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COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, November 8, 2005

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

EXCUSED: Ald. Krill

ALSO
PRESENT: N. Welch, Community Dev. Dir.; A. Kesner, City Atty.; Ald. Grimm, 4th Dist.

Ald. Kopischke as Chair called the meeting to order at 8:06 p.m.

Preliminary Plan Approval – 6745 W. Wells Street

The Chair announced that the request by William Ibach for Preliminary Plan Approval for a mixed use development at 6745 W. Wells Street will be held to a future meeting at the request of the applicant. William Ibach, 2347 N. 100th Street, and Jack Shepherd, The Shepherd Partnership, 600 N. 108th Place, were present and indicated that they will notify the city when ready to proceed, possibly in time for the next committee meeting on November 29.

Proposed Change of Zoning at 6533 W. Center Street

Ms. Welch reported that rezoning of 6533 W. Center Street from AA Business District to DD Eight Family Residence District was requested by James Miller in connection with the planned conversion of a four-unit apartment building to condominium units. DD Eight Family Residence District zoning is consistent with surrounding zoning and does not mean that the building will have eight units. In fact, there is a minimum lot size requirement per unit that would allow only four, or perhaps five, units. The Plan Commission unanimously recommended approval.

James Miller, 633 W. Wisconsin Avenue, Milwaukee, was present and indicated that his plan is for four condominium units.

Moved by Ald. Birschel, seconded by Ald. Sullivan to recommend approval of the change in zoning. Ayes: 7

Conditional Use at 2525 N. Mayfair Road for a Workout/Training Facility

The committee reviewed a request by Angela Fullerton for a Conditional Use in the AA Commercial District at 2525 N. Mayfair Road for a workout/training facility. The Plan Commission unanimously recommended approval. Ms. Welch reported that the applicant wishes to open a Fitness Together facility. Unlike typical facilities with

large groups of people using workout equipment, this facility will provide personalized one-on-one training using three private suites.

Pete Piranio, 17280 W. North Avenue, Brookfield, said the maximum capacity here would be three per hour. The facility will be similar to two others in this area. There are two private bathrooms with showers.

Moved by Ald. Krol, seconded by Ald. Sullivan to recommend approval of the Conditional Use. Ayes: 7

Enforcement of Sign and Zoning Ordinances for Detached Ornamental Features

Held from previous meetings was the matter of a request from the City Administrator for direction regarding enforcement of sign and zoning ordinances in connection with detached ornamental features.

Ald. Grimm outlined a situation at a residence in his district where metal sculptures and barrels bearing messages about the nearby foundry are displayed. He explained that the matter came to his attention through Ald. Treis, who was at city hall when a resident came in to register a complaint. That resident was trying to sell his home and was told by a realtor that there might be problems because of the materials on display at the neighboring property. Ald. Grimm said that the property maintenance inspector was asked to check on the property but reportedly was later told not to spend any more time on the matter, apparently because of freedom of speech concerns. He complained that the metal sculptures are rusty and said he finds one to be obscene. There are over 100 sculptures in the backyard plus a number of welded iron flowers in the front. A year or two ago, the owner apparently removed a bird house from the front yard upon some type of contact from the city.

Ald. Grimm said that he talked with a woman in the League of Municipalities office, possibly an attorney, who told him a permit could be requested and also mentioned a possible sales condition and nuisance because of cars stopping and causing hazards. He said that permits should be granted on an individual basis based on numbers, size, height, paint, maintenance, whether an installation is not unsightly, and whether messages are deemed not to be offensive. He said that he also talked to several city attorneys and other attorneys and was told that the city could be sued if ordinances are not enforced. He has no problem with similar material being kept at the owner's adjacent commercial site where he constructs the pieces. He presented a newspaper article and photos of the site, noting that the barrels appear to be on the commercial property. The neighboring home has apparently been sold. Ald. Grimm noted that Greendale earlier this year took action to remove a bluebird from atop a residence and Glendale rewrote their ordinance following erection of a cow display at a business place. He asked what action can be taken here.

Ald. Treis spoke of a past lawsuit regarding a sign and research on what is considered to be a sign. He said that the definition has become so broad that it covers almost anything on a premises that catches a person's attention, making all of that cited by Ald. Grimm a sign. He feels this is an eyesore and there should be a way to control it. If enforced the way the ordinance is written, however, it would affect many other situations as well. He said that the barrels on the commercial site are a sign for which the owner has no permits, and the figures on the lawn that some people call artwork still come under the definition of a sign. Ald. Treis questioned what can be done to straighten this out and have some control.

Ald. Becker felt that the possibility that the objects on display are being offered for sale makes it a business operation that should be addressed through the zoning code.

Ald. Sullivan recalled that the Mary Nohl property in a northern suburb along Lake Michigan was in disfavor because of precast concrete forms the owner created and displayed, but a Kohler Foundation grant will now preserve the property as folk art. He said that while the sculptures discussed here may be an irritation, they don't seem to fit the definition of obscenity. There may be a cause for action between the parties in terms of being a nuisance but not in terms of government regulating space and art, regardless of how positive the intentions or motivations might be.

Ald. Grimm reiterated that he sees this as a business in a residential area. He can't determine the exact lot line between the commercial and residential lots, but the owner may also be in violation of parking a truck in a residential area outside of a garage.

Ald. Birschel indicated that he is familiar with this type of creative sculpture. He felt that use of the home to store saleable items is something that might be addressed. He questioned whether the barrels could be ordered down if they are no longer considered temporary signs. Also, there is no permit for them.

Ald. Krol commented on the similarity to a non-stop garage sale. The owner apparently has quite an inventory in his backyard and would offer any of the items for sale. Although it may appear to be art, it is in itself a sign that is for sale. Ald. Krol also questioned payment of sales tax, reporting, and licensing.

The Chair said that this issue concerns artistic speech and political speech, which our society prizes. Both can be provocative, but they are protected. There are potential problems and unintended consequences in pursuing matters like this, and we would have to be very careful about any kind of selective enforcement. If enforcement action is taken on this particular property, we have to be ready to enforce it everywhere else in the city for things like yard statues or the type of monuments erected after 9-11 that had printed words and could be seen in the same context. Ald. Kopischke reiterated that he would not want to interfere with the artistic and political speech rights of citizens, which are part of the First Amendment and the foundation of our society.

Attorney Kesner summarized what has transpired to this point. When Ald. Grimm and a citizen asked for some action on a resident's property, there were a number of ways to address the situation but most would not work in terms of enforcement. The zoning code prohibits detached ornamental features in yards that are over 4 ½ feet tall in basically all zoning districts. While it is the concept of enforcement that is being considered here, the property of concern to Ald. Grimm is one that is most specifically applicable since the sculptures there are ornamental and detached. In some terms they could be considered signs, but the city lost a lawsuit on a particular sign and was also sued for enforcement of the political sign portion of the code. In the latter case, the court found that the city's attempts to regulate political speech were illegal and the city had to revise that portion of the code. Although this item arose from Ald. Grimm's concerns about one property, in addressing it we recognize that the concept of ornamental features over 4 ½ feet is not unique to that property.

Mr. Kesner reported that he did some research among fellow city attorneys and with the League of Municipalities through discussion groups on the internet and at conferences. He unable to find anyone who thought that the city could enforce against some artistic statues in a yard. We have the ability to regulate quality of life and certain things that affect property values. The property maintenance code regulates issues relating to grass, paint, maintenance, but it doesn't really apply to ornamental features. Because there potentially are so many ornamental features, it was felt that discussion should not be limited to just one property. The property maintenance inspector was pulled off the issue of the particular 4th District property after the Chief Inspector informed the City Administrator that the city does not have the resources to properly enforce that ordinance. The City Administrator then brought the question of citywide enforcement to this committee.

Mr. Kesner said that Ald. Grimm was told that the ordinance can be enforced when done uniformly, but it cannot be enforced selectively against a particular person. The problem with the property at issue is that the sculptures are very clearly in the category of art, which has a certain level of protection under the First Amendment. Also, there are political statements such as the statue that points at the foundry smokestack, which is one of the property owner's commentaries on that operation. It is a matter of public interest that he has been protesting for years. The barrels, which apparently are moved in and out periodically, reflect information from the DNR website regarding the chemicals being emitted, and they also are a matter of political speech.

Mr. Kesner reiterated that we can apply the ordinance, but it must not be applied unconstitutionally. Any citation that may be issued can be challenged, and there is a 50-50 chance of the city winning or losing that challenge. On constitutional issues, triple damages apply plus a requirement to pay all attorney fees, which can be very high. A case can easily cost $100,000 or more. In the past case of a threatened lawsuit on the city logo, the Common Council's decision to take the cross off the logo was based on the probability of losing that same kind of case. Mr. Kesner reiterated that the city can do enforcement, but we must recognize the risk. That is why the issue was brought to this committee for guidance.

Ald. Subotich complained of there being much discussion but no action and said he doesn't understand a fear of enforcing ordinances. He felt that the articles of concern in the resident's yard should be removed, especially if they are being offered for sale. He commented that if the resident doesn't like the foundry, he should move.

Citing the open-ended nature of this question, Ald. Sullivan felt it should be tabled until we have a specific proposal on changes in language or enforcement.

Moved by Ald. Sullivan, seconded by Ald. Subotich to table this matter until further notice –

Ald. Grimm reiterated his concerns about the property in his district. He said that at some point we have to determine what is offensive and what is not. He felt that permits should be required for anything over 4 ½ feet.

Ald. Krol spoke in support of the motion. He said that city ordinances should be enforced when there is a complaint, but he acknowledged that the city does not have enough staff to police everything. He felt that there are some ordinances that are enforced selectively in some other areas. He said that the Council would be somewhat remiss in not having enforced an ordinance if one of the ornamental structures toppled over.

Ald. Sullivan clarified the intent of his motion. He said that he doesn't see a logical end to this wide-ranging discussion. The committee has no specific course of action or language to discuss; there is no action suggested. The matter should be tabled until something more specific comes forward.

Vote on the motion, Ayes: 7

The meeting adjourned at 9:05 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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