



CITY OF WAUWATOSA
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COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, April 26, 2005

PRESENT: Alds. Becker, Birschel, Kopischke, Krill, Krol, Subotich, Sullivan, Treis (8:12 p.m.) -8

ALSO

PRESENT: N. Welch, Community Dev. Dir.; A. Kesner, City Atty.

Ald. Kopischke as Chair called the meeting to order at 8:02 p.m. -7

Conditional Use – 869 N. Mayfair Road

Ms. Welch reviewed a request by Brandon Bergman and Rafael Escamillo for a Conditional Use in the AA Business District at 869 N. Mayfair Road for a restaurant with outdoor dining. The Plan Commission recommended approval by a 5-0 vote. This site is at the north end of the Promenade shopping center. A small portion of the outdoor dining area on the north side encroaches into public right-of-way, which would require separate approval from the Board of Public Works and Common Council.

Ed Bushman of Victor Construction, Pewaukee, was present representing the owner along with the manager of another site who will take over management here. The applicants own similar restaurants serving Mexican cuisine in two other suburbs. The site has adequate parking and is seen as a good location for this business. Mr. Bushman clarified that the outdoor dining area is 11 feet by 26 feet.

In response to questions, Ms. Welch stated that notices were sent to 16 individuals including the owner and the proposal was reviewed by the Design Review Board. She confirmed that there is adequate parking and said she does not anticipate a significant change in traffic. There are traffic signals at Mayfair and Potter Roads. Locating outdoor dining along the Mayfair Road side would have eliminated parking spaces. The proposed area will be buffered from traffic.

Moved by Ald. Sullivan, seconded by Ald. Birschel to recommend approval of the Conditional Use contingent upon: 1) hours of operation from 11 a.m. to 11 p.m. Sunday through Thursday and 11 a.m. to 1 a.m. Friday and Saturday; 2) obtaining an encroachment agreement for the outdoor seating; and 3) determination from the fire marshal on the need for sprinklers.
Ayes: 7

Street Vacation, Land Division, Change of Zoning – Gridley Avenue Area

The Committee reviewed the following requests by Craig Dillman, Manager of Real Estate, Milwaukee County:

- Request for a Street Vacation of a portion of the 8400 block of Gridley Avenue
- Request for a Land Division to create a parcel located at approximately 8600 Watertown Plank Road

- Request for a Change of Zoning at 8410 and 8420 Gridley Avenue from AA Single Family Residence District to Medical Center and Institutions District

Referring to an aerial photo, Ms. Welch pointed out the area of Gridley Avenue that was extended into the county grounds when the medical complex built three houses in 1953 for use in connection with medical treatment. In 1987 when Milwaukee County considered selling that property, the parcels were rezoned from Medical Center and Institutions District to AA Single Family. The county is now requesting a return to the former Medical Center and Institutions zoning. This is the traditional boundary between the county grounds and the residential neighborhood to the east. If rezoned and the street vacated, they wish to create a new parcel that would be leased to the Medical College of Wisconsin.

Tim Russell, Acting Director of Economic Development for Milwaukee County, was present and indicated his availability to answer questions. Kathryn Kuhn, Medical College of Wisconsin, also offered to provide any clarification that is needed. The Chair noted that an April 26, 2005 letter from T. Michael Bolger, President & CEO of the Medical College of Wisconsin, clarifies their intentions regarding this land.

(Ald. Treis present. -8)

Nancy Hall, 1123 Glenview Avenue, representing the Glenview Heights Neighborhood Association, said that there have been many comments and mixed opinions from residents and there is much uncertainty about future plans here and on related projects. Residents are very concerned about encroachment from the institutions into their neighborhood. When considering these requests and others in the future, she asked that the committee hold them to what is being promised, particularly some of the improvements at the end of Gridley and along the edge of the neighborhood.

Ald. Krill said he has questions from constituents about a connection between the subject requests and a parking garage that will be proposed in the future. He asked if approving the current requests would in any way facilitate future plans for the parking proposal or prevent the community from objecting to it. Ms. Welch said that if the Medical College was unable to combine this area into one large parcel on which the parking garage could be located, they would still be able to create a parcel with sufficient space for a parking garage; i.e., they could continue with their plans whether or not these requests are approved. Likewise, the rezoning would not inhibit objections to a parking garage, which would come through under a separate Conditional Use process. Demolition of houses on the rezoned land could proceed without any approvals and would not be necessary in order to build a parking garage. Regarding the Comprehensive Plan, Ms. Welch said the border in place now has been identified in the Comprehensive Plan since 1972 or 1973. In the current process of updating that plan, there has been no discussion about extending borders of the county grounds or the Medical and Institutions District. A section in the introductory chapter mentions the goal of preserving neighborhood borders and buffers between neighborhoods and other uses. Ms. Welch noted that the area under discussion has been part of the county grounds since the city existed.

Ald. Birschel said he has discussed his status as a retired county employee with the City Attorney and believes he would not violate conflict of interest statutes by voting on these issues. He is familiar with this area, has walked the site, and has no problem with returning it to institutional zoning. When approval of parking structure is sought in the future, he will look at it very closely.

Ald. Becker asked if fences will be maintained along the border and if Gridley Avenue is the only access point to the county grounds in that area. Ms. Welch said that Gridley is the only road that extends into the county grounds. Most of the fences were put up on property lines; there are none at the end of Portland or Currie.

In response to questions from Ald. Sullivan, Ms. Welch said that plans for a parking garage have not yet been submitted. Any plans would have to meet setback requirements, and there is also a 20-ft. MMSD easement in this area. Setback requirements would additionally be based on the height of the structure. A low structure could be placed no closer than 20 feet from the property line. Additional buffer requirements could be considered.

The Chair commented that some of the issues raised would most appropriately be dealt with when and if a Conditional Use for a parking structure is requested. It does not seem that approval of any of the current requests would impede the neighbors' position in that regard but rather would allow more flexibility for the Medical College to address residents' concerns. He noted that the city would not bear the street vacation costs.

Displaying a drawing of the area, Ms. Kuhn pointed out where the structure might be located to the north of the subject Gridley homes. A 50-foot buffer is planned along the property line from Watertown Plank Road to Portland Avenue. They have been meeting with residents to discuss the type of landscaping to be used. They want to create an aesthetically pleasing line so that there will be a distinct difference between the neighborhood and the college grounds. They believe the required setback would be 50 feet and are considering adding another 50 feet to that setback. The 120-year, market-rate lease they recently entered was secured for future development so that they would never have to look at buying up homes, as Mr... Bolger gave assurance of in his letter. Their long-term vision when building would be to keep shorter buildings closer to the residents and larger builders nearer other large buildings. Ald. Krill commented that the buffer zone weighs heavily in his thinking when looking at the subject requests and when considering the future proposal.

Ms. Kuhn said they would not make a Conditional Use request until they have a parking structure plan that is aesthetically pleasing in the materials used and including landscape architecture. She noted that the land along the border did not belong to the Medical College prior to this time, but they are very committed now to improving it. Asked if the structure would alleviate parking problems, Ms. Kuhn said that the construction would displace cars temporarily, during which time they would use Children's Hospital and other lots. It is their goal in the end to have no parking on local streets.

Ald. Treis said that in the event of an accident on Gridley, the city would be somewhat liable plus we have to plow and sweep and maintain it. It is a wasted liability to the city. Ms. Welch agreed that the street does not serve any occupied family homes. The only reason to maintain the roadway would be if the city anticipated putting the street through in the future.

Moved by Ald. Treis, seconded by Ald. Krol to recommend to Council approval of the Street Vacation of a portion of the 8400 block of Gridley Avenue –

Ald. Krill said that votes on all these issues are made with the understanding that they are not related to the future parking garage, which he will look at very carefully when it comes forward for consideration. He emphasized that he has made no decision as to the propriety of that structure.

Ald. Birschel questioned whether today's letter from Mr. Bolger clearly addresses the eastern border. Ald. Krill asked Ms. Kuhn if the Medical College would be willing to specifically commit that they will not move east into the neighborhood. Ms. Kuhn responded that she would forward such a letter tomorrow.

Vote on the motion, Ayes: 8

Moved by Ald. Treis, seconded by Ald. Krol to recommend to Council approval of a Land Division to create a parcel located at approximately 8600 Watertown Plank Road. Ayes: 8

Moved by Ald. Treis, seconded by Ald. Krol to recommend to Council approval of a change in zoning at 8410 and 8420 Gridley Avenue from AA Single Family Residence District to Medical Center and Institutions District. Ayes: 8

Conditional Use – 4473 N. 105th Street

The committee reviewed a request by Dawn Kennison and Naomi Kennison for a Conditional Use in the AA Single Family Residence District at 4473 N. 105th Street for an eight-bed community based residential facility (CBRF) for older adults with developmental disabilities and frailties of aging. The Plan Commission recommended approval by a 4-1 vote. Ms. Welch explained that eight beds would be the maximum under the zoning ordinance, but the maximum allowed by the state is expected to be less than that. Conditional Use approval is required because this aldermanic district has a CBRF population greater than 25, most residing at Luther Manor. Ms. Welch displayed a map identifying all the licensed CBRFs in the city. There is one other facility within 2,500 feet, but the others within this district are all well outside that range.

Dawn Kennison, 8932 W. Mitchell Street, West Allis, and Naomi Kennison, 3951 N. 81st Street, Milwaukee, were present. Naomi Kennison said they contacted the city prior to writing an offer on this property and were told that there wasn't another facility within 2,500 feet. She commented that for more than a year Milwaukee has routinely passed on to the Board of Zoning Appeals applications for group homes where there is another within 2,500 feet. Only one was not permitted due to being new construction that was significantly different and larger than neighboring properties. She said that the 2,500 foot rule clearly conflicts with fair housing laws and the rights of people with disabilities.

Tom Johnson, 4556 N. 106th Street, said that if approved, there will be two CBRFs within 1,000 feet of his home, which will hurt his property value and ability to resell. It will also create traffic problems since there are very few routes through this area, and parking will also be an issue. He noted that no specifics have been given about staff numbers, number of beds, residents' ages, and the types of disabilities residents might have.

Kathy Dallen, 4454 N. 105th Street, displayed a map showing additional CBRF facilities not on the city's map: 4265 N. 104th Street, 20 beds; 4835 N. 105th Street, 3 beds; and 4901 N. 106th Street, 8 beds. The area is becoming concentrated with CBRFs, having a total bed capacity of 177 beds representing 3% of the district's population. If standards aren't set, the area can't provide the community environment needed and is not doing CBRF residents any great service. Issues tied to over-concentration are use of fire and EMS services and reduction of the school-based population. The National City Planning Association stresses concern about over-concentration, especially in areas that are less densely populated, since standards there could become the standard for other districts including those that are more densely populated.

Ms. Dallen was also concerned that the client base has not been specifically clarified as required by ordinance and state statute. She said this is not an issue of "not in my backyard" since the district has been supportive, but it is an issue of what exactly is on the agenda. The meeting notice sent to residents was for an 8-bed facility, but Naomi Kennison said they intend to have 7. There has been no clarification of the home's capacity. Looking at the layout, it seems that it could at most support 5 semi-ambulatory or 6 ambulatory adults. The applicants said clients would be "the grandmas and grandpas" of the neighborhood, but it was stated that a 40-year-old with emotional

problems would qualify. Although the issue isn't about sexual predators, Ms. Dallen said that the state has confirmed that someone committed for sexually deviant behavior could be served there. The applicants serve a broad range of individuals at their West Allis facility.

Ms. Dallen cited state reports she has received regarding the applicants' West Allis facility. She mentioned that 13 deficiencies were found in June 2000, one a repeat from 1998, including lack of employee instruction in proper universal precautions pertaining to blood or bodily fluids. For several years they also did not address approved training on administration of medications to residents. A complaint related to that issue was filed in November 2000. There have also been problems with meeting code requirements regarding safety hazards, fire drills, and evacuation plans. A more recent inspection in May 2004 indicated only one new deficiency, although there were several issues about fire plans and smoke detectors. Ms. Dallen submitted copies of the information she obtained. She said that neighbors are very concerned about these quality issues. She has also found that the City of West Allis has sued the applicants for unpaid 2003 taxes, so there is a fiscal issue to consider as well. In addition, neighbors have noted that 105th Street and Ruby Avenue are main thoroughfares with cars regularly traveling at speeds from 25-50 mph. There are no sidewalks, bus stops are almost a half-mile away, and additional parked cars could also present hazards.

Norb Stefan, 4505 N. 103rd Street, said his neighbors, including at least 5-6 new families, are vehemently opposed to this. The neighborhood would like to continue as it is. Andrew Pernitz, 4454 N. 105th Street, commented on inadequate care and lack of proper supervision he has observed in connection with a relative who has lived in facilities of this type. He was also concerned about the distance to a bus line and how residents, especially if disabled, would get there in the winter.

Fred Muenta, 4434 N. 106th Street, said there is additional heavy traffic on 105th Street and on Ruby in connection with the service entrance for Pinelawn Cemetery. Divine Savior-Holy Angels, Milwaukee Lutheran High School, and Madison Elementary School also generate traffic past this area, and the streets are used for cross country training. Robert Osheim, 4425 N. 105th Street, mentioned concerns with putting a business into a quiet residential neighborhood. When he circulated petitions, he easily got over 100 signatures. He noted that this matter was passed on by the Plan Commission despite the fact that only the applicants spoke in favor.

Roger Laesch, 4503 N. 106th Street, said that regulations require a state inspection before submitting an application and also call for an advisory committee to be appointed and to meet, both of which haven't been done. Dennis Martin, 10311 W. Ruby Avenue, felt that the garage will eventually be converted to living quarters, and he urged doing everything possible to fight this proposed use. Nancy Stern, 4519 N. 105th Street, said the quality of the neighborhood will be lost if saturated with this use. She commented that it wasn't fair for the Plan Commission to pass this on without a response so that the community knows what is being done. She believes the city fears a lawsuit.

(The committee recessed at 9:36 p.m. and reconvened at 9:43 p.m.)

The Chair reported that two e-mails have been received and added to this file. Both Bradley Zunk, 4455 N. 104th Street, and Marjorie Rudig, 4515 N. 105th Street expressed opposition to the proposed facility.

The Chair asked the City Attorney to clarify areas that are within the city's jurisdiction and those that are governed by state and federal fair housing laws.

Mr. Kesner said that in 1988 Congress passed the Fair Housing Amendments Act, adding disabled individuals to the groups of people that cannot be discriminated against in housing. Wisconsin statutes outline certain abilities to

limit the placement of CBRFs in residential neighborhoods or zoning districts. If there is an existing CBRF facility within 2,500 feet of a proposed facility, the new facility requires the approval of the city. This is implemented in our ordinances by requiring Conditional Use approval. There have been lawsuits in Wisconsin involving the 2,500 foot rule that some cities have implemented, and discrimination has been found in a number of cases. When the city is considering whether to place a facility within 2,500 feet of an existing facility, the courts have made a clear distinction about the kinds of things that can be considered, differentiating between legitimate zoning concerns and regulatory concerns handled under the state licensing process. Effect on the neighborhood could in some ways be considered by the city in its zoning decision, but the courts have been very strict in interpretation. State statutes also state that no more than 1% of the population in an aldermanic district shall be in a CBRF, but that hasn't been tested in Wisconsin law and hasn't been incorporated in our local ordinance. The courts have found a similar provision in New Jersey to be unenforceable. This is not an absolute prohibition but something that has to be interpreted by the city.

Mr. Kesner said that decisions should be based on legitimate zoning concerns that are part of the city's Conditional Use ordinance. It is important to remember that the effect on a neighborhood can be discussed but federal courts have severely limited the applicability of that effect in similar situations throughout the nation. One of the most significant cases in Wisconsin involves a facility in a residential home on Menomonee River Parkway just south of Mt. Mary in Milwaukee. The facility was within 338 feet of another licensed facility in Milwaukee, but the finding was that applying the 2,500 foot rule would be a discriminatory practice under the federal act.

The Chair suggested that it may be appropriate to hold this matter to the next meeting. Much information was presented tonight, and more detailed information is needed from the applicants about client base, number of beds, and how they will fit in the existing or revised layout, as well as some clarity on the business plan, staffing, and similar issues. The need for a state inspection prior to city approval and establishment of an advisory committee should also be investigated.

Mr. Kesner responded to questions and further clarified the review process. He indicated that it would be very difficult to defend a zoning decision based on quality of care issues. Any effort to hypothetically project what will happen with hypothetical residents could be considered by federal courts to be using the nature of the disabilities to make a zoning decision. It also would be difficult to make a decision based on whether taxes have been paid in the past or whether the city will get tax revenue. He noted that the city addresses adequate parking through the zoning code and advised against stepping outside of those bounds. In answer to a question of holding the applicants to any promises that are made, Mr. Kesner said that the Common Council maintains continuing jurisdiction over Conditional Uses and can review them any time it is found that conditions are not being followed or additional conditions are needed.

Moved by Ald. Sullivan, seconded by Ald. Krill to hold this matter for one month, requesting that appropriate various city departments provide additional written material on the item, particularly the impact on health, traffic, and safety and the neighborhood impact, including input from the police, fire and health departments if they so desire; to ask the applicants to provide information on their business plan and further definition of the client base; number of beds, and how they would be accommodated; and to ask the City Attorney to summarize some of his comments for further review –

Ald. Treis noted that there may be state-imposed time limits for addressing this issue. Mr. Kesner said the city has not yet received anything from the state that would trigger time limits, but the matter could be brought back sooner if necessary.

Ald. Birschel indicated that he would like the information that Ald. Treis mentioned at the Plan Commission meeting about group homes that have closed.

Vote on the motion, Ayes: 8

Change of Zoning – W. North Avenue from N. 60th to N. 74th Streets

The Chair reported that the proposed rezoning of W. North Avenue from N. 60th Street to N. 74th Streets from AA Business District and Business Planned Development to North Avenue Trade District was forwarded by the Plan Commission without recommendation since the ordinance is under development and requires further review.

Ms. Welch said that the only action required tonight a recommendation for a public hearing. A draft of the ordinance has been circulating, and comments are being incorporated into the language. One of the suggestions was to consider uses under 5,000 square feet as Conditional Uses rather than prohibiting them. There is also a question regarding the status of automobile repair businesses. Uses listed as prohibited would include check cashing, pawn brokers, gun shops, and perhaps cabarets. There have been discussions of additional regulations that might be put in place in this district to encourage business development that is compatible with the adjacent residential area. For example, some limitations on hours of operation might be considered as a means to address neighbors' concerns about late-night operations.

Matt Mikolajewski of the Wauwatosa Economic Development Corporation (WEDC) said the draft ordinance was favorably reviewed by WEDC directors in October. When they reiterated their support last week, they raised some concerns that have since been addressed by Ms. Welch. The WEDC sees this as very positive for business and commercial properties.

Moved by Ald. Treis, seconded by Ald. Becker to recommend introduction of an ordinance and adoption of a resolution setting a public hearing date.
Ayes: 8

Proposed Ordinance – Building Foundations

As described at the previous meeting, Mr. Kesner said that the proposed ordinance clarifies requirements to remove underground foundation materials of commercial buildings. In certain circumstances, it would allow removal to only 12 inches below finished grade contingent upon appropriate notice to future owners through proper recording of the condition.

Moved by Ald. Treis, seconded by Ald. Birschel to recommend adoption of the ordinance. Ayes: 8

The meeting adjourned at 10:22 p.m.

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Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin