board on the Central Racine County Health Department's response to the COVID-19 pandemic. She also discussed a proposal to create a countywide health department.

No formal action was taken by the Village Board on this agenda item.

4518 South Sylvania Avenue drainage-related complaint

No formal action was taken by the Village Board on this agenda item.

16209 Braun Road/15941 Durand Avenue (STH 11) drainage issues

D. Nelson stated that the drainage issues affecting the property located at 16209 Braun Road may be the result of a damaged tile on the property.

No formal action was taken by the Village Board on this agenda item.

2020 bridge condition report

Motion (S. Nelson, Bartlett) to authorize the Administrator/Clerk to obtain proposals for the engineering design for replacement of the 58th Road Bridge over the West Branch of the Root River Canal, MC.

Land disturbing construction activity ordinances

Discussion focused on potential changes to the Village's existing land disturbing construction activity ordinances related to how to address compliance issues with existing land disturbing construction activity permits.

No formal action was taken by the Village Board on this agenda item.

Reports

Code Enforcement Officer's Report: O'Brien reported to the Village Board on issues related to the following properties:

- 18903 Two Mile Road
- 18617 Durand Avenue (STH 11)
- 13826 Braun Road

- 15516 Ives Grove Road

Engineer's Report: Madsen stated that he had no information to report to the Village Board.

Yorkville Stormwater Utility District Report: S. Nelson stated that he had no information to report to the Village Board.

Roads/Public Works Committee Report: Funk stated that the Committee will need to schedule their upcoming annual road tour. He added that he has received multiple complaints about ditch drainage issues.

Treasurer's Report: No report was submitted to the Village Board.

Administrator/Clerk's Report: McKinney stated that he had no information to report to the Village Board.

Public Comments, Questions and Suggestions

Scott Butler addressed the Village Board regarding drainage issues he is experiencing on his property.

New and Unfinished Business - Discussion and possible action on the following:

Closed Session: Location of a future Union Grove-Yorkville Fire Department station

Motion (S. Nelson, Funk) to enter into closed session at 9:06 p.m., pursuant to Wisconsin Statutes Section 19.85(1)(e) for the purposes of deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, specifically regarding the location of a future Union Grove-Yorkville Fire Department station. Roll Call - Bartlett, Yes; S. Nelson, Yes; D. Nelson, Yes; Maurice, Yes; Funk, Yes. Motion Carried.

The Village Board met in closed session to discuss the location of a future Union Grove-Yorkville Fire Department station.

Motion (S. Nelson, Funk) to return to open session at 9:25 p.m., MC.

Location of a future Union Grove-Yorkville Fire Department station

No formal action was taken by the Village Board on this agenda item.

Adjournment

Motion (Bartlett, Maurice) to adjourn, MC. The meeting was adjourned at 9:25 p.m. The next scheduled Village Board meeting is Monday, June 8, 2020, at 6:00 p.m.

Michael McKinney
Administrator/Clerk

YORKVILLE VILLAGE BOARD DECISION

IN THE MATTER OF THE APPEAL OF THE ANNEX, LLC

BACKGROUND

The Annex, LLC by managing member, John Kurt (“Mr. Kurt”) is appealing a requirement of Fire Chief Tim Allen of the Union Grove–Yorkville Fire Department and the Building Inspector for the Village of Yorkville that a Fire Alarm System be installed pursuant to Section 26-22(q)(2) and (3) of the Village of Yorkville Code of Ordinances at the following locations: an approximately 7,320-square foot multi-tenant commercial building on the property located at 4514 Jack Pine Lane (Parcel ID # 194-03-21-31-018-019) and for two properties located at 20911 White Ash Road (Parcel ID # 194-03-21-31-018-014) and 20917 White Ash Road (Parcel ID # 194-03-21-31-018-015). Incorporated by reference is the May 21, 2020 letter from James DeLuca, Building Inspector and the letter of appeal from Mr. Kurt, dated May 26, 2020. Mr. Kurt has waived the 10-day notice requirement for a hearing on his appeal.

Mr. Kurt requests (1) that the buildings at 20911 White Ash Road (Parcel ID # 194-03-21-31-018-014) and 20917 White Ash Road (Parcel ID # 194-03-21-31-018-015) be removed from the May 21, 2020 noncompliance letter issued by the Building Inspector, and (2) that though the ordinance requires the installation of a fire alarm system, requests that a waiver or modification be granted as to 4514 Jack Pine Lane.

VILLAGE BOARD AUTHORITY AS TO APPEAL

Village Ordinance § 26-31(b)(2) governs the Village Board’s Appeal Authority.

- “(2) The board shall affirm the decision of the building inspector, Fire Chief or his designate unless it determines that:
- a. The building inspector, Fire Chief or his designate has misinterpreted or misapplied the applicable ordinance, rule or code provision; or
 - b. The compliance time established by the building inspector, Fire Chief or his designate is unreasonable; or
 - c. An equally good or better form of construction can be used.”

I. Is the decision by the Fire Chief and Building Inspector to require Mr. Kurt to install a Fire Alarm System at 20911 White Ash Road (Parcel ID # 194-03-21-31-018-014) and 20917 White Ash Road (Parcel ID # 194-03-21-31-018-015) affirmed?

Yes, the Decision is affirmed No, the Decision is Reversed

Vote: 5 0
Ayes Nays

II. Is the decision by the Fire Chief and Building Inspector to require Mr. Kurt to install a Fire Alarm System at 4514 Jack Pine Lane affirmed?

Yes, the Decision is affirmed No, the Decision is Reversed

Vote: 5 0
Ayes Nays

Reasons for Decision:

- (1) The construction of the building at 4514 Jack Pine Lane is near completion
- (2) Applicant was not provided with ample notice of the stricter standards set forth by the Village
- (3) The Building Inspector and the State have already approved the plans of the building at 4514 Jack Pine Lane
- (4) The Village’s ordinance is stricter than the State’s code, which, without notice, is not obvious to Applicant or other builders in the Village

- (5) Applicant has constructed two other structures with similar plans, neither of which was required to install a Fire Alarm System

VILLAGE BOARD WAIVER AUTHORITY

Village Ordinance § 26-31(c) governs the Village Board’s Waiver/Modification Authority.

- “(3) Considerations. The village board may consider the following factors, in addition to any other factors deemed relevant by the building board:
a. Whether the request for a waiver or modification, if granted, would be consistent with the general intent of the ordinance.
b. Whether the request for a waiver or modification, if granted, would adversely affect any property owners in the village.
c. Whether the request for waiver or modification, if granted, would benefit the Person Aggrieved in a way that is not consistent with the village’s interests.
4. Whether, instead of granting the request for a waiver or modification, the ordinance itself should be changed to accommodate the kind of situation presented by the Person Aggrieved.
5. Whether, the conditions upon which the request for a modification or waiver is based are unique to the situation or property for which the modification or waiver is sought and are not applicable generally to other situations or property.

- (4) Conditions for Granting. The village board shall not grant a modification or waiver to an ordinance unless it makes findings based upon the evidence presented to it in each specific case and based upon the consideration of the above factors that the granting of the modification or waiver will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the village. Any decision to grant a modification or waiver shall not be arbitrary, capricious, or prejudicial in nature.”

III. Does the Village Board grant Mr. Kurt a Waiver of the requirement by the Fire Chief and Building Inspector to install a Fire Alarm System?

[X] Yes, a Waiver is granted [] No, a Waiver is denied [] Waiver is denied subject to modifications below

Vote: 5 Ayes 0 Nays

Reasons for decision and listing of any modifications granted:

A waiver is granted for the following reasons:

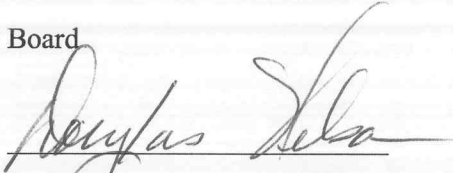
- (1) The completed structures at 20911 White Ash Road (Parcel ID # 194-03-21-31-018-014) and 20917 White Ash Road (Parcel ID # 194-03-21-31-018-015) have been inspected by the Fire Department bi-annually since completion of their original construction (2013 and 2018), and no issues have been raised by the Fire Department during those inspections
(2) The waiver request would allow Applicant to complete its current project on time
(3) The standards set forth in the Village’s ordinances requiring a Fire Alarm System for structures over 5,000 sq. feet do not comport with the State’s less strict standard
(4) Applicant was not given notice in ample time to prepare plans, costs, and installation of a Fire Alarm System
(5) The waiver is less of a benefit to Applicant and more of relief from an unforeseen expense
(6) The building at 4514 Jack Pine Lane is nearing completion, and the timing issues above apply the same to this building

- (7) The building inspector, fire department, and the state have reviewed the plans for all three buildings
- (8) It is now unreasonable for the Village, without proper early notice, to require Fire Alarm Systems in any of the three buildings
- (9) Tenants currently occupy 20911 White Ash Road and 20917 White Ash Road, and pulling the occupancy permits of these properties is unreasonable

Dated this 8th day of June, 2020.


Village Board

By:



Douglas Nelson, Village President

Attest:



Michael McKinney, Village Administrator/Clerk