



CITY OF WAUWATOSA
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COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, June 14, 2005

PRESENT: Alds. Becker, Birschel, Kopischke, Krill, Subotich, Treis -6

EXCUSED: Alds. Krol, Sullivan

ALSO

PRESENT: N. Welch, Community Dev. Dir.; A. Kesner, City Atty.; B. Jacobsen, Admin. Intern

Ald. Kopischke as Chair called the meeting to order at 8:00 p.m.

Conditional Use – 2332 N. 124th Street

A request by Yan Hua Qiu and Ann Hunter for a Conditional Use in the AA Business District at 2332 N. 124th Street for a take-out restaurant was held from the previous meeting due to the absence of the applicants. Ms. Welch reported that Ms. Hunter was notified of tonight's meeting, but neither applicant was present. Ald. Birschel offered to contact Ms. Hunter about attending the next meeting.

Moved by Ald. Birschel, seconded by Ald. Becker to hold this matter for two weeks. Ayes: 6

Land Combination – 8131 W. North Avenue

The committee reviewed a request by Thomas Hickey for a Land Combination in the DD Eight-Family Residence District at 8131 W. North Avenue. Ms. Welch reported that this involves two lots that remained as originally platted despite the fact that an apartment building was built straddling both lots. It seems appropriate to combine them so that zoning requirements are met and there is only one tax bill. Thomas Hickey, 6431 Betsy Ross Place, was present. The Plan Commission unanimously recommended approval.

Moved by Ald. Krill, seconded by Ald. Birschel to recommend to Council approval of the Land Combination. Ayes: 6

Vacation of Alley between N. 122nd and N. 124th Streets North of W. Chambers Street

Ald. Treis has requested vacation of the north-south portion of the alley in the AAA Residence District and AA Business District between N. 122nd and N. 124th Streets north of W. Chambers Street. The Plan Commission reviewed and forwarded the request for the purpose of setting a public hearing date.

Moved by Ald. Treis, seconded by Ald. Krill to recommend setting a public hearing date. Ayes: 6

Conditional Use – 10842 W. Blue Mound Road

The committee reviewed a request by John A. Vassallo for a Conditional Use in the AA Business District at 10842 W. Blue Mound Road for a restaurant. Ms. Welch displayed a site plan and reported that the applicant plans to open a Mo's Irish Pub and Restaurant in the former Ground Round facility. He is adding a small area of outdoor seating and a small addition. The plans meet all parking requirements, and there are no concerns about access. The Plan Commission unanimously recommended approval with hours of operation 10 a.m. to 2:30 a.m. seven days per week.

Mr. Vassallo was not present but had attended last night's Plan Commission meeting and the Legislation, Licensing and Communications Committee meeting regarding the facility's liquor license earlier tonight.

Moved by Ald. Treis, seconded by Ald. Krill to recommend approval of the Conditional Use with hours of operation 10 a.m. to 2:30 a.m. seven days per week, subject to any required licenses and permits –

Asked about the proposed hours of operation, Ms. Welch said that the Plan Commission recognized that this area does not directly abut residences. The Chair reported that, as a result of the Plan Commission's discussion, Mr. Vassallo planned to distribute flyers to neighbors today informing them of the proposed closing time and the opportunity to attend this meeting. No one from the neighborhood was present.

Ald. Becker said that closing times of 1 a.m. on weekdays and 2:30 a.m. on weekends are more generally allowed and would be appropriate here. Before the Council vote next week, he would like to know the hours of other establishments in this area and elsewhere in Wauwatosa. If no others are open until 2:30 a.m. on weeknights, he felt that those hours should not be granted here except for weekends—hours should be consistent throughout the community. The Chair also requested information on the Ground Round's hours of operation.

Vote on the motion, Ayes: 5; Present: 1 (Becker)

Land Division, Change of Zoning – 1215 N. 62nd Street

The committee reviewed a request by Brian Cummings for a Land Division by Certified Survey Map in the AA Business and AA Light Manufacturing District at 1215 N. 62nd Street and a request for a change of zoning from AA Light Manufacturing District to AA Business District.

Displaying an aerial photo of the area, Ms. Welch pointed out the current Sentry lot, the unusually shaped lot formerly owned by Western Metals, and the area to be reconfigured under the proposed land division. The latter is also the area proposed to be rezoned to accommodate a Walgreens store. A small triangular portion already zoned AA Business will be included in the reconfigured parcel. The remainder of the area will remain in AA Light Manufacturing zoning. The Plan Commission unanimously recommended approval of both changes. Mr. Cummings of Redmond Development, Waukesha, was present.

Moved by Ald. Krill, seconded by Ald. Becker to recommend approval of the Land Division. Ayes: 7

Ald. Becker asked about other development planned in this area. Mr. Cummings said that he and David Israel, with whom he formed a joint partnership on the Walgreens parcel, wanted to pursue that development sooner than other plans that may be advanced. Adding additional retail space to the Sentry store may be proposed next. Mr. Cummings displayed a plat drawing of the area. At the Plan Commission, Mr. Eckert and others from Eckert Door Company, which is adjacent to the reconfigured lot, expressed concerns about access to their loading dock. Mr. Cummings reported he has since proposed a curb opening that would facilitate that access and is awaiting Mr. Eckert's response.

Vote on the motion, Ayes: 6

Moved by Ald. Becker, seconded by Ald. Krill to recommend to Council setting a public hearing date on the change in zoning. Ayes: 6

Proposed Ordinance Creating Trade District Zoning

Ms. Welch reported that a trade district zoning ordinance has been under consideration for over two years. Staff has worked with members of the East Town Business and Merchants Association in attempting to craft zoning that will allow North Avenue between N. 60th and N. 74th Streets to develop as a retail district more compatible with surrounding residential uses. Local alderpersons have also been very busy working on this project.

Ms. Welch said that the current zoning along this area is the same that exists on Mayfair Road or Blue Mound Road and is clearly geared to more intense uses. While drafting this ordinance, the police felt that some of their issues with disorderly conduct and other types of problems could be alleviated by setting a closing time for businesses, which seemed appropriate given the adjacent residential area. As a result, this would be the first zoning district with a special restriction limiting the hours of all businesses. The current version of the ordinance sets that limit at 11 p.m. but does allow for Conditional Use approval of later hours for businesses that would typically be open longer such as the Rosebud Cinema or a few bars that have been there for a long period. Ms. Welch said that she found no Council approval of hours beyond 11 p.m. for any businesses other than the Rosebud and the bars. Approval of hours of operation was not required at the time some businesses began operating.

The ordinance will also cut parking requirements along this area of North Avenue basically in half to make it easier for businesses to locate there. Also, due to some concern about residential properties interspersed with businesses, residential uses are Conditional Uses requiring Council approval under the new ordinance. Ms. Welch clarified that this doesn't mean that the city would encourage construction of single family homes within the business district if a property were to burn down.

Matt Mikolajewski of the Wauwatosa Economic Development Corporation (WEDC), 1430 Underwood Avenue, said the WEDC board had some initial concerns about prohibiting uses over 5,000 square feet and prohibiting auto repair, but he noted that auto repair has now been shifted to the Conditional Use category. Although the board hasn't seen the latest draft with the limitation on hours of operation, Mr. Mikolajewski noted that they have been very supportive of other aspects of this ordinance.

Moved by Ald. Becker, seconded by Ald. Birschel to recommend adoption of the ordinance –

Ald. Becker said he worked on this for two years and it may not be the most perfect result but it will encourage more businesses to come into this area. The biggest complaint has always been parking requirements, and there

were't enough parking credits to go around. Ald. Becker endorsed the idea of 11 p.m. closings with the provision of variations by means of Conditional Uses.

In response to questions from the Chair, Ms. Welch said this ordinance does not give the city the ability to shut down any existing business, whether permitted under the ordinance or not., but it does allow some control over new businesses. Regarding the limitation on hours, an amnesty period could be proposed whereby businesses are identified, reviewed, and approved; or the businesses could be required to seek Conditional Use approval. The Chair favored a period of perhaps two or three months during which businesses could continue under their current hours and apply for a Conditional Use at no cost. Ald. Krill advocated at least a three-month period.

Moved by Ald. Kopischke, seconded by Ald. Birschel to amend the motion by adding that any existing business that currently has approved hours beyond 11 p.m. or existed before approval of hours was required would be allowed to maintain those hours for three months after the passage of this ordinance during which time applications may be made, at no cost, for a Conditional Use for the extended hours –

The Chair asked if sale of cigarette and tobacco products currently exists as a Conditional Use. Ms. Welch said there is an existing cigar store on North Avenue. There is a desire to maintain some control over that type of business by placing it in the Conditional Use category. The Chair then suggested narrowing the definition in some way in order to control cigarette-stop type shops. He asked that Ms. Welch confer with the City Attorney on appropriate language prior to the next Council meeting.

Vote on the amendment, Ayes: 6

Vote on the motion as amended: Ayes: 6

Ald. Becker asked that any businesses that come forward be advised to contact one of the local alderpersons so that they can provide assistance.

Conditional Use – CBRF at 4473 N. 105th Street

Ms. Welch reviewed the status of the request by Dawn Kennison and Naomi Kennison for a Conditional Use in the AA Single Family Residence District at 4473 N. 105th Street for a community based residential facility (CBRF) for up to eight older adults. Additional information requested at the previous meeting and provided since that time includes a business plan and plan of operation. In addition, staff has received notice from the state requesting identification of any pertinent hazards at this location. A copy of the form to be completed by staff was provided.

The Chair indicated that comments will be heard first from members of the public who have not spoken on this issue at previous meetings. He asked that others present limit their comments to new information or stating concurrence with prior statements. He noted that there has been considerable discussion and the committee will continue to hear comments and take them into consideration.

Atty. Robert Pledl, 1110 N. 3rd Street, Milwaukee, was present together with Dawn Kennison, Mr. Pledl said that the applicants have also provided a copy of their state application, as requested. The state requires a very detailed plan of operation but not a business plan, so the Kennisons prepared and provided that additional document. They contacted all of the people who expressed an interest in a community advisory committee, and a community meeting of almost two hours was held last Saturday. At that meeting, which included some residents who had not

attended previous city meetings, they tried to answer the basic questions and address concerns. Possible agenda items and the role of a community advisory committee were discussed. Some present indicated an interest in volunteering at the home, and a method was set up for doing so. There was a general discussion about parking and traffic in the area, with residents suggesting that visitors or staff park on Ruby Avenue rather than 105th Street. Mr. Pledl said this is the type of information the applicants want in order to be good neighbors. He commented on the willingness of residents to set aside their strong feelings in opposition to the home and volunteer to serve on an advisory committee to make this work if it is approved. A total of 12 individuals, some among the 24 residents who attended the community meeting and some who volunteered later, will serve on the community advisory committee.

Roy Bendler, 4550 N. 101st Street, objected to putting a business in a residential area and felt the city's elected representatives should be looking out for residents' welfare. He noted that the city code not only calls for formation of a community advisory committee but also states that there should be a state inspection before the application is considered by the city.

Norm Steffan, 4505 N. 103rd Street, submitted and read sections of a four-page statement that reiterated concerns previously expressed by residents about over-saturation of community living arrangements in this area and the city in general. The statement also mentioned concerns about property values, school-age populations, and maintaining the fabric of the neighborhood. Portions read by Mr. Bendler outlined concerns about the maximum capacity of the home and a suggestion that the owner/administrators of the CBRF be required to ensure that there will be not be more than three citations or breaches of state or local statutes, regulations, codes, or ordinances on any given government inspection.

Kathleen Wallberg, 4557 N. 103rd Street, was concerned about the number of occupants. She said that eight adults seems a little overcrowded and would be a very high density in this small residential area.

The City Attorney responded to questions and issues that were raised, as follows:

- Business in residential area – The city's zoning code has placed this type of use within residential zoning because the Fair Housing Act and other provisions of state law require the city to consider the use as one that can be conducted in a residential neighborhood. Because the proposed CBRF is within 2,500 feet of another licensed facility, it is a Conditional Use under the zoning code. If not within that distance, it would be a permitted use that would not require committee review. While it may be a business operation, it is a business of providing residences to people who need community residences.
- Number of residents – The Chair noted that a large family could move into this home without any restrictions, so it must be viewed in a manner that doesn't discriminate between the GBRF group and a family. Mr. Kesner added that this class of facility is licensed for up to 8, but this particular facility may not be licensed for 8. The state will determine capacity based on square footage requirements. The application itself mentions 7 residents.
- State jurisdiction – Issues such as square footage requirements are not within the city's purview but rather are regulatory duties of the State of Wisconsin.
- Class of facility as it relates to number of residents – The city code states that facilities with 8 or fewer beds can be considered.
- Suggestion of 3 citation limitation – This would be difficult to administer within the process of state inspections, and there is a question of what may be seen as citations. The state may find issues of concern and determine that a citation will be issued if not corrected within a particular time. It would be beyond the city's purview to place limitations on issues of concern, but the city could condition approval upon continued licensing by the

state. As a Conditional Use, the Common Council maintains continuing jurisdiction and could bring the matter back for further consideration if the established conditions are not met.

- Timing of state inspection – Even though city code requires a state inspection prior to city approval, the state often won't act on an application until they know there is city approval. Mr. Kesner said that he would be concerned about holding this up on this basis alone. State licensing can be made a condition of approval.

Ms. Welch said that the state does not specifically contact the city after their inspection, but staff can continue to contact them to monitor the status. Each January the city receives a list from the state that identifies every CBRF and other type facility in Wauwatosa. If the Conditional Use is approved, the applicants would still need a certificate of occupancy, which provides another opportunity to confirm licensing. The zoning code requirement, in fact, reads "licensed facility," so the facility would be in violation if not licensed at any time.

Ald. Birschel reported on the recent establishment of a group home in his district as a permitted use. A neighborhood meeting has been scheduled. He noted that a house adjacent to a group home near his residence was recently sold for an amount reportedly within at least 95% of the asking price. There has never been any cause for complaint about that group home. Another CBRF in his district seems to be very quiet; he has never observed more than two cars in its driveway.

The Chair asked if staff has identified any issues in accommodating this facility. Ms. Welch said that no hazards were identified by the police, fire, or public works departments.

Moved by Ald. Krill, seconded by Ald. Birschel to recommend approval of the Conditional Use contingent upon: 1) maintaining state licensing and complying with all state and federal requirements for the operation of a CBRF; and 2) seeking additional Conditional Use approval if any modifications to the garage are proposed –

Ald. Birschel commended those who volunteered for the community advisory committee. The Chair agreed that it will be crucial and suggested placing an additional condition to ensure community input.

With consent of Aids. Krill and Birschel, a third contingency was added: 3) maintaining community input –

Ald. Becker thanked those who have attended meetings and offered comments, noting that the committee has listened but sometimes a compromise is just not possible. Ald. Krill concurred, referring to the constraints placed upon the committee and the obligation to not only follow higher authority but consider the spirit of those laws and decisions regarding the ability of disabled people to live in communities.

The Chair also expressed appreciation to the residents who have participated and said the process has been productive with a lot of dialog and education on the issues. He believes the advisory committee will be a positive force in keeping this connected to the community.

Vote on the motion, Ayes: 4; Noes: 1 (Subotich); Present: 1 (Treis)

The meeting adjourned at 9:16 p.m.

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Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin