

# **TOWN OF ST. GERMAIN**

OFFICE OF THE TOWN CHAIRMAN

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## **MINUTES BOARD OF APPEALS JANUARY 28, 2019: CORNERSTONE CUSTOM BUILDERS, INC., REQUEST FOR REVIEW OF CONDITIONAL USE PERMIT DECISION BY ZONING COMMITTEE ON JANUARY 8, 2019**

### **NOTICE TOWN OF ST. GERMAIN BOARD OF APPEALS CONDITIONAL USE PERMIT DECISION REVIEW CORNERSTONE CUSTOM BUILDERS, INC.**

**PLEASE TAKE NOTICE**, that the Board of Appeals of the Town of St. Germain will conduct a public hearing on Monday, January 28, 2019 at 6:00 P.M. in the St. Germain Community Center pursuant to Section 1.607(a) of the Town of St. Germain Zoning Ordinance, to consider a request from CornerStone Custom Builders, Inc. to review the conditional use permit decision by the St. Germain Zoning Committee dated January 8, 2019. The original Conditional Use Permit application dated November 19, 2018, was to construct mini-storage garage buildings on eight parcels of land in the Multi-family Zoning District abutting the west end of the St. Germain Housing Authority properties on Sunrise Drive, Sec. 33, T40N, R8E. The review is to also include tax parcel ID#24-2184-05. CornerStone Custom Builders, Inc. is asking that the Board of Appeals confirms and validates that the conditional use requested complies with all six standards of issuance, and conforms with all applicable regulations of the district in which it is located.

#### **CERTIFICATION**

The undersigned, Thomas E. Martens, Certifies as follows: (1) that he is the Clerk of the Town of St. Germain, (2) that this notice was published in the Vilas County News Review on the 16th day of January 2019 and on the 23rd day of January 2019, and (3) notices were posted in three public places, the St. Germain Community Center, St. Germain Post Office and St. Germain Sentry Foods on Saturday, January 12, 2019.

Dated this 12th day of January 2019.

Thomas E. Martens  
Town Clerk

Tom Christensen called the Board of Appeals to order at 6:00 P.M.

**Board of Appeals Members present:** Acting chairman Tom Christensen noted that chairman John Vojta had resigned just prior to this meeting. Mr. Christensen also noted that Tim Gebhardt had been appointed as alternate #1 and Bob Schell had been appointed as alternate #2 at the special town board meeting held on January 24, 2019. Other committee members present Jim Swenson and Kelly Ryan.

Also present Tom Martens town clerk, Glenn Schiffmann, attorney Al Mustakis and 14 other people. Committee member Nancy Miller was ill and not in attendance.

Motion Swenson seconded Ryan that Tom Christensen be appointed as chairman for tonight's meeting. By a roll call vote: Swenson – yes; Schell – yes; Ryan – yes; Gebhardt – yes. Mr. Christensen abstained. Motion carried.

Mr. Christensen asked Mr. Martens if he had received any correspondence concerning this board of appeals hearing. Mr. Martens had not received anything. Mr. Christensen asked the other members. They also had not received and correspondences.

Mr. Christensen read the decision from the January 8, 2019 public hearing by the zoning committee concerning a conditional use permit request from CornerStone Custom Builders for five mini storage buildings on his property in Section 33. The full decision is attached at the end of these minutes. Mr. Mustakis noted that the tax ID numbers on the parcels is incorrect. They have been changed by hand on the attached decision.

Mr. Mustakis handed out a packet named Conditional Use Permit Appeal, also attached to these minutes: January 28, 2019. Mr. Mustakis stated that on January 8, 2019 the St. Germain Zoning Committee denied CornerStone Builders CUP application for a lack of conformity to the sixth and final standard. The standard says that the conditional use shall conform to all applicable regulations of the district in which it is located. Mr. Mustakis said that the committee found that under the Ordinances, Chapter 1 – Zoning, neither the “permitted” nor the “conditionally” permitted land uses for Multi-Family Residential district include multi-unit mini-storage buildings. Mr. Mustakis argued that the finding was an error and that the zoning committee did not interpret the ordinance liberally in favor of the town, but placed limitations upon it.

Attorney Mustakis went on to say that the ordinance states that the uses in the Multi-Family District are “principally” of an institutional nature, but not “limited” to an institutional nature. The Community Highway Business District is the only zoning district in St. Germain that lists mini-storage at all. The zoning was changed in 2001. Mr. Schiffmann had purchased his lots in 1993. At that time, the property was zoned at general business. Mr. Mustakis also mentioned that the Chamber of Commerce building is being allowed in the Parks & Recreation District and that the Chamber of Commerce is a private organization.

Glenn Schiffmann stated that the board of appeals can read the rules and see that the zoning committee had already said that the storage buildings would be beneficial to the town. The ordinance allows the board of appeals to check box six. The board of appeals decision can vary from the decision of the zoning committee. The mini-storage buildings would be of a benefit to the town.

Mr. Ryan questioned the setbacks. He stated that the setbacks in the Community Highway Business District are different than those in the Multi-Family District. Mr. Mustakis stated that the setbacks could be set in the conditions in the CUP.

Mr. Christensen stated that he was not in favor because in his mind mini-storage buildings are not of an institutional nature. Mr. Mustakis reminded Mr. Christensen that the ordinance doesn't say that the uses have to be institutional. Mr. Christensen went on to say that public and semi-public uses are allowed in all of the zoning districts. Allowing the mini-storage units in the multi-family district

would open the town to more changes. Mr. Christensen also added that the Chamber of Commerce building will be turned over to the town when it is completed.

Mr. Gebhardt noted that it is hard to find an open storage unit in St. Germain.

Attorney Mustakis stated that by approving the first five standards, the zoning committee had already shown that the mini-storage units are “in favor of the town”. The storage units are not permitted uses in any district in town. Mr. Schiffmann said that the board of appeals should look at the language of the ordinance. Perhaps the language needed to be changed.

Bob Schell stated that the Chamber of Commerce gets its money from room tax. He said that comparing the chamber building with the mini-storage units doesn’t work. Mr. Mustakis added that the chamber is a private company and it was granted a CUP.

Mr. Christensen noted that a rezone application had been submitted to rezone Mr. Schiffmann’s lots from the Multi-Family Residential Zoning District to the Community Highway Business Zoning District. There will be a public hearing held on Monday, February 18, 2019. Even with the rezone, the mini-storage buildings would require a CUP. Mr. Christensen thought that the board of appeals should not go around the ordinance.

Mr. Mustakis stated that he thought that Mr. Christensen’s comments about the rezone application had muddied the waters. That application should not interfere with the decision made tonight. Attorney Mustakis added that the statutes and regulations for rezoning were completely different than those for granting a CUP. He also added that the zoning committee had already recommended to the town board that the property be rezoned.

Mr. Schiffmann added that time is of the essence for him. If he is granted a permit, he still needs to get a DNR permit for water runoff and State approved plans for the buildings. Attorney Mustakis noted that even if the appeal is granted tonight, Mr. Schiffmann will be back to apply for the rezone. It is his opinion that the zoning is a mistake that the area should be a business area.

Ted Ritter said that Attorney Mustakis had objected to talking about rezoning at all, and it is over a half hour later and he is still talking about it. Mr. Christensen asked why Mr. Schiffmann just didn’t pull the appeal request and ask for the rezoning. Mr. Swenson asked Mr. Schiffmann if he had objected to the zoning change in 2001. Mr. Schiffmann stated that Chip Nielsen was his attorney at that time and that he had been looking for a letter concerning the zoning. He also stated that if the appeal is granted tonight, he still has to go back to the zoning committee for the conditions on the CUP.

Mr. & Ms. Peter Berman said that they had not received a notice and that they are totally against the storage buildings. They had bought their property in a quiet residential area and didn’t want people making noise at all hours practically in their backyard.

Jim Promer stated that Mr. Schiffmann had purchased the lots prior to the present zoning. He should have built the storage units when he bought the land.

Hearing no further comments, Mr. Christensen called for a motion.

Motion Mr. Ryan seconded Mr. Swenson that the appeal to change the January 8, 2019 decision of the zoning committee be denied. By a roll call vote: Ryan – yes; Schell – yes; Swenson – yes; Gebhardt – no; Christensen – yes. Motion carried 4 to 1.

Mr. Schiffmann wanted it noted for the record that two of the four board of appeal members voting to deny the appeal own storage facilities.

Mr. Christensen adjourned the Board of Appeals at 7:16 P.M.

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Town Clerk

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Chairman

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Member

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Member

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Member

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Member

**Town of St. Germain Zoning Committee**  
**Decision of Conditional Use Permit**

**Applicant:** CornerStone Custom Builders, Inc. / Kathy Davis, Agent

**Application date:** 11/19/2018

**Public hearing date:** 01/08/2019

Findings of Fact

Having heard the testimony and considered the evidence presented, the St. Germain Zoning Committee finds the following:

1. The applicant is the owner/agent of the following described property which is the subject of the Conditional Use Permit application: Parcel #s 24-4020, 24-4021, 24-4022, 24-4023, 24-4024, 24-4025, 24-4026, 24-4027, Sunset Lane, St. Germain  
The applicant intends to conjoin these eight parcels plus parcel #24-2184-05 and construct buildings on the new one parcel, but failed to include # 24-2184-05 in the CUP application.
2. The property is presently used for Undeveloped
3. The applicant proposes to construct five buildings containing a total of 160 mini-storage units described on the application as "public storage units".
4. The standards for issuance of a Conditional Use Permit are:
  - ☒ The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.
  - ☒ The uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.
  - ☒ The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
  - ☒ Adequate utilities, access roads, drainage, buffer areas and landscaping and other necessary site improvements have been or will be provided.
  - ☒ Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
  - ☐ The conditional use shall conform to all applicable regulations of the district in which it is located.

### Order and Determination

On the basis of the findings of fact, conclusions of law, and the record in this matter, the Town of St. Germain Zoning Committee orders the requested Conditional Use Permit is hereby:

- ☒ Denied (see explanation below)
- ☐ Granted subject to the following conditions

The nine parcels are subject to the restrictions of the "Multi-Family Residential" district of St. Germain's Code of Ordinances, Chapter 1 - Zoning. Neither the "permitted" nor the "conditionally" permitted land uses for this district include multi-unit, mini-storage buildings.

The applicant argued that the conditional use of "Public and Semi-Public Uses" allowed in the ordinance for Multi-Family Residential districts is applicable to mini-storage buildings. The majority of the committee does not agree with that argument.

Public and Semi-Public Uses is defined in section 1.111 of the ordinance as follows: ***"Uses principally of an institutional nature and serving a public need. "Public and Semi-Public Uses" include, but are not limited to, churches public and private schools, libraries, museums, post offices, police and fire stations, government offices, town halls and public garages."***

By a vote of 4 to 1 the Committee denied the CUP on the basis that approval would constitute a violation of the Zoning Ordinance because not all six standards for approval have been satisfied.

Dated: 01/08/2019

*Ted Ritter*

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Chairman, Zoning Committee

**Conditional Use Permit Appeal:**

January 28, 2019

*Written comments by applicant*

**I. Background**

When the subject property was purchased by GPS, Inc., on May 13, 1995, it was zoned as General Business by both the Town and the County. Under both zoning districts, self-storage was a permitted use. The Town has since changed the zoning and permitted uses on the subject property. The County district remains the same.

The Town of St. Germain Code of Ordinances (the "Ordinances") § 1.606(D) lists six (6) standards which must be present for the Zoning Committee to grant a conditional use permit. On January 8, 2019, the Zoning Committee of the Town of St. Germain voted to deny the CUP application submitted by CornerStone Builders, Inc., for a lack of conformity to the sixth and final standard. That standard is, "The conditional use shall conform to all applicable regulations of the district in which it is located." Specifically, the Committee found that under the Ordinances, Chapter 1 – Zoning, neither the "permitted" nor the "conditionally" permitted land uses for Multi-Family Residential district include multi-unit mini-storage buildings.

**II. Jurisdiction and Authority**

Under § 1.604(C) of the Ordinances, the Board of Appeals has the following powers:

- (1) Hear and decide appeals where it is alleged there is error in any order requirement, decision or determination made by the Zoning Committee or Zoning Administrator in the enforcement of this chapter.
- (2) Hear and decided appeals of conditional use and non-conforming use decisions by the Zoning Committee.

- (3) Authorize, upon appeal in specific cases, such variances from the terms of this chapter as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship and so that the spirit of this chapter shall be observed and substantial justice done . . .

### **III. Appeal**

This Appeal is based on the idea the Ordinances allow for self-storage units under § 1.306(C)(3) when read in conjunction with § 1.106. Therefore, the Zoning Committee made an error when it failed to approve the conditional use permit.

#### **i. Interpretation**

First, § 1.106 dictates how the chapter must be interpreted. The section reads: "In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, *liberally construed in favor of the Town* and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin statutes." (emphasis added) This section of the Ordinances means that, in the interpretation of Chapter 1, terms must be read liberally in order to benefit the Town. That is what we are asking for.

#### **ii. Public and semi-public uses**

§ 1.306(C) lists the conditional uses under the Multi-Family Residential district. Subsection (3) is a conditional use called "Public and semi-public uses." Public and semi-public uses are defined in this Chapter as, "Uses principally of an institutional nature and serving a public need. "Public and semi-public uses" include, but are not limited to, churches, public and private schools, libraries, museums, post offices, police and fire stations, government offices, town halls and public garages." There are a few important terms in this definition that qualify the conditions set forth therein. First, uses that are "principally" of an institutional



nature and serving a public need. The word "principally" qualifies the term "institutional." The use of the word "principally" signals that exceptions are anticipated. Although the list is "principally" made up of "institutional" uses, it need not be exclusively. This is further evidenced by the phrase that follows: "'Public and semi-public uses" *include, but are not limited to*, churches, public and private schools, libraries, museums, post offices, police and fire stations, government offices, town halls and public garages." (emphasis added) By not limiting the list, the drafters are leaving even more room for the intended liberal interpretation in favor of the Town.

Although the above-mentioned list is non-exhaustive, it is relevant to compare one of the enumerated uses to the proposed self-storage. Private schools are privately owned and can be owned by for-profit businesses. Anyone from the public may attend a private school if there are spots available and the tuition price is paid. Private schools serve a public need. In comparison, the self-storage would be privately owned and for-profit. Anyone from the public may use the self-storage if there are units available and they are willing to pay the rental price. This self-storage would serve a public need. The interesting thing about private schools and mini storage units is that private schools appear to be institutional in nature whereas self-storage is arguably not. However, as shown above, not all the conditional uses must be institutional in nature. If that were the intention, the drafters would have qualified the word "institutional" with a word like "exclusively" verses principally and they would not have stated in the ordinance that it is to be "liberally construed in favor of the town."

### **iii. Other permitted and conditional uses**

One concern from the Zoning Committee was that the zoning district "Multi-Family Residential" should not contain commercial business. However, there are commercial businesses listed in both the permitted and conditional uses under the Multi-Family Residential District in § 1.306. Such uses include: Bed and Breakfast

establishments; golf courses; resorts; and boat launching. The drafters intentionally allowed for these commercial enterprises under this zoning district.

One example of a time that the Town permitted a conditional use under the heading of public and semi-public uses (though under Parks and Recreation District), was the building that is occupied by the St. Germain Chamber of Commerce, Inc. A for-profit business that serves a public need. Although such a building was not enumerated under the definition of public and semi-public uses, the broad language of the Ordinance allowed for it.

#### **IV. Conclusion**

§ 1.106 mandates that Chapter 1 of the Ordinances be construed liberally as to benefit the Town. If § 1.306(C)(3) and its definitions are construed liberally in favor of the Town, self-storage fits as a conditional use. Although it is not institutional in nature, it does not have to be. This self-storage project would serve a public need and is comparable to other enumerated conditional uses. Further, the drafters included many other commercial enterprises under this zoning district.