

TOWN OF HOLLAND BOARD OF APPEALS
OFFICIAL PROCEEDINGS
HOLLAND TOWN HALL, W3005 COUNTY ROAD G, CEDAR GROVE, WI 53013
Wednesday, December 4, 2024 7:00pm

1. CALL TO ORDER:

Town Board of Appeals Chair James Wonser called to order the Board of Appeals meeting at 7:00pm.

2. PLEDGE OF ALLEGIANCE:

Chair James Wonser led the attendees in the Pledge of Allegiance.

3. CLERK TO CERTIFY NOTICE REQUIREMENTS AND REQUIREMENTS OF THE WISCONSIN OPEN MEETINGS LAW HAVE BEEN MET:

Clerk-Treasurer Janelle Kaiser certified that both the notice and Wisconsin Open Meetings Law requirements had been met in advance of this meeting. A hearing notice was published in the Sheboygan Press on November 20, 2024 and November 27, 2024. The notice was also posted in 3 places throughout the Town and on the Town's website. The meeting agenda was posted on at the Town Hall and on the Town's website on December 2, 2024 at 10:00am.

Let these minutes show that letters were mailed to property owners within 300 feet of the subject properties, N905 Sauk Trail Road and N2047 Pine Beach Road South, as further notification of the hearings.

4. CLERK TO TAKE ROLL CALL AND CONFIRM WHETHER A QUORUM IS PRESENT:

a. Members Present:

- i. Board of Appeals Chairman: James Wonser.
- ii. Board of Appeals Members: Jill Huenink, Neil Teunissen, Kenneth Tyler, John DuMez, Jeffrey Kritz (Alternate 1), and Ryan Wonser (Alternate 2).

b. Members Absent: None.

Clerk Janelle Kaiser confirmed that a quorum of the Holland Board of Appeals is present at the meeting. At this time Attorney Michael Bauer announced that he is representing the Holland Board of Appeals.

c. Others Present: Board of Appeals Clerk Janelle Kaiser, Town Chairman David Huenink, Town Supervisor Douglas Hamilton, Attorney Michael Bauer of Hopp, Neumann, and Humke on behalf of the Town of Holland Board of Appeals, Attorneys Eric Eberhardt and Matt Nugent of Antoine, Hoefl, and Eberhardt on behalf of the Town of Holland, Attorneys David Muth and Ellen Anderson of Quarles and Brady on behalf of David Valenti and Larry Britton, Attorneys Daniel Blinka and Lynn Ludke of Godfrey and Kahn on behalf of American Orthodontics, and Court Reporter Michelle M. Gudex of Cream City Reporting LLC.

Let these minutes show that this meeting was stenographically reported by Michelle M. Gudex.

- d. Members of the public that signed in: Gretchen Petraske, Sandy Rose, Dale Velier, Kevin Kappers, Ellen Anderson, David Muth, Fred Holt, Diane Holt, Bill Murphy, Josephine Lemieux-Murphy, Jack Stokdyk, Jane Dederling, William Bannier, Jane Hamilton, Bob Mackey, Kristen Sheeran, Annemarie Valenti, James Testroote, Lori Testroote, John Dickmann, Scott Davis, Nicola Davis, Larry Britton, Judy Britton, Mary Ann Tyler, Mark Huenink, Mary Huenink, Karl Olinger, David Valenti, Cheryl Baldwin, Scott Theil, Mark Olivieri, Michael Terrill, Greg Broghammer, Susan LaBudde, Amy Q Scott, Scott Siemon, Carol Harpold, James Harpold, and John Patek.
5. ADOPT AGENDA AS OFFICIAL ORDER OF BUSINESS:
Motion by Kenneth Tyler, seconded by John DuMez, to adopt the agenda for the December 4, 2024 Board of Appeals meeting as presented; the motion carried by unanimous voice vote.
 6. CHAIR ANNOUNCEMENT OF PROCEEDINGS:
Chair James Wonser announced that there will be two hearings of the Board of Appeals at this meeting. The first hearing will consider a variance request by Michael B Everett to vary the applicable sign regulations; the request is to construct a sign with a height of 100 feet and an area of 697.5 square feet at N905 Sauk Trail Road, Cedar Grove, WI 53013. The second hearing will consider a Second Amended Application by Atty. Ellen Anderson on behalf of David Valenti and Larry Britton appealing the Town Plan Commission's adoption of the Town Attorney's interpretation of zoning regulations. The Application requests a review of the legal interpretation that the proposed use of the dwelling at N2047 Pine Beach Road South, Oostburg, Wisconsin complies with Holland Town Code §330-27, R-1 Single-Family Residence District.
 7. PUBLIC INPUT:
 - a. James Testroote said that he would like to hear Michael Everett talk about the proposed sign at N905 Sauk Trail Road, to include where it is proposed to be located and how big and bright it will be.
 - b. At this time, Attorney Bauer requested that Michael Everett present his request for a variance at N905 Sauk Trail Road.
 - c. Michael Everett explained that the variance request is to exceed the allowable height and square footage of a sign allowed by Town ordinance, and that the topography of the subject property at N905 Sauk Trail Road creates conditions where compliance with existing Town ordinances would render the sign ineffective and unsafe for motorists. The subject property sits at a higher elevation than other nearby properties and includes several tall, mature trees that obscure visibility from the roadway, Interstate 43, and would block a sign that complies with existing Town ordinances. Michael said that the request for a taller sign is to ensure that it can be seen from a sufficient distance to give drivers ample time to react, and that a

larger sign is crucial to convey clear and legible information to motorists, especially given the speed of traffic on the interstate. A larger sign would allow larger text to be used, which is necessary for motorists who need extra time and distance to make safe turns off the highway and into a fueling station, such as truck drivers.

Michael added that the subject property serves a vital role as a truck stop for both passenger vehicles and commercial trucks. Visible and clear signage is relied upon by drivers to navigate safely when exiting the interstate; without a properly positioned and sized sign, there is a risk of drivers missing the exit, which could lead to abrupt stops, sudden lane changes, or accidents. Michael conveyed that the taller, larger sign request is not simply a matter of convenience, but rather a crucial safety issue. Michael continued, saying that he feels the variance request is reasonable, given the topographical challenges on the subject property and the aforementioned safety concerns. Their goal is to ensure that all drivers, particularly those in large commercial vehicles, have adequate visibility and time to make safe decisions. A driving survey was provided to the Board of Appeals members which reflected the subject property's hardship due to the mature trees, particularly when traffic is heading southbound on the interstate.

- d. James Testroote thanked Michael Everett for his comments.
- e. Michael Everett said he could speak with the owners to suggest that the sign include an automatic dimmer at night, specifically, to dim down the price sign in the evening hours. He mentioned that the sign would be fully engineered by a Wisconsin-licensed engineer.

At this time, questions were posed by Board of Appeals members.

Board of Appeals member Kenneth Tyler asked Michael Everett to confirm whether the aforementioned mature trees are located on the subject property or other people's property, to which Michael confirmed the latter. He said taking them down is not an option, but if it was, it would be less costly than the proposed sign. Kenneth Tyler asked Michael Everett for confirmation of the direction the sign would face; Michael replied that it would be facing the interstate so that it could be read from both north and south directions. John DuMez inquired about whether Michael is aware of the setbacks required for the sign. Michael stated that they will do whatever they need to do to make the adjustment for the sign to sit where possible on the property.

At this time, public input resumed.

- f. James Testroote said that you can go from Saukville up to County Road V and not have a sign glaring at you. The Kwik Trips in Oostburg and Belgium were limited to a certain sign size.
- g. John Patek commented that he is working with someone who is making portable light towers with a height of up to one hundred feet. He inquired about whether these signs are retractable, to which Michael Everett replied that they are not. The

proposed sign would be engineered to withstand snow and wind load. John Patek stated that portable light towers that are 100 feet tall need to be taken down when the wind picks up.

- h. Michael Everett said that the sign pole will be constructed with thick steel and will likely be installed in the ground at a 40-foot depth. John Patek said, probably like the Acuity flagstaff. Michael said that the faces of the sign are flexible, kind of like trampoline material, and will blow out in the event of a tornado.

Board of Appeals member Kenneth Tyler inquired about how the proposed size of the sign was determined. Michael replied that a crane was set up and driven on the property to take pictures at the proposed heights. Then, an image of the proposed sign was superimposed on the photos taken; the drawings provided to the Board of Appeals show the minimum relief needed to gain visibility of the sign above the trees, particularly for southbound traffic.

8. HEARING OF BOARD OF APPEALS FOR: A request by Michael B Everett to vary the applicable sign regulations. The request is to construct a sign with a height of 100 feet and an area of 697.5 square feet at N905 Sauk Trail Road, Cedar Grove, WI 53013: The hearing opened at 7:17pm. There were no further comments or discussions during the hearing.

Motion by Kenneth Tyler, seconded by John DuMez, to close the hearing at 7:18pm; the motion carried by unanimous voice vote.

9. DELIBERATION AND DECISION ON THE REQUEST BY MICHAEL B EVERETT:

John DuMez asked Town Building Inspector, Tom Huenink, who was present at the meeting, about his feelings on the height of the sign. Tom replied that he has no experience with a sign of that height, though he was sure that the sign would be engineered per the applicable specifications, and that a building permit would be required for the sign. Kenneth Tyler inquired about whether the Town Board would have future recourse if there were issues with the sign regarding safety, size, or other issues. Attorney Bauer provided that once a variance is granted, it is approved, and therefore permanent.

John DuMez inquired about whether the Board of Appeals could place conditions on any approval of the variance, to which Attorney Bauer confirmed that they could.

Jeffrey Kritz asked for further clarification about whether a Town building permit would be required, whereas the sign would be for commercial purposes, and the Town building inspector is not a certified commercial inspector. Tom Huenink confirmed that Jeff was correct, and Jeffrey confirmed that the Town would look to the state's commercial inspector for permitting of the sign.

Chair James Wonser inquired about whether the Board of Appeals should walk through the Board of Appeals' decision form. Attorney Bauer instead asked whether there was general consensus among the Board of Appeals, and whether they were satisfied with the hardship presented, which was the topography of the property and the trees associated with neighboring property.

John DuMez stated that trees and ravines along the Interstate 43 corridor are not unique. He mentioned comments from the public that there are no tall signs from Belgium to

County Road V along Interstate 43, stating that he recently drove through that area a couple of times.

Kenneth Tyler suggested that the state inspector might have more experience with situations like this, and perhaps they would have a better ability to judge what is best for this particular site, to which John DuMez replied that if the variance is granted, it is a done deal. Attorney Bauer confirmed that the state inspector would not be able to weigh in on the question at hand as long as state building code regulations are complied with.

Jill Huenink stated that the applicant presented a concern for safety about exiting trucks, and inquired, for discussion purposes, about whether this concern is considered to be a hardship.

John DuMez asked the board to consider whether the situation is unique, to which James Wonser said that it obviously is due to the trees affecting traffic visibility for southbound drivers that want to exit for fuel. Kenneth Tyler said that perhaps a bigger sign is better to avoid possible accidents, which could present a potential liability for the business; Attorney Bauer replied that a liability concern would be an indirect stretch and recommended that it not be used.

A member of the public, Tom Dittrich, asked whether approving this variance would set a precedent. Attorney Bauer replied that the nature of a variance is that it is unique to this particular property and should not be similar to other properties in the area.

Jeffrey Kritz commented that areas along I-43, such as Saukville, Belgium, Oostburg and the County Road V exit, are pretty open areas, so this is a unique property in comparison due to the trees. John DuMez replied that he didn't know about Oostburg, whereas there are trees and ravines if you're going southbound. Jeffrey and John acknowledged that there is visibility for northbound traffic on both the subject property and at Oostburg I-43 exit.

A member of the public, Jane Hamilton, inquired about whether board members conducted an on-site inspection of the subject property. Neil Teunissen, James Wonser, John DuMez, and Kenneth Tyler raised their hands, apparently having conducted independent inspections of the subject property. Jane also commented that it was difficult to hear from the back of the meeting room and asked the board members to elevate their voices.

Attorney Bauer asked board members to consider whether the features of the property present a hardship to the property owner, specifically, a hardship that other similar properties aren't faced with. As to size, is it far enough away that it needs to be that large for notice and viewing from the interstate?

John DuMez inquired about whether the board should go through its determination form. Attorney Bauer replied that they have had a terrific discussion, which is the basis for any decision, so he didn't think they needed to go through the questions. The board could make a motion at this time.

John DuMez moved to deny the request by Michael Everett based on that the property is not unique, trees are not unique, and the ravines are not unique along the I-43 corridor. There was no second to the motion; motion failed for lack of a second.

Kenneth Tyler inquired about whether the board could ask the property owner to revisit the size of the sign and have them come back again at some point to revisit this; James Wonser asked him to specify what should be different, to which Kenneth Tyler replied that size and height are the two biggest issues. Attorney Bauer provided that the application could be modified and presented at a future hearing.

Applicant Michael Everett stated that the sign size requested is the minimum size required for this site, and that a standard size for these signs is 1,200 square feet. The sign requested is by no means large; it is the minimum size required to get people off of the interstate, which is what drives the business. He provided that the hardship is that he cannot control what is on other people's property, citing the aforementioned trees and noting that surrounding property owners are not going to want to cut those down. Attorney Bauer said that under variance law, pure economics is not a basis for a variance. Michael said that he would like the board to understand that the aforementioned trees are not located on the subject property, and the inability to remove those is the hardship.

James Wonser inquired about whether, instead of a high sign, the business could put up a billboard on a different property, to which Michael replied that they might be able to look into this, but gas prices wouldn't be displayed on a billboard, which is very competitive. Kenneth Tyler said that money talks and inquired about whether the applicant has asked surrounding property owners to allow the trees to be cut down and to be compensated for the tree removal, to which Michael replied that they had not, and that the hardship presented is well seen in the applicant's eyes.

Motion by Kenneth Tyler to approve the application for the sign regulation. The motion was seconded by James Wonser. Further discussion followed.

John Dumez said that a sign dimmer is a good idea and asked for a compromise on that point, even if they couldn't quantify the brightness. Michael Everett stated that there is an automatic dimmer built into the sign due to the glare at night.

Attorney Bauer inquired about whether the board would like to amend their motion to add a condition that a dimmer for the sign be added to the approval of the sign regulation, to which **Kenneth Tyler and James Wonser agreed to amend the motion to add a condition requiring that the proposed sign include a dimmer.** Attorney Bauer called for Clerk Janelle Kaiser to take a roll call vote. **Jill Huenink: No. Neil Teunissen: Yes. James Wonser: Yes. Kenneth Tyler: Yes. John DuMez: No. Motion failed.**

The variance is not granted, whereas the Holland Town Code requires that the concurring vote of four members of the Board of Appeals shall be necessary to reverse any order,

requirement, decision or determination of any administrative official; to grant a variance; or to make an interpretation.

The meeting was recessed from 7:40pm until 8:07pm.

10. HEARING OF BOARD OF APPEALS FOR: A Second Amended Application by Atty. Ellen Anderson on behalf of David Valenti and Larry Britton appealing the Town Plan Commission's adoption of the Town Attorney's interpretation of zoning regulations. The Application requests a review of the legal interpretation that the proposed use of the dwelling at N2047 Pine Beach Road South, Oostburg, Wisconsin complies with Holland Town Code §330-27, R-1 Single-Family Residence District.

The hearing opened at 8:07pm. At this time, it was announced that James Wonser requested that Attorney Bauer run the meeting. There were no objections by Board of Appeals members or interested parties.

Attorney Bauer announced that he was informed of some questions that Town Attorney Eric Eberhardt has for Board of Appeals member Kenneth Tyler and invited Attorney Eberhardt to address Kenneth. Attorney Eberhardt stated that he was advised of Kenneth's expression of his point of view, his opinion, about the use of the property at N2047 Pine Beach Road South, as well as indication of his status as a Board of Appeals member, at a prior Plan Commission meeting during public input. He asked Kenneth to confirm whether this was correct, to which Kenneth stated that it was, however, he said that they were questions, not statements. Attorney Eberhardt asked Kenneth Tyler if he has a point of view, and whether that point of view is that he opposes the proposed use of the subject property, to which Kenneth stated that he has not made a decision, and that he is able to fairly and reasonably come to a decision depending on what is discussed this evening. Kenneth said that if Attorney Eberhardt is considering whether he should recuse himself, that he does not feel that he will need to do that, because he can be fair and just. Attorney Eberhardt asked Kenneth to confirm whether he can be impartial; Kenneth Tyler confirmed this as well as having an open mind on the issue, that he will listen to facts presented by the attorneys, and that only when all of that is done will he take that under advisement. Kenneth also confirmed that if he would rather have an alternate fill in on the matter, he would disclose this information.

There were no further questions presented to Kenneth Tyler regarding his impartiality.

John DuMez, a local surveyor, disclosed that he has had several clients over the past decade that are on both sides of the issue. Specifically, in the past, he has completed work for American Orthodontics (AO) and two signatories of the Amicus Memorandum provided to Board of Appeals members prior to tonight's meeting, Susan LaBudde and Charles Parker, III. He has also completed work for the Town of Holland. All of the aforementioned work is complete except for a boundary survey to be performed for the Town of Holland. John stated that no compensation is owed to him from AO or the other parties, and that he does not have any work, other than the aforementioned boundary survey, in progress or pending with anyone listed. He has not been involved with N2047 Pine Beach Road South and stated

that he feels that he can be fair and impartial on the matter at hand while serving on the Board of Appeals.

There were no concerns presented about John DuMez's disclosure.

At this time, Attorney Bauer asked the attorneys who will present arguments, and their co-counsel, to introduce themselves. Attorney David Muth introduced himself as well as Attorney Ellen Anderson, both of Quarles and Brady, on behalf of the petitioners. Attorney Eric Eberhardt introduced himself as well as Attorney Matt Nugent, both of Antoine, Hoeft, and Eberhardt, on behalf of the Town of Holland. Attorney Dan Blinka introduced himself as well as Attorney Lynn Ludke, both of Godfrey and Kahn, on behalf of American Orthodontics.

Attorney Bauer proceeded to state his understanding that Attorney Muth would present a stipulation of facts agreed upon by counsel for all interested parties. Attorney Muth reported that relevant background facts for purposes of today's decision-making can be taken from the October 14, 2024, legal opinion issued by Attorney Eberhardt. He also stated the following four (4) additional stipulations that have been entered into by the interested parties:

1. As currently constructed, Pine Beach Road South is not a two-lane road. It is too narrow for at least the majority of the road to have cars going in opposite directions to pass each other without one car having to leave the currently graveled portion of the road.
2. The parties were unable to agree as to the current speed limit or the egress and ingress on Pine Beach Road South, and have stipulated, the fact that evidence of that is not being introduced today does not constitute a waiver of those factual disputes in future litigation, if that occurs.
3. Page 2 of a statement of facts proffered to the Board of Appeals, which states that the American Orthodontics' house is "like a family-style house." The parties have stipulated that that is not a fact but rather an argument that the parties will make. One side will disagree with that. Another side will propose that that is what we should interpret.
4. Typically, American Orthodontics' guests arrive as a group, say, at General Mitchell Airport, and typically, therefore, those guests arrive in one or two vehicles. That's all. Arrive to the property in one or two vehicles.

At this time, Attorney David Muth, Attorney Dan Blinka, and Attorney Eric Eberhardt presented arguments supporting their positions. Let these minutes show that Attorney David Muth provided a binder of exhibits to each of the Board of Appeals members, of which exhibits 1, 3, 4, 5, and 6 were entered into the record. A copy of the exhibits will be filed in the office of the Clerk of the Board of Appeals. After the arguments were presented, Attorney David Muth presented a rebuttal.

At this time, public comment was allowed:

Susan LaBudde referred to her Amicus Memorandum, which was provided to Board of Appeals members in advance of tonight's meeting; the memorandum referenced "the

Forshee case.” Susan said that Forshee is an unusual case because there's a distinct difference between the majority vote on the factual disposition versus the legal reasonings that support it, and as put in her Amicus Memorandum, Attorney Eberhardt relied too much on one set of legal reasoning from that opinion that she thought was in error.

John Dickmann said that South Pine Beach Road has over 20 homes along a one-lane road on which trees have been cut as larger fire trucks were purchased by the first responding fire department; that's how narrow the road is. The dwelling at N2047 Pine Beach Road South is going to have 18 people staying there for 6 months out of the year. That's probably 18 trips of food for each individual coming down our road and back out. John Dickmann inquired about how often they will have their 2 septic tanks pumped, as the tanker truck will have to travel down the road and said that there are times when it takes him over 5 minutes to get from his property on South Pine Beach Road to Stokdyk Ingelse Road because he has to pull over into the woods to let someone in or out of their driveway. The aforementioned dwelling doesn't belong there; it doubled in size in comparison to AO's properties on Foster Road South because they weren't put to a stop then.

Dana Mueller identified herself as living on Foster Road South. Dana reported observing more than two or three vehicles when AO uses their properties on Foster Road South; it's more like seven to ten SUVs (sport utility vehicles) when they visit. It is a short stay, and they don't use the places as frequently as one might think. Dana thinks it's individuals staying at the property, although, she stated that she never sees the actual people. Dana also thinks that the individuals are there to get a tour of AO, to get trained on products they have purchased, and that they had to use reward points to stay at AO's property, though she's not sure of the facts on that.

Tom Dittrich stated that we know what a family isn't. He spoke to the proposed use of the dwelling at N2047 Pine Beach Road South, saying that corporate residences enable companies to save money, utilize sales tools, and personalize the business. Tom said he doesn't need it in his neighborhood.

Deb Krygiel spoke on the family aspect of this. Referencing Attorney Eberhardt's argument, Deb said that a family trust is simply when the beneficiaries are family members, and family members are what constitutes a family trust over a trust. She asked the board to keep that in mind as a legal term as they are figuring out this legal conundrum.

Scott Siemon spoke about the definition of family. His understanding is that the Town of Holland has multi-family dwellings and zoned residential area and that there is a definition of multi-family; there's family, and there's multi-family. He inquired about why there would be an interpretation that a single-family unit can be anything, and why even have a multi-family definition. Scott then said he was told that a single family functions as a single household that has access to the full house; he guesses that the guests that will stay at N2047 Pine Beach Road South can't waltz into a bedroom that isn't their own at will, so he doesn't think it qualifies as a single family.

Julie Kuether spoke about the building plans for the dwelling at N2047 Pine Beach Road South, noting that each bedroom and bathroom will have the same furniture, same color, same product code, and the same manufacturer. Nobody has bedrooms and bathrooms with the same furniture from the same manufacturer, besides a hotel or motel, as that is how facility buyers buy their furniture. Julie noticed that the building plans say "residential," however, they also say "American Orthodontics." If these were Julie's building plans, the permit would say "Julie Kuether," and that would be residential, but this is not residential. It's American Orthodontics. The attorney's argument that this is residential is wrong and it is going to affect and depreciate all properties. It's going to ruin the whole shoreland if it's not shut down tonight.

David Valenti identified himself as one of the petitioners. He read the definition of motel as defined by the Holland Town Code as "A series of attached, semi-attached, or detached sleeping units for the accommodation of transient guests." David noted that this definition of motel does not say that a fee is required, and that we have a motel going up on Pine Beach Road, as it is for the accommodation of transient guests. There has been previous discussion about AO not collecting a fee to stay at the subject property, however, this is garbage because there is consideration; this is a business making a profit. He encouraged the Board of Appeals to vote that the dwelling at N2047 Pine Beach Road South is a motel or at least think of it as a motel. It's clearly not a single-family residence.

Mike Van Eerden spoke about a poem by Carl Sandburg called, "The Lawyers Know Too Much." He also said that he knows what a family is, and what the intent of the R-1 zone is, telling the board that he thinks they know what it is. He appreciated Attorney Muth's comments, gathering from them that a family is what it is, the R-1 zone is what it is; he thinks the letter and intent of the law is on his side.

Attorney Bauer asked for any objections to admitting the following into the record as exhibits:

1. Attorney Anderson's November 27, 2024, letter and legal argument.
2. Attorney Blinka's November 27, 2024, letter and legal argument.
3. Susan LaBudde's November 19, 2024, Amicus Memorandum.

There were no objections; the exhibits above were entered into the record. A copy of the exhibits will be filed in the office of the Clerk of the Board of Appeals.

Motion by Kenneth Tyler, seconded by James Wonser, to close the hearing at 10:23pm; motion carried by unanimous voice vote.

11. DELIBERATION AND DECISION ON THE REQUEST BY ATTORNEY ELLEN ANDERSON ON BEHALF OF DAVID VALENTI AND LARRY BRITTON:

At this time, Attorney Bauer explained the applicable criteria for the board's decision. He explained that:

1. Per Holland Town Code Section 330-96A.(4) and Wisconsin Statute (Wis. Stat.) 62.23(7)(e)4, the Board has authority to hear and decide applications for interpretations of

the zoning regulations, after the Town Plan Commission has made a review and recommendation.

2. Per Holland Town Code 330-97 and Wis. Stat. 62.23(7)(e)4, an appeal may be taken to the Board by any person aggrieved from decisions or orders of Town officials within 30 days after the date of notice of the decision or order.

3. A person is “aggrieved” when the decision directly causes injury to the person’s legally protected interests. *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, 402 Wis. 2d 587, 977 N.W.2d 342.

4. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. Wis. Stat. § 62.23(7)(e)8.

5. The concurring vote of four members of the Board shall be necessary to reverse any order, decision, or determination of the Plan Commission or to make an interpretation. Holland Town Code § 330-95E.

6. Holland Town Code § 330-6 provides, “In the interpretation of this chapter and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Town of Holland and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.”

7. Ordinance interpretation begins with the language of the ordinance, if the meaning of the language is plain, then the plain meaning is applied to the facts at hand. *Bruno v. Milwaukee County*, 2003 WI 28, ¶ 6, 260 Wis.2d 633, 660 N.W.2d 656. If the meaning is ambiguous, then the decision maker must look to other sources beyond the text of the ordinance to determine the meaning of the ordinance.

8. Where the ordinance does not define a word or phrase, the word or phrase will be given its plain, ordinary and usually understood meaning. *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110.

9. Context and structure of the ordinance are important to meaning; therefore, the ordinance text is interpreted in the context in which it is used, not in isolation but as part of a whole and in relation to the language of surrounding or closely related ordinances. *Kalal* at ¶ 46. Explicit ordinance statements of purpose or intent are considered part of the context of the ordinance and these provisions may guide a plain-meaning interpretation of the ordinance. *Kalal* at ¶ 49.

10. If after examining the text of the ordinance, there is a plain, clear meaning, then there is no ambiguity and there is no need to consult other sources to determine the meaning of the ordinance. There is ambiguity if reasonably well-informed persons are confused as to the meaning of the ordinance, e.g. there are two or more reasonable meanings of the ordinance. *Bruno v. Milwaukee Cnty.*, 2003 WI 28, ¶ 19, 260 Wis.2d 633, 660 N.W.2d 656.

Attorney Bauer then sought to ascertain the board’s consensus. He asked whether there is consensus to uphold the Town’s interpretation of the R-1 zoning or if the consensus is that the interpretation is incorrect.

Kenneth Tyler said, considering the issues presented by the attorneys and the audience, the question is should the board take pause in approving the use of this residence, using common sense in what differentiates commercial from residential and family from transient. Kenneth stated that his feelings because of these issues is that the use of the subject property should be rejected.

John DuMez brought up definitions, and that the board's focus should be on definitions and interpretation, not on solving problems. The board is tasked with interpreting the Town's zoning ordinance. John stated that the definitions boil down to "one single-family dwelling," and that the Holland Town Code defines dwelling as "a building designed or used as a residence, but does not include hotels, motels, tents or cabins." He noted that the Holland Town Code does not define residence and referenced a book of legal terms that he personally brought to the meeting, which defines residence as, "Broadly, any place of abode that is more than temporary."

John provided his opinion that the subject property's use is not the intent of a single-family residence.

Jill Huenink stated that the exhibit 4 presented by Attorney Muth does define residence; it is defined as a house, so that is also a place of dwelling, which is included in the Town Code definitions. A residence is a home, a place, or a dwelling.

Ryan Wonsler stated that it's also a place where corporations or other enterprises does business and could possibly be defined as a motel in the Town ordinance's definition, where it's a series of attached or detached sleeping units for transients, so it should be considered whether it's a family or it's a transient member.

Jill continued that it's not only the act of living in a place for an extended period of time. It could also be simply a residence, a home, a house.

At this time, Attorney Muth asked Attorney Bauer whether Board of Appeals alternate members could participate in deliberation, to which Attorney Bauer replied that they are allowed to participate, but not vote.

Jill continued presenting her point of view as to the interpretation of single-family dwelling. She observed family as being defined in the Town Code as one or more individuals that are in a dwelling unit. The structure on the subject property is being used for that purpose. There are one or more individuals in that place. Kenneth Tyler inquired about whether that would be true of a motel. Jill replied that the board's consideration is not the interpretation of a hotel, rather, it's about whether this is a single-family residence.

Attorney Bauer said he was ready for a motion.

Kenneth Tyler moved that the Board of Appeals reject the proposed use of the American Orthodontics' property and reverse the Town Board's interpretation of the R-1 zoning code. There was no second to the motion; **motion failed for lack of a second.**

John DuMez asked Kenneth Tyler to repeat his motion, not an as official motion, but for comprehension purposes. There was discussion between John DuMez and Kenneth Tyler about how the motion could be amended; John stated that the board's purpose is to interpret the definition.

Kenneth Tyler suggested that there could be a motion to accept the petition of the Valenti Britton application. After a period of silence, Kenneth Tyler asked Attorney Bauer for advice.

Attorney Bauer repeated, as stated prior, that the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement as ought to be made, and to that end shall have all the powers of the officer from which the appeal is taken. Therefore, the board can uphold the Plan Commission's decision to adopt the Town Board and Town Attorney's legal opinion, or the board can reverse it.

Kenneth Tyler moved to reverse the Town Board's legal interpretation and Plan Commission's legal interpretation incorporating the Town attorney's legal opinion. The motion was seconded by John DuMez. Attorney Bauer called for Clerk Janelle Kaiser to take a roll call vote. **John Dumez: Yes. Kenneth Tyler: Yes. James Wonser: Yes. Neil Teunissen: Yes. Jill Huenink: No. Motion carried.**

Attorney Bauer noted that the motion means that the American Orthodontics property is not in compliance with the R-1 zoning code.

12. PUBLIC INPUT:

None.

13. MINUTES:

No action taken.

14. ADJOURN:

Motion by Kenneth Tyler, seconded by James Wonser, to adjourn the meeting at 10:43pm; the motion carried by unanimous voice vote.

Respectfully submitted,
Janelle Kaiser, Board of Appeals Clerk