



CITY OF WAUWATOSA

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COMMUNITY DEVELOPMENT COMMITTEE MEETING Tuesday, November 30, 2004

PRESENT: Alds. Becker, Birschel, Kopischke, Krill, Krol, Sullivan, Treis -7

EXCUSED: Ald. Subotich

ALSO N. Welch, Community Dev. Dir.; A. Kesner, City Atty.; Ald. Grimm, Dist. 4;
PRESENT: Chief D. Redman, Dep. Chief J. Hevey, Fire Dept.

Ald. Kopischke as Chair called the meeting to order at 8:05 p.m.

Zoning Code Amendment – Changes to Special and Conditional Uses

The committee reviewed a proposed ordinance amending Chapters 24.23.015, 24.23.020, 24.24.015, 24.24.020, 24.26.020, 24.26.025, 24.27.015, 24.27.020, 24.34.020, 24.34.025, 24.36.020, 24.36.025, and 24.38.020 of the Code to correct designations of special and conditional uses, as previously reviewed by this committee. Ms. Welch reported that some Special Uses have been changed to Conditional Uses, requiring review by the Plan Commission and this committee prior to final approval by the Common Council. The Plan Commission will have the authority to approve other Special Uses, and the Board of Zoning Appeals will function as an appeals body rather than as secondary review. Two additional ordinances related to these changes, which were previously recommended for adoption, will also now be forwarded to the Common Council for final action.

Moved by Ald. Treis, seconded by Ald. Becker to recommend to Council
adoption of the proposed ordinance. Ayes: 7

Zoning Code Amendment – Massage Therapy as a Conditional Use in AA Commercial District

The committee reviewed a proposed ordinance amending Chapter 24.24 of the Code by adding massage therapy as a Conditional Use in the AA Commercial District. Ms. Welch reported AA Commercial zoning applies to limited areas, particularly along the west side of Mayfair Road between North Avenue and Burleigh Street. It requires two-story buildings with uses that are generally office and commercial rather than retail. Ms. Welch said that massage therapy seems to be appropriate for that setting. The committee was provided with a list of 24 current massage establishments licensed by the city.

Kathy Marker, N86 W14575 MacArthur Drive, Menomonee Falls, was present representing Medical Associates, which operates a health services clinic in Menomonee Falls and at 2421 N. Mayfair Road. She said that about six months ago they started offering massage and yoga in their Menomonee Falls facility and would like to offer massage at their Wauwatosa site.

Ald. Sullivan questioned whether any of the existing massage establishments had requested zoning changes. Ms. Welch said this is the first request for a site in AA Commercial zoning. Massage therapy is currently a

Conditional Use in the AA Business District, which covers the bulk of the city and is where most of the establishments are located, with the exception of the Wisconsin Athletic Club which is in Medical Center and Institutions zoning.

Ald. Sullivan stated a concern that this proposed change would be a disservice to existing establishments that located their business within the zoning requirements. It is not necessarily advisable, he felt, to revise the existing zoning structure that has been in place and effective for many years.

Moved by Ald. Sullivan, seconded by Ald. Becker to recommend denial of the requested change –

Ms. Welch said that massage has evolved considerably in the 30 years since the city's zoning ordinance went into effect when it was perceived as somewhat borderline and viewed with disfavor. With the evolution of alternative treatment, however, massage has become more mainstream and is being offered by medical facilities, sports clinics, beauty salons, and facilities such as the YMCA and Wisconsin Athletic Club. Ms. Welch suggested that at this point it may well be worth discussing massage therapy in general.

In response to further discussion, Ms. Welch added that AA Business zoning is in many ways almost too broad in that it covers a full spectrum of retail, office, and commercial uses—everything from small local businesses to Mayfair Mall. AA Commercial zoning is more restrictive with some limited retail uses but mostly commercial, office, and professional uses. AA Professional Office District zoning is oriented to small neighborhood locations with one or two buildings with office-type uses but no retail.

Ald. Krol observed that there is not really much difference between AA Business, where many massage establishments chose to locate, and AA Commercial zoning, where the use may be expanding. Ald. Treis and Ald. Sullivan debated the ability of a business to add massage treatment to their services under current zoning. The Chair said that this proposal does not seem to put businesses at a competitive disadvantage and seems to be a reasonable amendment to a 30-year-old code.

Roll call vote on the motion to deny, Ayes: 2 (Sullivan, Becker); Noes: 5
Motion fails.

Moved by Ald. Treis, seconded by Ald. Krill to recommend approval of the zoning code amendment. Roll call vote, Ayes: 5; Noes: 2 (Sullivan, Becker) Motion passes.

Conditional Use – 2421 N. Mayfair Road

Ms. Welch reported that John E. Hoffman, 2400 Mayfair Ltd. Partnership, has requested a Conditional Use in the AA Commercial District at 2421 N. Mayfair Road for a massage therapy establishment. The Plan Commission unanimously recommended approval with hours of operation of Monday through Friday from 8 a.m. to 8 p.m..

Kathy Marker, N86 W14575 MacArthur Drive, Menomonee Falls, was present representing Medical Associates, which offers massage therapy in Menomonee Falls and would like to offer it to patients at their Wauwatosa facility.

Moved by Ald. Krill, seconded by Ald. Birschel to recommend approval of the Conditional Use contingent upon the previously recommended zoning code change, the necessary licensing and permits, and hours of operation of 8 a.m. to 8 p.m. Ayes: 6; Noes: 1 (Sullivan)

Zoning Code Amendment – Interior Yard Setbacks

Ms. Welch reported that the Joint Committee on the Comprehensive City Plan recently endorsed an amendment to the Code to change the interior yard setbacks for principal buildings on corner lots in the Estate, AAA, and AA Single Family Residence Districts. The Plan Commission unanimously recommended approval.

Ms. Welch explained that the current zoning code was adopted after the city was largely developed. It requires interior setbacks for corner lots that actually set them farther apart from other houses in the same block, and it makes a number of those residences legal non-conforming. The goal of the amendment is to make the required distance between houses consistent. It applies only to the interior setback between structures and does not change the requirement for additional setback from the street side of corner lots.

Moved by Ald. Treis, seconded by Ald. Krol to recommend introduction of an ordinance to implement the recommended change and adoption of a resolution setting an appropriate public hearing date. Ayes: 7

Zoning Code Amendment – Retail Establishments over 5,000 Square Feet

Ms. Welch reported that a proposed ordinance creating Chapters 24.23.090 and 24.24.035 to create additional restrictions on the development of large retail sites has been reviewed by the Plan Commission and the Joint Committee on the Comprehensive Plan and approved in concept. With the existing moratorium on "big box" development due to expire in February, the goal is to set a public hearing date while still giving the Plan Commission and this committee more time to review the proposed ordinance. Staff is continuing to revise it, having had input from the engineering department and currently discussing recommendations on design guidelines with the Design Review Board.

Asked about the possibility of extending the moratorium, Ms. Welch said that could be considered, if necessary, in January. The point of the moratorium was to develop an ordinance, and a good faith effort is being made to do that, she noted. It would be within the Council's right to extend the moratorium if extra time is needed to finalize the ordinance. City Attorney Kesner concurred that the moratorium could be extended if progress is being made but more time is required for completion.

(Ald. Birschel excused, 8:44 p.m. -6)

Moved by Ald. Krill, seconded by Ald. Krol to recommend introduction of an ordinance and adoption of a resolution setting an appropriate public hearing date. Ayes: 6

Proposed Village Newspaper Vending Ordinance

The committee reviewed a letter from Carl Templer, Manager of the Village Business Improvement District (BID), and a proposed ordinance relating to newspaper vending in the Village that was drafted with the assistance of City Attorney Kesner. Mr. Templer explained that newspaper vending boxes have increasingly been attached to street light poles and traffic signal standards in the Village despite the fact that such installation is not allowed by code. To address this growing problem and improve Village aesthetics, the BID would like to install newspaper "hotels," which would accommodate multiple publications. Anyone wishing to vend a particular newspaper would have to pay a fee for use of a "room" in the hotel for a period of time.

Mr. Kesner said that the proposed ordinance is modeled on similar ordinances in Appleton and in Florida to provide leased space for newspaper vending. It is fairly open ended and has very few requirements in and of itself but rather leaves a lot to administrative detail. A city ordinance passed in 1999 regulates news boxes in the public right-of-way by requiring permits and establishing requirements regarding neatness and use in the public right-of-way. The proposed ordinance expands that by limiting the kinds of boxes and giving any business improvement district the right to manage them in consultation with the Director of Public Works, who has discretion on locations and placement.

Ald. Grimm said that he has complained about newspaper boxes in the Village for years, one concern being newspapers that are left on top of the boxes and ultimately blow around the neighborhood. He said that he has some concerns about the proposed ordinance. It does not specify the number of available units and does not establish a penalty for newspapers that end up cluttering the neighborhood. He also wondered if the hotels would block any parking spaces or bus stops, and he questioned who would be liable since the BID would own the units. Also, what control does the city have beyond issuing occupancy permits or removing something installed illegally? What would be done about chaining bikes to the units? Who will enforce the ordinance? What about use of private property? Ald. Grimm was also concerned about extra work imposed on the City Clerk's office in connection with the lottery process. He requested that the proposal be held for further input from alderpersons representing the BID area.

Mr. Kesner said he spoke with Ald. Grimm today and could redraft the ordinance to accommodate his concerns. For example, permit fees could be shared so that public works costs would be paid as part of the fee. Under the current ordinance, public works collects the street occupancy fee and any fee for placement in the public right-of-way, which is the only location over which the city has any control. He envisioned some type of subleasing by the BID, once the permit is issued, to cover fees and management costs. There would also be a provision to indemnify the city against damages. There hasn't been any discussion of the number of available units, although the committee or the Council could very well make a determination. The penalty for not removing old papers could be made more clear. The Director of Public Works was given control over locations within public right-of-way to make sure there aren't problems with blocking access. The City Clerk's office could handle any lottery, which could be done in the form of a drawing and shouldn't be too burdensome.

Ald. Krol said he has seen similar newspaper hotels in large cities and is not opposed to them in the Village. Because of the amount of foot traffic there, he would have some concerns about proper placement. He would like to see the local alderpersons involved in some of the discussion.

(Ald. Birschel present, 8:55 p.m. -7)

Ald. Sullivan said that the present boxes, which are of various sizes, shapes, and colors and are in various states of repair, would be replaced by a better organized group of boxes. He asked if the BID could perhaps lease the boxes on a highest-bid basis.

Moved by Ald. Sullivan, seconded by Ald. Krill to hold this matter for two weeks so that the ordinance can be redrafted –

The Chair suggested clarifying the time during which occupancy would be permitted. Ald. Krol said that his request is for contact by the BID and the City Attorney with alderpersons from the four districts encompassing or abutting the Village. Mr. Kesner indicated that he would provide those alderpersons with drafted changes. He noted that the ordinance only addresses public property. It states that all size and location decisions shall be subject to the absolute discretion of the Director of Public Works. Mr. Kesner indicated that he would also address the question of a lottery process versus leasing to the highest bidder.

Vote on the motion, Ayes: 7

National Incident Management System for Emergency and Disaster Operations

Chief Redman reviewed his memo of November 15, 2004, recommending that the City formally adopt the National Incident Management System (NIMS) as the operational plan for management of emergency and disaster situations. Local participation in federal funding and operational programs for emergencies is linked to participation in NIMS, which has been adopted by the federal government for interagency operations. Staff is preparing to implement NIMS through online training and formal training programs next spring. The system is fully compatible with existing incident command procedures in use by the fire department since 1982.

Moved by Ald. Treis, seconded by Ald. Krill to recommend to Council adoption of the National Incident Management System for management of emergency and disaster situations –

Responding to questions, Chief Redman further explained that NIMS is a standard set of policies established nationwide that would ensure compatibility when assisting other municipalities in emergency situations. Its adoption is a requirement for grant applications. It will not establish any unnecessary financial or operational burdens, and it will be a relatively natural process to incorporate the requirements over the next couple of years.

Vote on the motion, Ayes: 7

The meeting adjourned at 9:10 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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