

STATE OF WISCONSIN VILLAGE OF SHOREWOOD MILWAUKEE COUNTY
BOARD OF APPEALS

IN THE MATTER OF THE APPEAL OF:

The East Capitol Neighborhood Association, UA
as collective owners of property near 2418, 2420, 2428 E. Capitol Drive.

Appellant.

DECISION

The above matter came before the Shorewood Board of Appeals (“BOA”) on April 13, 2021, and May 4, 2021, in meetings held virtually via the zoom platform due to the statewide pandemic, pursuant to the notice required by law. Acting chairperson Michael Paulson presided over both meetings, and additional Board of Appeals members present at both meetings were as follows: Adam Burns, Jon Toutenhoofd, and April Toy.

The application submitted to the BOA by the East Capitol Neighborhood Association, UA, (“Association”) which is comprised of owners of property near 2418, 2420, and 2428 E. Capitol Drive in Shorewood, WI, appealed the Shorewood Plan Commission’s February 23, 2021 decision to grant a “special exception” related to parking under Village Code section 535-51 to Catalyst Partners, 833 Michigan Street, Suite 1000, Milwaukee, WI 53202. The request for the special exception related to a prospective development by Catalyst Partners on properties located at 2418, 2420, and 2428 E. Capitol Drive in Shorewood, WI. During the February 23, 2021 meeting, the Plan Commission moved and granted the special exception on a 5-1 vote.

The BOA first took up the Association's appeal April 13th, 2021. Appellants, Capitol Neighborhood Association, UA., appeared through counsel Joseph R. Cincotta. A public hearing on the matter took place between 6:25 PM and 7:19 PM on April 13, 2021, in which public comment was taken from several individuals. After close of the public hearing, The Board of Appeals discussed issues related to the proper standard of review and an alleged conflict of interest argument raised by counsel for the appellant. Acting chairman Paulson moved, seconded by Mr. Burns, to adjourn and schedule further proceedings on the matter for the evening of May 4th commencing at 5:30 PM. The motion passed by a roll call vote of 4-0.

The Board of Appeals again took up the Association's appeal on May 4th, 2021. Appellants, Capitol Neighborhood Association, UA., appeared through counsel Joseph R. Cincotta. The Board discussed how it would apply a certiorari standard of review to the Plan Commission's decision.

After discussion of the matter by BOA members, the following motion was brought forth by acting chairman Michael Paulson, and seconded by Jon Toutenhoofd:

To accept the appeal and remand the matter back to the Plan Commission to reopen the matter, including further public hearing, to explicitly consider the applicable provisions set forth in section 535-51 B. of the Village Code, including if it so finds an explicit determination of how the granting of a special exception is not inconsistent with the applicable provisions as set forth in 535-51 D. of the Village Code.

The motion passed on a 3-1 vote.

Based upon this motion, the Plan Commission is directed to:

- Reopen the hearing on the Catalyst Partners request for a special exception related to parking;
- Accept additional public comment from members of the public;
- Accept any additional evidence and/or argument from the applicant;

- Make a record demonstrating how the factors contained in Village Code §535-51 B. are being considered by the Plan Commission;
- Entertain a motion to either grant or deny the special exception based upon the original record, as well as upon any new evidence offered at the next Plan Commission hearing.

The record on appeal currently consists of the following items:

- Catalyst Partners original application for a special exception;
- The minutes of the February 23, 2021 Plan Commission meeting;
- Evidence offered by Catalyst Partners and the public at the February 23, 2021 Plan Commission meeting;
- The appeal application submitted by the East Capitol Neighborhood Association, UA to the BOA;
- Memos to the BOA from the Shorewood Village Attorney's office dated April 7, 2021 and April 27, 2021;
- Letters to the BOA from attorney Joseph Cincotta dated April 13, 2021 and May 4, 2021 submitted on behalf of the Association;
- The minutes of the April 13 and May 4, 2021 BOA meetings;
- Evidence offered by the Association, Catalyst Partners, and the public at the April 13, 2021 and May 4, 2021 meetings, including e-mails received by the BOA prior to the close of the hearing on May 4, 2021.

Dated at Shorewood, WI this 24th day of May 2021.

SHOREWOOD BOARD OF APPEALS

By: Michael Paulson
Michael Paulson, Chairperson

By: Sara Bruckman
Sara Bruckman, Village Clerk