



**ZONING BOARD OF APPEALS AGENDA**

**TUESDAY, AUGUST 27, 2024 AT 4:00 PM**

**COUNCIL CHAMBERS, SECOND FLOOR, MUNICIPAL BUILDING 106 JONES STREET,  
WATERTOWN, WI**

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**Virtual Meeting Info:**

<https://us06web.zoom.us/j/2371460557?pwd=UXjvqLXKCdw12jl4jl1b7GIUPaClat.1&omn=81991727250>

or by calling 1-646-931-3860 and using Meeting ID: 237 146 0557 Passcode: 144391

All public participants' devices will be muted during the meeting except during the public comment period.

**1. CALL TO ORDER**

**2. BUSINESS**

- A. Review and take action: Zoning Board of Appeals minutes dated June 14, 2022
- B. Conduct public hearing: 553 Milford Street-555 Milford Street – variance request for a 60.03 foot wide lot under Section §550-24F(2)(b)
- C. Review and take action: 553 Milford Street-555 Milford Street – variance request for a 60.03 foot wide lot under Section §550-24F(2)(b)

**3. ADJOURNMENT**

*Persons requiring other reasonable accommodations for any of the above meetings, may contact the office of the City Clerk at [mdunneisen@watertownwi.gov](mailto:mdunneisen@watertownwi.gov), phone 920-262-4006*

*A quorum of any City of Watertown Council, Committee, Board, Commission, or other body, may be present at this meeting for observing and gathering of information only*

**BOARD OF ZONING APPEAL**  
**June 14, 2022**

Section 2, Item A.

The Board of Zoning Appeal met on the above date in the Council Chambers of City Hall as well as via GotoMeeting. The following members were present: Jacob Maas, Mike Rollert, Paul Dettman, Thomas Johnson, and Mike Huebner. Steve Jones recused himself due to a conflict of interest. Also in attendance were Larry Gaugert of Good Shepherd Lutheran Church, Skip DeBack of Lemberg Signs, and Amy Buckholtz.

**1. Call to Order**

Acting Chairperson Mike Rollert called the meeting to order.

**2. Review and take action: Zoning Board of Appeals Minutes dated September 28, 2021**

Discussion: None.

Decision: Motion was made and seconded to approve the September 28, 2021 minutes as submitted. Unanimously approved.

**3. Conduct public hearing: 1611 E. Main Street – Good Shepherd Lutheran Church sign variance request**

The public hearing for Case #1-22 was called to order by Acting Chairperson Mike Rollert.

The following spoke during the public hearing:

Amy Buccholz:	Owns 1-6 Oakridge Court. Is not in favor of the electronic sign due to the proximity of the 6 patios which would be facing the sign. Concerned about the brightness of LED signs. Proposes moving the sign closer to Hwy 16 and Main Street.
Skip Debak:	From Lemberg Signs, the sign company hired by Good Shepherd. The sign would be much dimmer than other LED signs. The sign can be made dimmer as well.
Larry Gaugert:	Has kept the surrounding property owners in mind.

There being no further comments, the public hearing was closed by Acting Chairperson Mike Rollert.

**4. Review and take action: 1611 E. Main Street – Good Shepherd Lutheran Church sign variance request**


Discussion: Currently zoning of the property is SR-4, which is an error on the city's part when the zoning was recreated in 2003. The city would voluntarily follow procedures to have the zoning changed at no charge to the church to PO, Planned Office & Institutional which would allow for larger sign size. Current sign is in disrepair and needs to be changed out. Lighting on a new sign that's not an electronic message center could have fluorescent lights illuminating it. There is an option to turn off lights after a certain time. There are already rules and regulations put in place for electronic message center. The current sign is legal non-conforming. There is the argument that there is no hardship because the church has the frontage to place a new sign at a distance greater than 100 feet from the residentially zoned property, and still keep the current sign. Financial hardships are not able to be entered into the decision.

Decision: Motion was made to approve the variance. Due to the lack of a second, the motion did not proceed. Motion was made and seconded to deny the variance due to a lack of hardship. Aye - 3; Nay - 1. Motion carried.

**5. Adjournment**

With no further items to discuss motion was made and seconded to adjourn the meeting. Unanimously approved.

Respectfully Submitted,



Jacob Maas, CFM  
Zoning & Floodplain Administrator

**LEGAL NOTICE - CASE # 1-24**

Section 2, Item B.

The Zoning Board of Appeals of the City of Watertown, State of Wisconsin, will hold a public hearing on **August 27, 2024** at 4:00 p.m. in the Council Chambers on the second floor of the Municipal Building, 106 Jones Street, Watertown, Wisconsin or via Zoom using the following instructions:

Members of the media and the public may attend either by visiting <https://us06web.zoom.us/j/2371460557?pwd=UXJvqLXKCdw12jl4jl1b7GIUPaClat.1&omn=81991727250> or by calling 1-646-931-3860 and using Meeting ID: 237 146 0557 Passcode: 144391

All public participants' devices will be muted during the meeting except during the public comment period.

The public hearing will be to hear the appeal for Case #1-24 for the variance request of Buzdum

Trust/Michael L. Martin, Sr. for a potential variance to the 75 ft. minimum lot width under §550-24F(2)(b).

This variance request would allow for a lot to be created that is 60.03ft wide.

The property is located at 553 Milford Street-555 Milford Street, Watertown, Jefferson County, WI, and is further described as follows:

Outlot 7 according to the Survey of Outlots in the Third Ward of the City of Watertown, surveyed by Judson Prentice, City of Watertown, Jefferson County, Wisconsin. EXCEPTING THEREFROM land described in Quit Claim Deed recorded in Volume 715 of Records on Page 533 as Document No. 839897. FURTHER EXCEPTING THEREFROM Certified Survey Map No. 2112 recorded in Volume 7 of Certified Surveys on Page 87 as Document No. 839617. FURTHER EXCEPTING THEREFROM Certified Survey Map No. 5745 recorded in Volume 32 of Certified Surveys on Page 242 as Document No. 32 of Certified Surveys on Page 242 as Document No. 1375269. FURTHER EXCEPTING THEREFROM land described in Deed recorded as Document No. 1466123. (PIN: 291-0815-0541-022)

All persons wishing to be heard may either attend the public hearing or send correspondence addressed to the Zoning & Floodplain Administrator in regard to these matters.

CITY OF WATERTOWN  
Brian Zirbes  
Zoning Administrator

BZ/nmz

PUBLISH: August 13, 2024  
and  
August 20, 2024

**(BLOCK AD)**

Main Office  
920-262-4060

Brian Zirbes  
920-262-4041

Mark Hady  
920-342-0986

Nikki Zimmerman  
920-262-4045

Dell Zwieg  
920-262-4042

Doug Zwieg  
920-262-4062

Dennis Quest  
920-262-4061

TO: Zoning Board of Appeals  
DATE: August 27<sup>th</sup>, 2024  
SUBJECT: A variance request for 553-555 Milford Street

A request by Buzdum Trust/Michael L. Martin, Sr., for a variance to the lot width requirements under §550-24F(2)(b). Parcel PIN(s): 291-0815-0541-022

SITE DETAILS:

Acres: 0.63  
Current Zoning: Multi-Family Residential 8 (MR-8)  
Existing Land Use: Single-Family Residential  
Future Land Use Designation: Central Mixed Use

BACKGROUND AND APPLICATION DESCRIPTION:

The applicant is seeking variance approval of a reduction of the lot width requirements under §550-24F(2)(b) of the Zoning Ordinance. The applicant would like to subdivide an existing parcel that contains two existing single-family homes. Lot 1 on the proposed Certified Survey Map would be 60.03ft wide rather than the required 75ft. Lot 2 would be 97.59ft wide and conform to the ordinance requirements.

The homes were part of former the Bethesda Lutheran Homes and Services complex that was sold after the closure of campus facilities. Homes on the former campus property were not required to be built on individual residential lots resulting in two single-family homes existing on the subject property.

STAFF EVALUATION:

Variance Findings

§550-147D(3)

(3) *The Zoning Administrator shall also evaluate the application to determine whether the requested variance is in harmony with the recommendations of the City of Watertown's Comprehensive Plan, particularly as evidenced by compliance with the standards of Subsection D(3)(a) through (f) below:*

(a) *What exceptional or extraordinary circumstances or special factors are present which apply only to the subject property? The response to this question shall clearly indicate how the subject property contains factors which are not present on other properties in the same zoning district. Specifically:*

[1] *The hardship or difficulty shall be peculiar to the subject property and different from that of other properties and not one which affects all properties similarly. Such a hardship or difficulty shall have arisen because of the unusual shape of the original acreage parcel, unusual topography or elevation, or because the property was created before the passage of the current applicable zoning regulations, and is not economically suitable for a permitted use or will not accommodate a structure of reasonable design for a permitted use if all area, yard, green space and setback requirements are observed.*

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*Opportunity Runs Through It*

**Finding:** There is a hardship in that the property was formerly part of the Bethesda Lutheran Homes and Services complex where individual homes were not required to be built on individual lots within the complex. The closure and sale of the complex properties has resulted in two single-family homes being located on the same parcel.

*[2] Loss of profit or pecuniary hardship shall not, in and of itself, be grounds for a variance.*

**Finding:** Not applicable.

*[3] Self-imposed hardship shall not be grounds for a variance. Reductions resulting from the sale of portions of a property, reducing the remainder of said property below buildable size or cutting off existing access to a public right-of-way, or deed restrictions imposed by the owner's predecessor in title are considered to be such self-imposed hardships.*

**Finding:** Not applicable. The existing homes were allowed to be built on the same parcel under a previous version of the zoning ordinance and are not considered to be a self-imposed hardship.

*[4] Violations by or variances granted to neighboring properties shall not justify a variance.*

**Finding:** Not applicable.

*[5] The alleged hardship shall not be one that would have existed in the absence of a zoning ordinance. (For example, if a lot were unbuildable because of topography in the absence of any or all setback requirements.)*

**Finding:** Not applicable.

- (b) In what manner do the factors identified in Subsection D(3)(a) above prohibit the development of the subject property in a manner similar to that of other properties under the same zoning district? The response to this question shall clearly indicate how the requested variance is essential to make the subject property developable so that property rights enjoyed by the owners of similar properties can be enjoyed by the owners of the subject property.*

**Finding:** The proposed variance is essential for the two existing single-family homes to be separated onto individual lots.

- (c) Would the granting of the proposed variance be of substantial detriment to adjacent properties? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on adjacent properties.*

**Finding:** The proposed variance would not be of substantial detriment to adjacent residential properties. The homes in this area have existed as they are currently configured for many years without issues.

- (d) Would the granting of the proposed variance as depicted on the required site plan [see Subsection C(4) above] result in a substantial or undue adverse impact on the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the intent, provisions and policies of this chapter, the Comprehensive Plan, or any other plan, program, map or ordinance adopted or under consideration pursuant to official notice by the City or other governmental agency having jurisdiction to guide growth and development? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on such long-range planning matters.*

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**Finding:** The proposed variance would not have a substantial or undue adverse impact. The homes in this area have existed as they are currently configured for many years without issues. While the City's Comprehensive Plan calls for this area to be commercial in nature in the future, the division of this parcel as proposed does not impede that planning goal. The existing single-family uses can exist as they are until such time as the area is transitioned to commercial use.

- (e) *Have the factors which present the reason for the proposed variance been created by the act of the applicant or previous property owner or their agent (for example: previous development decisions such as building placement, floor plan or orientation, lotting pattern, or grading) after the effective date of this chapter (see § 550-11)? The response to this question shall clearly indicate that such factors existed prior to the effective date of this chapter and were not created by action of the applicant, a previous property owner or their agent.*

**Finding:** The current situation with two single-Family homes on one parcel was created before the current effective date of the ordinance and were not created by the applicant.

- (f) *Does the proposed variance involve the regulations of Article IV? The response to this question shall clearly indicate that the requested variance does not involve the provisions of the article.*

**Finding:** The proposed variance does not involve the regulations of Article IV. The proposed variance involves a standard (lot width) in Article II.

#### ZONING BOARD OF APPEALS OPTIONS:

The following are possible options for the Zoning Board of Appeals:

1. Deny the variance, based on failure to meet the required findings.
2. Approve the variance, based on successfully providing substantial evidence to meet the required findings.

#### ATTACHMENTS:

- Application materials

7/30/24

To whom it may concern,

I just wanted to give you a little background on this property. This property is 2 single family homes that were bought from owners ( Bethesda) over the years and taken off the city property tax bill and added to the Bethesda tax exempt land.

Bethesda told the buyers that they owned all the land behind these properties and agreed in writing to give an easement on the gravel road that is behind the properties and been in use at least 50 years or more....as well as they were told they could split the 2 homes on separate lots. The buyer/owner of these 2 homes cannot do anything with these two homes to get them back on the property tax bill unless they are allowed to make 2 parcels as they were originally, which is the best use of these 2 homes...separate lots, separate tax bills.

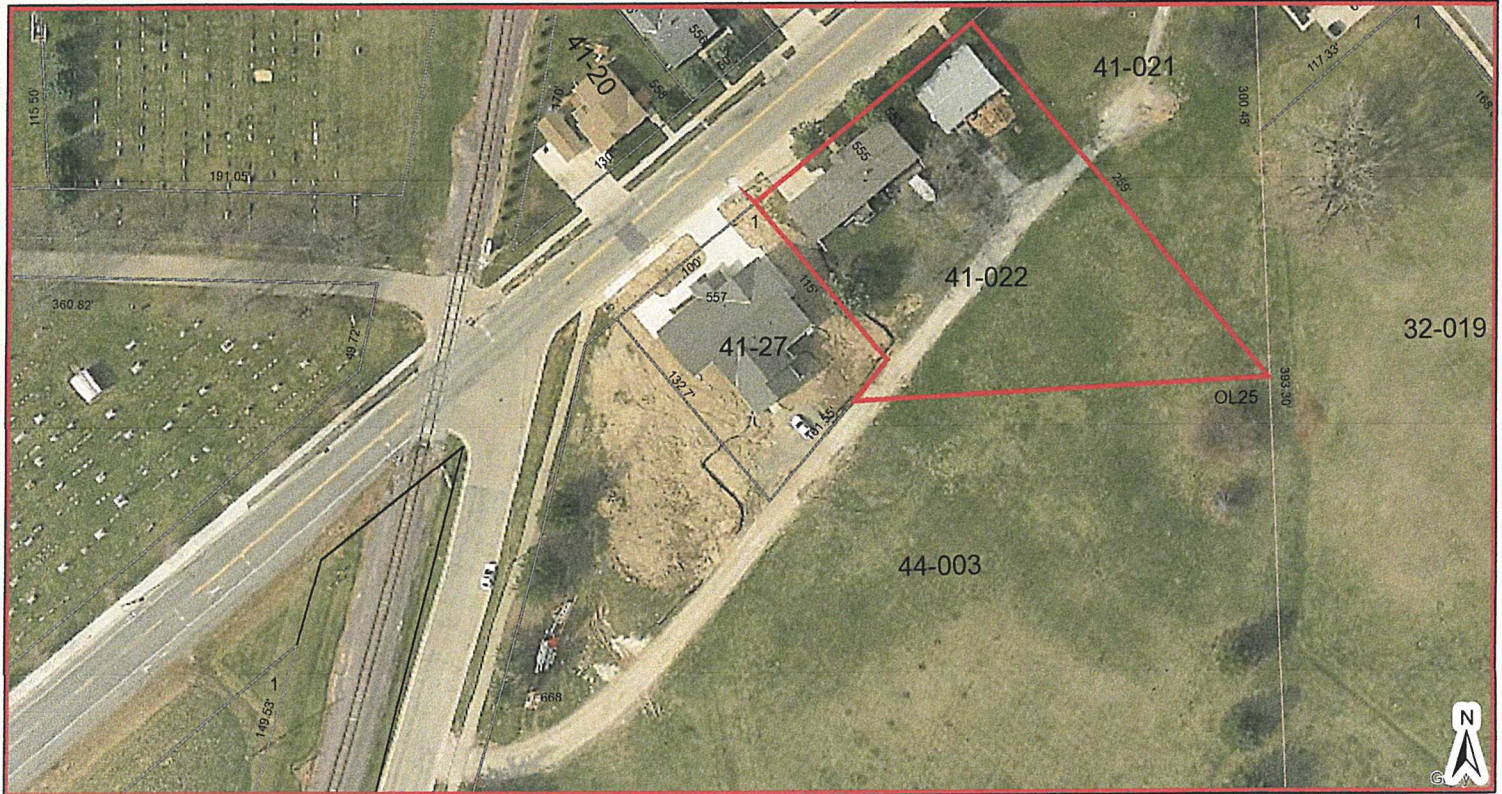
Please look at the survey and you will understand what is being proposed which seems to be the best/only solution to correct a problem.

Thank you

Buzdum Trust / Mike Martin



555 & 553 Milford Street, Watertown



Description	--- Old Lot/Meander Lines	— Surface Water	Jefferson_County_Wide_Mosaic.sid
Municipal Boundaries	— Rail Right of Ways	— Map Hooks	Red: Band_1
<b>Parcel Lines</b>	— Road Right of Ways	Tax Parcels	Green: Band_2
— Property Boundary	— Section Lines		Blue: Band_3

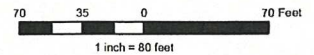


Jefferson County Geographic Information System

DISCLAIMER: This map is not a substitute for an actual field survey or onsite investigation. The accuracy of this map is limited to the quality of the records from which it was assembled. Other inherent inaccuracies occur during the compilation process. Jefferson County makes no warranty whatsoever concerning this information.

Printed on: July 13, 2022

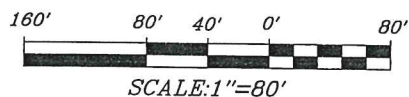
Author: Public User



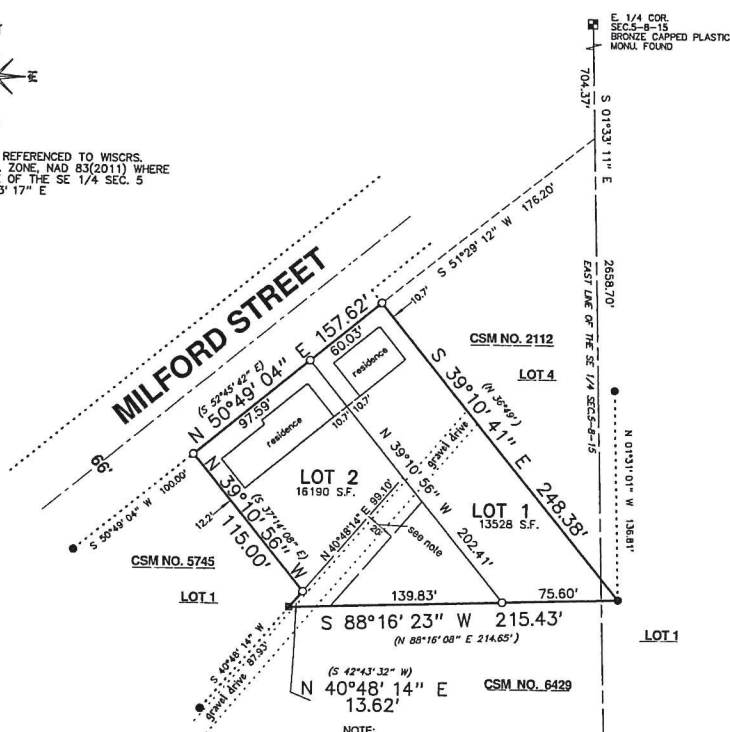


CERTIFIED SURVEY MAP NO. \_\_\_\_\_

PART OF OUTLOT 7 OF THE TWELFTH WARD FORMERLY THE THIRD WARD IN THE CITY OF WATERTOWN, LOCATED IN THE NE 1/4 OF THE SE 1/4 OF SECTION 4 AND THE NW 1/4 OF THE SE 1/4 OF SECTION 5, ALL IN TOWN 8 NORTH, RANGE 15 EAST, JEFFERSON COUNTY, WISCONSIN.



BEARINGS ARE REFERENCED TO WISCONSIN JEFFERSON CO. ZONE, NAD 83(2011) WHERE THE EAST LINE OF THE SE 1/4 SEC. 5 BEARS S 01°33' 17" E



- - INDICATES IRON ROD FOUND
- - INDICATES 1" IRON PIPE FOUND
- - INDICATES 3/4" X 18" IRON ROD SET WEIGHING 1.5 LBS./FT.
- (XX) - INDICATES RECORDED AS

NOTE:  
20' EASEMENT FOR INGRESS AND EGRESS GRANTED TO LOT 1



KW SURVEYING  
725 PALMYRA STREET  
P.O. BOX 32  
SULLIVAN, WI. 53178  
(262)-593-5800

DATED THIS 1ST DAY OF MAY, 2024.

SHEET 1 OF 3

THIS INSTRUMENT WAS DRAFTED BY KENNETH J. WILKOWSKI, S-1841

JOB NO. 2175

**CERTIFIED SURVEY MAP NO. \_\_\_\_\_**  
**PART OF OUTLOT 7 OF THE TWELFTH WARD OF THE FORMERLY THIRD WARD IN THE**  
**CITY OF WATERTOWN, LOCATED IN THE NE 1/4 OF THE SE 1/4 OF SECTION 4 AND**  
**THE NW 1/4 OF THE SE 1/4 OF SECTION 5, ALL IN TOWN 8 NORTH, RANGE 15 EAST,**  
**JEFFERSON COUNTY, WISCONSIN.**

**SURVEYORS CERTIFICATE**

I, Kenneth J. Wilkowski, Professional Land Surveyor, do hereby certify:

That I have surveyed, divided and mapped part of Outlot 7 of the Twelfth Ward formerly the Third Ward in the City of Watertown, Located in the NE 1/4 of the SE 1/4 of Section 4 and the NW 1/4 of the SE 1/4 of Section 5, All in Town 8 North, Range 15 East, Jefferson County, Wisconsin, bounded and described as follows:

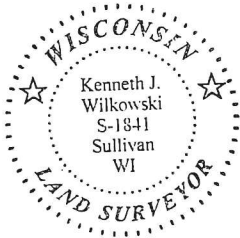
Commencing at the East 1/4 corner of said Section 5, Thence South 01°33'11" East along the East line of said Southeast 1/4 line, 704.37 feet to a point; Thence South 51°29'12" West, 176.20 feet to the Point of Beginning of the following description: Thence South 39°10'41" East, 248.38 feet to a point; Thence South 88°16'23" West, 215.43 feet to a point; Thence North 40°48'14" East, 13.62 feet to a point; Thence North 39°10'56" West, 115.00 feet to a point; Thence North 50°49'04" East, 157.62 feet to the Point of Beginning and containing 29,718 square feet or 0.6822 acres of land, more or less.

That I have made such survey, land division, and map by the direction of, Buzdum Trust, owner of said land.

That such map is a correct representation of all exterior boundaries of the land surveyed and the land division thereof made.

That I have fully complied with the provisions of Chapter 236 of Wisconsin Statutes and the Subdivision Regulations of the City of Watertown.

  
Kenneth J. Wilkowski, P.L.S.



**CERTIFIED SURVEY MAP NO. \_\_\_\_\_**  
**PART OF OUTLOT 7 OF THE TWELFTH WARD OF THE FORMERLY THIRD WARD IN THE CITY OF WATERTOWN, LOCATED IN THE NE 1/4 OF THE SE 1/4 OF SECTION 4 AND THE NW 1/4 OF THE SE 1/4 OF SECTION 5, ALL IN TOWN 8 NORTH, RANGE 15 EAST, JEFFERSON COUNTY, WISCONSIN.**

**OWNER CERTIFICATE**

As owner of the lands described in the foregoing certificate of Kenneth J. Wilkowski, Professional Land Surveyor, I hereby certify that I caused the said lands to be surveyed, divided and mapped as represented on the map of said survey in accordance with the provisions of Chapter 236 of the Wisconsin Statutes. I also certify that this plat is required by S.236.10 or 236.12 to be submitted to the following for approval or objection: City of Watertown.

Witness the hand and seal of said owner this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_, Trustee of Buzdum Trust

STATE OF WISCONSIN)  
JEFFERSON COUNTY)<sup>ss</sup>

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ the above named Trustee, known to me to be the person who executed the foregoing instrument and acknowledged the same.

My commission expires: \_\_\_\_\_

Notary public, \_\_\_\_\_ Co., WI

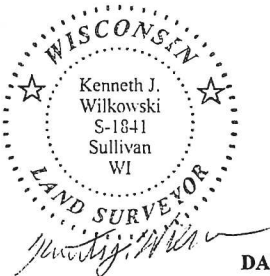
**CITY OF WATERTOWN PLAN COMMISSION APPROVAL**

This Certified Survey Map in the City of Watertown, Wisconsin is hereby approved by the Plan Commission:

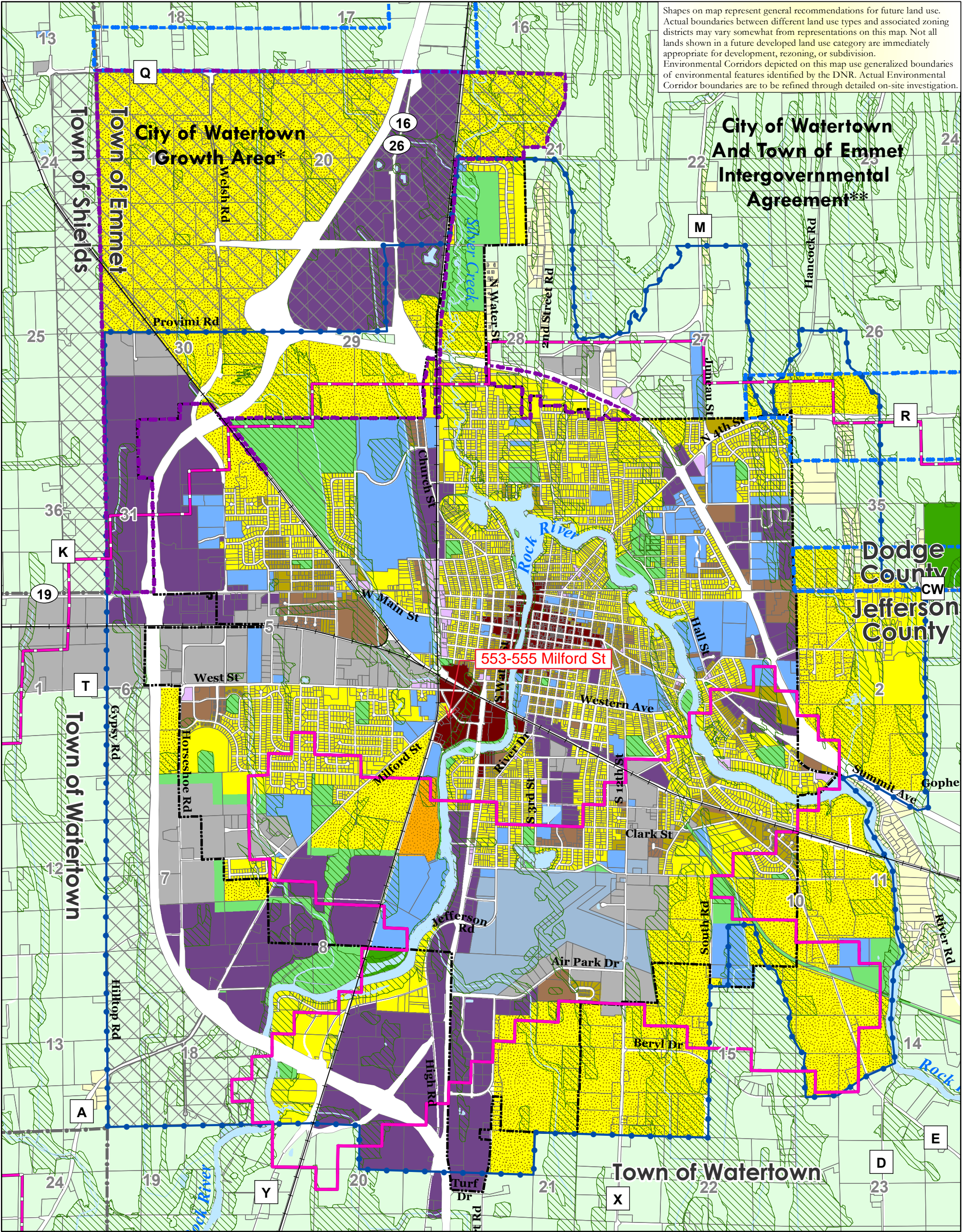
This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Emily McFarland, Mayor (Plan Commission Chairperson)

\_\_\_\_\_  
Megan Dunneisen, Clerk







Shapes on map represent general recommendations for future land use. Actual boundaries between different land use types and associated zoning districts may vary somewhat from representations on this map. Not all lands shown in a future developed land use category are immediately appropriate for development, rezoning, or subdivision. Environmental Corridors depicted on this map use generalized boundaries of environmental features identified by the DNR. Actual Environmental Corridor boundaries are to be refined through detailed on-site investigation.

## City of Watertown And Town of Emmet Intergovernmental Agreement\*\*

Dodge  
County  
Jefferson  
County

## Future Land Use Urban Area

### Map 6b

City/Town IGA\*\*  
City Growth Area  
City Periphery Areas

### City of Watertown Comprehensive Plan

#### Land Use Categories

- Agricultural
- Single-Family Residential - Unsewered
- Single-Family Residential - Sewered
- Two-Family Residential
- Multi-Family Residential
- Planned Neighborhood\*\*
- Institutional
- Airport

- Rights-of-Way
- Neighborhood Mixed Use
- Planned Mixed Use\*
- Central Mixed Use
- Riverside Mixed Use\*\*\*
- Mixed Industrial
- Parks & Recreation
- Environmental Corridor
- Surface Water

\*Each "Planned Mixed Use Area" may include mix of:  
1. Office  
2. Multi-Family Residential  
3. Mixed Industrial  
4. Commercial Services/Retail  
5. Institutional  
6. Parks & Recreation



\*\*\*"Planned Neighborhoods" should include a mix of the following:  
1. Single-Family - Sewered (predominant land use)  
2. Two-Family Residential  
3. Multi-Family Residential  
4. Institutional  
5. Neighborhood Mixed Use  
6. Parks & Recreation



\*\*\*Each "Riverside Mixed Use Area" may include mix of:  
1. Office  
2. Single-Family - Sewered  
3. Two-Family Residential  
4. Multi-Family Residential  
5. Commercial Services/Retail  
6. Institutional  
7. Parks & Recreation



- City of Watertown
- Town Boundary
- Parcel
- Railroad
- Watertown Urban Service Area
- Watertown Long Range Growth Area

#### Airport Height Limitations

- Maximum Building Elevation b/t 865 and 968 ft
- Maximum Building Elevation b/t 968 and 1005 ft

Draft: August 7, 2019  
Source: WisDNR, FEMA, City of Watertown, Dodge Co. LIO & Jefferson Co. LIO, V&A

VANDEWALLE & ASSOCIATES INC.  
Shaping places, shaping change

THE CITY OF  
WATERTOWN  
Opportunity runs through it.



0 0.25 0.5 1 Miles



## **Primary Standards for a Zoning Variance – City of Watertown**

**What are the primary standards for obtaining a zoning variance (City of Watertown)?**

### **§550-147D(3)**

(3) The Zoning Administrator shall also evaluate the application to determine whether the requested variance is in harmony with the recommendations of the City of Watertown's Comprehensive Plan, particularly as evidenced by compliance with the standards of Subsection D(3)(a) through (f) below:

(a) What exceptional or extraordinary circumstances or special factors are present which apply only to the subject property? The response to this question shall clearly indicate how the subject property contains factors which are not present on other properties in the same zoning district. Specifically:

[1] The hardship or difficulty shall be peculiar to the subject property and different from that of other properties and not one which affects all properties similarly. Such a hardship or difficulty shall have arisen because of the unusual shape of the original acreage parcel, unusual topography or elevation, or because the property was created before the passage of the current applicable zoning regulations, and is not economically suitable for a permitted use or will not accommodate a structure of reasonable design for a permitted use if all area, yard, green space and setback requirements are observed.

[2] Loss of profit or pecuniary hardship shall not, in and of itself, be grounds for a variance.

[3] Self-imposed hardship shall not be grounds for a variance. Reductions resulting from the sale of portions of a property, reducing the remainder of said property below buildable size or cutting off existing access to a public right-of-way, or deed restrictions imposed by the owner's predecessor in title are considered to be such self-imposed hardships.

[4] Violations by or variances granted to neighboring properties shall not justify a variance.

[5] The alleged hardship shall not be one that would have existed in the absence of a zoning ordinance. (For example, if a lot were unbuildable because of topography in the absence of any or all setback requirements.)

(b) In what manner do the factors identified in Subsection D(3)(a) above prohibit the development of the subject property in a manner similar to that of other properties under the same zoning district? The response to this question shall clearly indicate how the requested variance is essential to make the subject property developable so that property rights enjoyed by the owners of similar properties can be enjoyed by the owners of the subject property.

(c) Would the granting of the proposed variance be of substantial detriment to adjacent properties? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on adjacent properties.



(d) Would the granting of the proposed variance as depicted on the required site plan [see Subsection C(4) above] result in a substantial or undue adverse impact on the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the intent, provisions and policies of this chapter, the Comprehensive Plan, or any other plan, program, map or ordinance adopted or under consideration pursuant to official notice by the City or other governmental agency having jurisdiction to guide growth and development? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on such long-range planning matters.

(e) Have the factors which present the reason for the proposed variance been created by the act of the applicant or previous property owner or their agent (for example: previous development decisions such as building placement, floor plan or orientation, lotting pattern, or grading) after the effective date of this chapter (see § 550-11)? The response to this question shall clearly indicate that such factors existed prior to the effective date of this chapter and were not created by action of the applicant, a previous property owner or their agent

(f) Does the proposed variance involve the regulations of Article IV? The response to this question shall clearly indicate that the requested variance does not involve the provisions of the article.

## **Primary Standards for a Zoning Variance – State of Wisconsin**

By the League of Wisconsin Municipalities

### **What are the primary standards for obtaining a zoning variance (State Statutes)?**

A city or village zoning board of appeals abuses its power if it routinely grants zoning variance requests. A zoning board may grant a zoning variance request only in limited circumstances and only when the applicant provides evidence that proves they have met all of the legal criteria for a requested variance.

There are three main criteria that a variance applicant must satisfy: unnecessary hardship, a unique property condition, and no harm to the public interest.

The Wisconsin Supreme Court recognizes two types of zoning variances that may be granted by a zoning board: area variances and use variances. *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis.2d 549, 676 N.W.2d 401. However, these terms are not defined by state law. Consequently, this is a critical area for local action to define the terms in the local zoning code because case law establishes separate unnecessary hardship tests for use and area variances.

A use variance applicant must show that they will have no reasonable use of the subject property without the requested variance. *Ziervogel*, 269 Wis.2d at para. 31. This is an extremely difficult burden to satisfy and rightly so. A use variance is effectively a rezoning of property to allow a land use that the governing body of a municipality already determined is incompatible with other uses in the zoning district and risks great changes in neighborhood character.

An area variance applicant must show that “compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Snyder v. Waukesha County Bd. of Adjustment*, 74 Wis.2d 468, 247 N.W.2d 98 (1976). Thus, it is not enough that an area variance applicant show that a zoning regulation prevents or burdens their planned activity. They must show by competent evidence that the regulation unreasonably prevents or unnecessarily burdens the activity.

All zoning variance applicants must also show that the alleged unnecessary hardship is due to a unique property condition. *Snyder*, 74 Wis. 2d at 479. This phrase is not defined by statute but court decisions establish that it means a special physical feature of the property (soil conditions, steep slope, wetland, etc.) that is not shared by nearby land. *See Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis.2d 246, 258, 469 N.W.2d 831 (1991). More importantly, if a variance applicant fails to prove the existence of a unique property condition and a connection between the condition and the hardship, even if the hardship is great, a zoning board has no power to grant the requested variance.

Finally, all variance applicants must show that the requested variance will not be contrary to the public interest. *Arndorfer*, 162 Wis. 2d at 256. This criteria requires the zoning board to consider the purposes of the ordinance at issue and determine “whether the relief requested is consistent with the public interest such that the variance should be granted, or whether a variance would subvert the purpose of the zoning restriction to such an extent that it must be denied.” *Ziervogel*, 269 Wis.2d at para. 34.