DANE COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE DECEMBER 17, 2009 MEETING

MEMBERS PRESENT: Alan Colvin, Carlton Hamre, Al Long, Steven Schulz, Sue Studz.
OTHERS PRESENT: Assistant Zoning Administrator Kris Schutte, Zoning Administrator Roger Lane

I. CALL TO ORDER:
Chair Schulz called the meeting to order at 6:35 p.m. in Room 309 of the City-County Building and made an announcement regarding rules and procedures followed by the Board.

II. PUBLIC COMMENT
Chair Schulz offered an opportunity for public comment on general items not included on the current agenda. There were no registrants for public comment.

III. APPROVAL OF MINUTES
Motion by Studz/Colvin to approve the Minutes of the November 19, 2009 Public Hearing of the Dane County Board of Adjustment, with the following correction: On Page 4 of 9, the last line “Zoning Administrator Lane 8:10 p.m.” was corrected to read “Zoning Administrator Lane returned to the meeting at 8:10 p.m.” Assistant Zoning Administrator (AZA) Schutte explained there was an inadvertent omission. Motion carried, 5 – 0.

AZA Schutte noted there were no Minutes for the December 10, 2009 Site Inspection meeting of the Dane County Board of Adjustment, as the meeting was cancelled due to a winter storm. She told the Board that Zoning Inspector Patrick Klinkner visited all the sites and took photos for each file. Chair Schulz noted that this was the first time in his experience that the Board failed to visit the sites of appeals, and thanked Klinkner for his service.

IV. PUBLIC HEARING FOR DECEMBER 17, 2009 APPEALS
1. Appeal 3585. Appeal by Covance Laboratories Inc. (Kraemer Brothers, LLC, agent) for a variance from maximum allowable height of a structure permitted within the Dane County Regional Airport Height Limitation Zone as provided by Section 78.03, Dane County Code of Ordinances, to allow a temporary construction crane at 3301 Kinsman Boulevard, being Lot 1, Certified Survey Map 12516 in the SE 1/4 NE 1/4 Section 29, Town 08 North, Range 10 East, City of Madison.

COMMUNICATIONS:
AZA Schutte reported there was no correspondence from the City of Madison; however, no City action is required. AZA Schutte read the Staff Report.

VARIANCE REQUESTED: Allow temporary construction crane needed for Covance project involving placement of materials and equipment on roof of existing building.

Airport Height Limitation Zone (AHLZ) Variance:
Existing grade elevation 859 feet Above Mean Sea Level (AMSL) as per Federal Aviation Administration (FAA) at proposed crane location
Maximum Height of Structure Permitted in AHLZ: 913 ft. AMSL (54 ft. Above Ground Level [AGL])
Proposed Height of Temporary Crane: 1,058 feet AMSL as per FAA (199 feet AGL)

VARIANCE NEEDED: 145 feet for temporary construction crane only

IN FAVOR: Paul Bartleson, CSP, Senior Safety Director, Kraemer Brothers, LLC, Plain, WI - Agent
ZONING ADMINISTRATOR’S COMMENTS: Zoning Administrator Roger Lane recommended abeyance, since there is no FAA Determination, and the structure needing a variance of 145 feet would be located within 600 feet of the Airport runway. He noted the Zoning Division proposes an aggressive approach to amending Chapter 78 -- adding a section to the existing ordinance requiring
review of temporary cranes as an administrative process -- rather than wait for comprehensive revision of the chapter.

**OPPOSED:** None

Chair Schulz stated no rebuttal was needed, but assured the applicant that further input would be allowed, if necessary. Discussion ensued.

**Motion:** Long/Hamre to approve a variance of 145 feet or 1,058 feet Above Mean Sea Level (AMSL) from the maximum permitted AHLZ elevation of 913 feet AMSL to allow only a temporary construction crane for a proposed Covance project involving installation of a permanent structure on the roof of the existing building, with CONDITIONS:

1. FAA Determination and conditions for the temporary crane; and
2. Airport conditions for the temporary crane.

Schutte reiterated that a new variance application for the proposed exhaust stacks must be submitted, and received verbal approval from Chair Schulz to accept an application for the January Public Hearing.

**Finding of Fact:**

1. Airport Height Limitation Zoning authority in all Dane County municipalities within three (3) miles of the Dane County Regional Airport is granted to Dane County Zoning Division under Chapter 78 Dane County Code of Ordinances (DCCO).
2. Covance Laboratories buildings are located adjacent to the Dane County Regional Airport within the City of Madison and in the Airport Height Limitation Zone (AHLZ). The Covance building and proposed crane locations are not on Airport property, but were at one time, according to the Agent; current FAA maps erroneously showed the Covance complex as “On-Airport.”
3. Kraemer Brothers applied for a variance for a temporary construction crane to move “pieces of equipment and materials” to the roof of the main Covance building. Because the application statement and plans did not show that a new exhaust stack would be installed, Appeal 3585 does not include a request for variance for the stack.
4. A Federal Aviation Administration (FAA) Determination for the temporary construction crane is pending, but has been delayed because it was erroneously considered an off-airport project. A separate FAA application is required for the exhaust stack installation.
5. Dane County Regional Airport staff has been apprised of the proposed crane and of Appeal 3585, but has chosen to wait for the FAA Determination before providing comments and conditions.
6. The existing Covance building exceeds the maximum AHLZ. It is a pre-existing, non-conforming structure in the AHLZ, with a 949.6 ft AMSL HVAC penthouse height. Part of the complex was built before the AHLZ Ordinance was adopted in 1976, and additions were built before Airport runways were lengthened in the 1990s. At that time, the maximum AHLZ elevation was reduced from 926.2 feet AMSL to 913 feet AMSL. Five (5) previous variances have been granted for Covance projects for temporary construction cranes and permanent additions.
7. Kraemer Brothers proposes to use a temporary construction crane to add “some stacks” to the roof of the main Covance building, according to the Agent, who expressed willingness to meet all conditions of the FAA and Airport to ensure safety during crane operations. He told the Board Covance officials and Kraemer Brothers assumed previous variances would apply to the new exhaust stacks because they would be lower than the maximum height of the existing building. The project would take two to three weeks, but must now be delayed until FAA Determination is complete and a variance application for the permanent stacks is processed.

**Conclusions:**

1) Unnecessary Hardship: It would be unnecessarily burdensome to prevent continued permitted uses of the building, for which the temporary crane is required.
2) Unique Limitations of the Property: The history of the existing non-conforming status of the Covance complex in close proximity to the Airport is a unique limitation.
3) No Harm to Public Interests: Compliance with FAA and Airport conditions will ensure the public interest.

**Motion carried:** 5 – 0.
NOTE: The Board took a very brief break. Zoning Administrator Lane left the meeting at 7:05 p.m.

2. Appeal 3586. Appeal by Mark France (Timothy Moore, Moore Surveying, LLC, agent) for a variance from minimum required setback from road as provided by Section 10.17(4), Dane County Code of Ordinances, to permit existing house and proposed land division by Certified Survey Map at 220 Nygard Street, being Lot 20 and Part Lot 19, Hammersley Heights, Section 35, Town of Madison.

COMMUNICATIONS:
11/10/2009 Town of Madison Acknowledgment
12/17/2009 Email from County Land Division Review Officer Norb Scribner answering a query from AZA Schutte regarding his review of Mr. France's Preliminary Certified Survey Map (CSM): “The CSM, as modified, will be approved by Dane County.”

VARIANCE REQUESTED: Purpose: Allow proposed two-lot Certified Survey Map, with an existing house and garage on one lot.
Setback from Road Variance:
Minimum setback from right-of-way required: 20 feet
Actual Setback: From front lot line: 18.5 feet.
VARIANCE NEEDED: 1.5 feet.

IN FAVOR: Timothy Moore, Moore Surveying, LLC, agent, Fitchburg, WI – Agent
Mark France, Madison, WI – Owner
Kate Blood, Madison, WI – Prospective buyer

ZONING ADMINISTRATOR’S COMMENTS: AZA Schutte reported that Zoning Administrator Roger Lane had no comments or recommendations for this appeal.

OPPOSED: None
No rebuttal was needed. Discussion ensued.

Motion: Hamre/Studz to grant a variance of 1.5 feet from the minimum 20 feet required setback from right-of-way to permit the proposed land division by two-lot Certified Survey Map, with an existing house and garage on one lot.

Finding of Fact:
1. Mr. France owns two legal parcels in Hammersley Heights, platted in 1907, which have historically been used as one residential property. The property is zoned R-3 Residential, is served by public sewer, and is the last property on the north side of a “dead-end” street.
2. The France property includes a house located entirely on the easterly parcel, described as “Part of Lot 19, Hammersley Heights,” and a detached 1-1/2 stall garage, located on the property line between Lots 19 and 20.
3. Mr. France wishes to divide the property into two residential-use lots by Certified Survey Map (CSM), creating an 11,220 square foot (SF) lot for the existing house and garage (Proposed Lot 1) and a 27,063 SF lot for a new house (Proposed Lot 2). Both proposed lots would meet Chapter 10 - Zoning requirements regarding the minimum R-3 Residential lot width of 60 feet at the building setback line and minimum R-3 lot area of 8,000 square feet for sewered lots.
4. Only one of the two proposed lots (Lot 2) would meet Chapter 75 – Subdivisions required minimum frontage of 66 feet on a straight right-of-way. The other lot (Lot 1) would meet the exception available in Chapter 75 for frontage on a cul-de-sac, which is reduced to an arc length of 30 feet. The agent worked with Zoning and Land Division staff, revising earlier versions of the CSM to eliminate the need for any variances to Chapter 75.
5. The agent also worked with Zoning staff to reduce the need for variances to Chapter 10 to one variance for setback from the new cul-de-sac right-of-way of Nygard Street for a corner of the front porch of the existing house.
6. Mr. Moore told the Board that no additional land is available from the railroad right-of-way to the west or from the neighbor to the east to provide additional lot width. He conferred with City of Madison staff and used the City Engineering Department’s. cul-de-sac radius specification of 50 feet, rather than the County’s 60 foot standard, since the City will annex this area in 2022. The County Land Division Review Division has indicated the CSM may be approved with the City’s specification; the City’s signature is required for approval of the CSM.

7. Mr. Moore said the development of another residential lot on a dead-end street serves the public interest, would have no negative impact on implementation of the South Madison Neighborhood Plan, and would meet City infill criteria. Mr. Moore submitted a copy of a 09/25/2009 email from City staff to AZA Schutte. In response to a question from AZA Schutte, he explained that a deck in front of the porch has been removed from the existing house, reducing the variance needed.

8. Mr. France stated the addition of another house on the end of the cul-de-sac would improve security for all residents of the neighborhood.

9. Ms. Blood stated she intends to build a small-footprint, energy-efficient house on proposed Lot 2, in keeping with the neighborhood, and will try to preserve as many large trees as possible.

Conclusions:
1. Unnecessary Hardship: The agent cooperated with County and City staff to reconfigure the two lots, preserve existing structures, and reduce the need for variances by complying as much as possible with the Zoning and Subdivision Ordinances. Financial factors were not considered in granting a variance.

2. Unique Limitations of the Property: The original lots were platted in 1907 and do not provide lot width meeting current standards. The lots will be annexed to the City of Madison in 2022.

3. No Harm to Public Interests: The reduced setback from right-of-way is minimal, and will pose no hazard at the end of the cul-de-sac.

Motion carried: 5 – 0.

3. Appeal 3587. Appeal by Walgreen Company (SC Environmental LLC, agent) for a variance from maximum allowable height of a structure permitted within the Dane County Regional Airport Height Limitation Zone as provided by Section 78.03, Dane County Code of Ordinances, to allow a temporary construction crane at 6343 Blanchars Crossing, being Lots 15, 16 and 17, Chase Farms Plat, Section 32, Town 09 North, Range 10 East, Village of DeForest.

COMMUNICATIONS: AZA Schutte reported she had received no communication from the Village of DeForest; however, no Village action is required in regard to this variance request.

VARIANCE REQUESTED: Allow temporary construction crane to install recycling equipment on roof of Walgreens Distribution Center building.

Airport Height Limitation Zone (AHLZ) Variance:
Existing grade elevation: 880.3 feet Above Mean Sea Level (AMSL) at proposed temporary crane location on “dock roadway” per SC Environmental application; 884 ft. AMSL per Federal Aviation Administration (FAA) study “in progress.”

Maximum Height of Structure Permitted in AHLZ: 1009 feet AMSL per FAA, or 125 ft Above Ground Level

Proposed Height of Temporary Crane: 1080.3 feet AMSL (200 feet AGL) per SC Environmental application; 1,080 AMSL as per FAA study “in progress,” or 196 feet Above Ground Level.

VARIANCE NEEDED: 71.3 feet as per SC Environmental; 71 feet as per FAA

IN FAVOR: Alan Sherwood, SC Environmental LLC, Mequon, WI -- Agent

ZONING ADMINISTRATOR’S COMMENTS: AZA Schutte reported that Zoning Administrator Roger Lane had no specific recommendations or concerns regarding this Appeal, but reiterated a general recommendation that the Board require compliance with all FAA and Airport staff conditions.

OPPOSED: None

No rebuttal. Discussion ensued.
Motion: Studz/Colvin to grant a variance of 71 more or less feet from the maximum elevation of 1009 feet Above Mean Sea Level permitted in the Airport Height Limitation Zone to allow operation of a temporary construction crane at an elevation of 1,080 feet AMSL or 196 feet above ground level to install recycling equipment on the roof of the Walgreens Distribution Center building, as proposed, with CONDITIONS.

1. FAA Determination and conditions for the temporary crane; and
2. Airport conditions for the temporary crane.

Finding of Fact:
1. Airport Height Limitation Zoning authority in all Dane County municipalities within three (3) miles of the Dane County Regional Airport is granted to Dane County Zoning Division under Chapter 78 Dane County Code of Ordinances (DCCO).
2. The Walgreens Distribution Center buildings are located in the Village of DeForest and Airport Height Limitation Zone (AHLZ). Walgreens building additions constructed in 1993 and 1997 (when the area was still in the Town of Windsor) did not need AHLZ variances. No previous variances for construction cranes or permanent structures were found for the Walgreens building.
3. A temporary construction crane is needed to place equipment for a recycling system on the roof of the Walgreens Distribution Center. The crane would be needed for about four (4) hours on one day only, probably in February, depending on weather conditions. The recycling equipment to be installed will not exceed the AHLZ height.
4. Mr. Sherwood reported he has been in contact with Dane County Regional Airport staff and the Village of DeForest Engineer, and has applied for FAA Determination of No Hazard to Air Navigation 11/16/2009. The Determination was “In Progress” on the day of the Public Hearing.
5. Mr. Sherwood explained that the crane is the safest method for moving the equipment to the roof; other methods would require closing public roads. The recycling equipment would more efficiently, economically and ecologically increase shredded corrugated cardboard baling capacity for the Walgreens distribution facility.

Conclusions:
1. Unnecessary Hardship: It would be unnecessarily burdensome to prevent this improvement to a permitted facility. The crane is necessary for the work proposed.
2. Unique Limitations of the Property: The location is near the edge of the three-mile limit of the Airport Height Limitation Zone, and is separated from it by the Cherokee Marsh. The very large distribution facility has unique recycling needs.
3. No Harm to Public Interests: The proposal for use of a temporary crane would accomplish the task in the safest manner, with the least disruption to the public, and for a very brief window of time. The applicant is willing to comply with all FAA and Airport conditions.

Motion carried: 5 – 0.

V. OTHER BUSINESS:
1. Zoning Administrator’s and Assistant Zoning Administrator’s Reports, including distribution of materials, if any, discussion, and possible action regarding the following topics:
   a. Ordinance Amendment regarding temporary structures in the Airport Height Limitation Zone. AZA Schutte reiterated the Zoning Administrator’s comments earlier in the evening regarding needed changes to Chapter 78, and told the Board the Zoning Division planned to disseminate information about the change to cities and villages in the AHLZ, to businesses with multi-story buildings, and to crane operators and heavy construction contractors. Changing the ordinance would allow more consistent review of all cranes in the AHLZ, and reduce the burden on businesses. Board members expressed support of the proposed change.

Motion: Schulz/Studz to support and encourage Zoning Division staff to proceed as quickly as possible with an amendment to Chapter 78 specifically allowing temporary structures, including temporary construction cranes, to exceed Airport Height Limitation Zone maximum elevations, subject to administrative review procedures, rather than by a variance appeal process.
Motion carried: 5 – 0.

b. Boards of Adjustment/Boards of Appeals Workshop. Schutte announced a Board of Adjustment/Board of Appeals Workshop has been scheduled for Thursday, February 18, 2010. An agenda is being developed. The Board discussed possible presentation topics and formats, and asked Schutte to inform the Dane County Corporation Counsel’s office of the workshop. No action was taken by the Board.

2. Discussion and possible action regarding Agendas for the regularly scheduled meetings of the Dane County Board of Adjustment: January 14, 2010 Site Inspections and January 28, 2010 Public Hearing. AZA Schutte reported there were no applications for the January Public Hearing. She requested and received permission from Chair Schulz to accept an application from Covance after the deadline for the January meeting for the exhaust stack that was not included in Appeal 3585, if submitted in time to publish a Public Hearing Notice. She asked Board members to contact her if they are unable to attend either meeting; she will consult the Chair on agendas.

VII. ADJOURNMENT:
Motion: Studz/Colvin to adjourn. Motion carried: 5 -- 0 at 8:06 p.m.

Respectfully submitted,
Kristine L. Schutte, Dane County Assistant Zoning Administrator, Recording Secretary

MINUTES FILED WITH THE COUNTY CLERK: January 20, 2010.

MINUTES FILED IN THE OFFICE OF THE DANE COUNTY PLANNING AND DEVELOPMENT DEPARTMENT, DIVISION OF ZONING:

SIGNED BY: Roger W. Lane, III
Dane County Zoning Administrator

THE MINUTES OF THE December 17, 2009 BOARD OF ADJUSTMENT MEETING
WERE APPROVED BY THE BOARD OF ADJUSTMENT ON ______________
AS PRESENTED. / AS AMENDED TO INCLUDE THE FOLLOWING:

SIGNED BY: Steven Schulz
Chair, Dane County Board of Adjustment

Date