



CITY OF WAUWATOSA  
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**COMMUNITY DEVELOPMENT COMMITTEE MEETING**  
**Tuesday, April 12, 2005**

PRESENT: Alds. Becker, Birschel, Kopischke, Krill, Krol, Subotich, Sullivan, Treis -8

ALSO PRESENT: N. Welch, Community Dev. Dir.; A. Kesner, City Atty.; Ald. Maher, 8th Dist.

Ald. Kopischke as Chair called the meeting to order at 8:03 p.m.

**Conditional Use – 10944 W. Capitol Drive**

Held from the previous meeting was a request by Jason Krasno, Milwaukee Mudd, for a Conditional Use in the AA Business District at 10944 W. Capitol Drive for a drive-through espresso stand using a 64 sq. ft. prefabricated structure. Mr. Krasno was present.

Ms. Welch reported that since the previous meeting staff has researched the question of where semi-permanent structures might fall under the descriptions of buildings in the city's zoning code. The definition of "building" indicates a permanent fixture or principal building on a site, and accessory buildings are those that provide a use accessory to the existing business such as a storage shed or garage. Temporary buildings are defined as serving a stated temporary purpose with a stated temporary time frame. A kiosk does not seem to fit into any of those categories. Although the intended use is allowed under the zoning code, the question is the structure itself.

Tony Gazzana, Milwaukee Mudd, 1417 Wauwatosa Avenue, presented copies of ordinances from Lexington, South Carolina and Grand Forks, North Dakota that define kiosks. He pointed out on a drawing the location of a proposed curb to be installed to the west of the structure angling slightly eastward to move traffic toward the southeast exit rather than toward 110th Street. He noted that issues such as parking have been addressed and said they have met all the licensing requirements of the state Department of Agriculture for handling of gray water. He presented a sample of the brick fascia to be used on all four sides of the building to blend with the main building on the site and give the structure a more permanent look. The Board of Public Works has approved a variance for handling roof runoff, and electrical service will be underground trenched to the site. Having its corporate headquarters in Wauwatosa, he said that Milwaukee Mudd would like to have a presence here. Thirty or more similar units are planned in southeast Wisconsin.

Ald. Maher said that one stipulation made at the last meeting was for the owners to work with the aldermen of the district to disseminate information, but he has not been contacted. He has received e-mails and phone calls in opposition and found the owner of the health food store at this site is also opposed. Although there was a comment previously that there were no concerns about traffic, the City Engineer has said there are several traffic concerns. Also, a kiosk provides no property value to the city other than potentially through personal property. Big Bend reportedly rejected a kiosk because of traffic concerns. West Bend allowed it but on a

separate lot with its own parking. Milwaukee has been holding a proposal for a kiosk at 8th and Layton since December. Ald. Maher advised denial of this request since kiosks are not permissible if we don't have an ordinance dealing with them, residents don't want it, and other businesses are not supportive.

Mr. Gazzana said that the Big Bend police commissioner, traffic department, and planning commission all were in favor of a kiosk but felt that the proposed site was too small and did not have enough parking. The site in Milwaukee was approved last month, but an issue with the landlord is still pending. The West Bend site is not a Milwaukee Mudd business. Mr. Gazzana disagreed that all the neighbors are opposed. When approaching residents who abut the alley he found a couple that opposed the business, but several had no opinion and another encouraged them to proceed.

Mary Kees, 10943 Glenway Court, said she has talked to more neighbors than Mr. Gazzana and found that most feel there is no benefit and don't want this. It will add more traffic to an already congested area that is especially busy during rush hours. Residents rely upon alderpersons to represent them and don't understand the fact that they are considering this proposal.

Ald. Krill asked if the lack of an ordinance relating to this type of structure prevents addressing this application or if there would be future difficulties if approved without an ordinance change. Mr. Kesner said that the structure is not one that is specifically anticipated or defined by the ordinance, but the Council would not be prohibited from approving it. Doing so without a specific definition, however, would make it more difficult to deny similar applications in the future. The best way to assure future control would be through a change in the ordinance.

Ald. Treis said he originally viewed this application somewhat positively but has concerns after reviewing factors such as water, restrooms, and possible traffic problems. This is clearly nothing more than a "portable" unit, and there hasn't been a positive answer to the possibility of moving to a permanent building.

Moved by Ald. Treis, seconded by Ald. Subotich to recommend to Council  
denial of the request for a Conditional Use –

Ald. Krol asked if Capitol Drive is at maximum traffic volume and if other businesses are using this area in the early morning hours. Ms. Welch said that Capitol Drive has a very high volume but she was uncertain if it is considered at or near capacity. A number of the businesses there open at 8 a.m. The concern is how cars will enter and exit the site and whether traffic would impact the surrounding neighborhood. Ald. Krol asked if there has ever been a photo-mart type kiosk in Wauwatosa and noted that the attendant booths at parking structures are similar in nature. Ms. Welch responded that the attendant booths would be seen as accessory to the parking structures.

Ald. Becker said he supports the motion because he feels an ordinance change is needed before considering this type of business. Also, he supports the position of the neighbors.

Ald. Sullivan commented on the impulse nature of coffee purchases and felt that vehicles would not get backed up and traffic would not increase too much. He said that the Council's role is to balance the needs of residents and businesses when approving uses. Although Capitol Drive is busy, that is one reason why they would like to locate there. He is satisfied with the information provided on handling gray water and believes they would be good and reputable operators. If the request is denied, he would like to see them come back after the issue of kiosks is addressed in the zoning ordinance. Ms. Welch said that the zoning ordinance states that they could not reapply for a period of one year except if there is a change of conditions, and a zoning code amendment

would be such a change. The applicants would have to start the process anew beginning with the Plan Commission.

Ald. Birschel supported the motion, agreeing that a precedent would be set if approved without changing the ordinance. Ald. Subotich also supported drafting an ordinance to specifically address this type of structure. He commented that this committee asks questions and tries to get facts in order to make the right decision for the city and for the neighborhood. He cited a use in his district that initially raised neighbors' concerns but subsequently hasn't been a problem. He said that he does not feel this is a good location mainly because of traffic.

The Chair commented on the need to define this type of structure in the zoning code. He felt it would be helpful to see language prohibiting semi-permanent structures and language setting conditions under which they might be allowed.

Vote on the motion, Ayes: 7; Noes: 1 (Sullivan)

### **Proposed Ordinance Amending Foundation Removal Requirement**

Mr. Kesner reported that the proposed amendment to Section 15.20.010 C regarding foundation removal was requested by Ald. Treis and is a minor change that brings the building code in line with uniform codes throughout the state. The language was changed a number of years ago based on problems in connection with demolition of a publicly owned building. Existing language requires complete removal of all underground structures and foundation materials. Proposed changes have been discussed and approved by the Chief Building Inspector.

Developers of the proposed Burleigh Square project at the Briggs & Stratton site have found significant underground structures that will be difficult or impossible to remove. It is possible to maintain the integrity of the property without removing those structures. The proposed ordinance requires that materials left underground should be noted on a certified site plan to be filed with the city and also recorded with the County Register of Deeds, providing notice to all future purchasers of a property. Alternatively, the materials need not be removed if a new building is constructed over existing materials. Removal of all underground structures would still be required on residential properties.

Ald. Treis described the situation that prompted the existing requirement for removal of structures down to a level of 10-12 feet. The problems arose in connection with the foundations for homes being constructed on the site of the former Webster School. In the current case on the Briggs & Stratton site, there are deep pilings that would have to be removed to meet the current ordinance requirements. That seems unnecessary, however, since they will actually be covered by five feet of dirt and would be fully disclosed as a condition of the site.

Bill Rudolph of Briggs & Stratton spoke in favor of the proposed amendment. He said that any remaining underground structures will be fully documented. Terrance Patrick, Burleigh Square project consultant, said removal of the pilings would destabilize the site and make building on top of that area more difficult; i.e., an already engineered site would have to be re-engineered.

Moved by Ald. Treis, seconded by Ald. Becker to recommend to Council  
introduction of an ordinance amendment –

Ald. Sullivan was concerned about possible cost shifting to future owners. Mr. Kesner said that the market should address that question since any future purchaser would be aware of the condition and presumably would make an offer based on whether or not it presents any hindrance.

Vote on the motion, Ayes: 8

**Proposed Rezoning of 22-Acre Site at N. 124th and W. Burleigh Streets – Public Hearing Date**

The committee reviewed a request by Michael J. Fox, Continental Properties, for a change of zoning on 22 acres of the Briggs & Stratton property at the northeast corner of N. 124th and W. Burleigh Streets from AA Light Manufacturing District to AA Business District to accommodate a retail development project.

Ms. Welch reported that this is a fairly complex project involving a number of zoning decisions by this committee and the Common Council. In addition to rezoning, it will require conditional use approval under the requirements of the recently adopted "big box" ordinance and approval of a land division to create the parcel being rezoned. Because of the longer time involved in the rezoning process, the intention is to move ahead by setting the public hearing date now while staff continues to meet with the applicant on other issues. Ms. Welch noted that there is a lot of AA Business use in this area, both in Wauwatosa and Brookfield, providing a strong reason to consider rezoning.

Michael Fox, Continental Properties, N134 W8675 Executive Parkway, Menomonee Falls, confirmed that Continental endorsed proceeding and offered to answer any questions.

Moved by Ald. Treis, seconded by Ald. Becker to recommend introduction of a rezoning ordinance and adoption of a resolution setting a public hearing date –

Ms. Welch anticipated that the Plan Commission would review the land division at their May 9th meeting followed by consideration by this committee. The land division must be approved before the rezoning can be approved.

Vote on the motion, Ayes: 8

The meeting adjourned at 9:12 p.m.

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Carla A. Ledesma, City Clerk  
Wauwatosa, Wisconsin