



CITY OF WAUWATOSA
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COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, July 31, 2007

PRESENT: Alds. Birschel, Didier, Donegan, Herzog, Krill, Meaux, Treis -7

EXCUSED: Ald. Minear

ALSO

PRESENT T. Szudy, Planner; A. Kesner, City Atty.; Chief B. Weber, Police Dept.

Ald. Treis as Chair called the meeting to order at 8:20 p.m.

Conditional Use for Video Game Club at 6909 W. North Avenue

A request by Devonna Blanchard for a Conditional Use for a video game club in an existing candy store in the Trade District at 6909 W. North Avenue was held from the previous meeting after being re-referred to committee by the Common Council. The committee had recommended to Council that the Conditional Use be denied. Ms. Blanchard was present and requested that the committee consider granting a six-month trial period.

Ald. Becker spoke in opposition to the use, feeling it does not fit with the direction in which this section of North Avenue has been heading and is not supported by neighbors. He commented that there are different rules for North Avenue and that this type of business has been tried in the area and failed.

Brian Beaulieu, owner of Laabs Appliance Parts and Service, 6907 W. North Avenue, as well as the subject building, supported Ms. Blanchard's request and said that he has seen no problems. He explained that this operation is not "computer gaming," but basically X-Box 360 games. It allows young people to try out expensive games at a reasonable price without having to purchase them. It is well controlled by requiring that users join a club and reserve scheduled times, with only up to four players at a time.

Ms. Blanchard objected to comparison of this business with the former North Avenue gaming business or with the arcade at Mayfair. Users here do not surf the Internet, exchange messages, or enter chat rooms. They have two TVs and four chairs are not creating any type of public nuisance. She was unaware of any rules for this area that would have prevented her from applying for this use. Mr. Beaulieu added that concessions have been made for North Avenue restaurants that inconvenience other businesses and their customers in terms of parking. His customers have not been affected by this business, and his own son and a number of his friends have enjoyed using this facility and trying out games there during the past month. Asked about current use, Ms. Blanchard said they are in the process of setting up their Internet connection and have allowed kids to test the connections.

Greg Ziemet, 2350 N. 91st Street, supported a trial period; the license could be pulled if there are problems.

Ald. Didier cited licensing requirements for commercial use of software. Ms. Blanchard said that an attorney is looking into obtaining those licenses.

Ald. Meaux discussed the capacity of the building, concluding that it is unlikely to be a problem under the described conditions. He also noted that the city does not have a specific loitering ordinance but the business itself has imposed many restrictions. He pointed out the wide variety of businesses within a two block radius on

North Avenue and expressed reluctance to say what type of business can be there. He suggested that it would not be within the city's purview to enforce federal copyright regulations on the software. There are no restrictions on this type of activity and he would not be in favor of denying it.

Moved by Ald. Meaux, seconded by Ald. Krill to recommend to Council approval of the Conditional Use with a six-month probationary/review period and with the contingencies recommended by the Plan Commission: 1) hours of operation during the school year from 3 p.m. to 7 p.m. Monday through Friday and 2 p.m. to 6 p.m. on Saturday; during the summer from 12 p.m. to 8 p.m. Monday through Friday and 12 p.m. to 6 p.m. Saturday, closed on Sunday; 2) obtaining the proper licenses and permits; and 3) two gaming spots and no more than four people playing with no spectators and a dividing wall separating the gaming area from people purchasing candy –

Ald. Birschel noted that the applicant operated the candy store for 4-6 months without Health Department approval and has again jumped ahead of approval of this use. He also spoke of the extreme violence seen in some types of games and said he will not support the motion.

Ald. Didier was reluctant to support the use without assurance of proper site licensing for individual software products being used. Ald. Meaux declined to amend the motion by including site licenses for software as part of the second contingency, feeling it could be a lengthy process that would hold up final approval of the use.

The Chair also commented that he would not support approval, pointing out that the business had operated without a food license, the applicant did not appear as requested at the committee's previous meeting, and the requested use is apparently already going on without approval.

Roll call vote on the motion, Ayes: 3; Noes: 4 (Birschel, Didier, Herzog, Treis)

Conditional Use for Expansion of Floral Shop at 7001 W. North Avenue

Held from the previous meeting was a request by Daniel Grogan for a Conditional Use, including waiver of parking requirements, in the Trade District at 7001 W. North Avenue for expansion of a floral shop. Mr. Grogan was present.

Ms. Szudy explained that staff is concerned about setting a precedent by allowing the business to expand by eliminating parking spaces without providing sufficient replacement spaces.

Ald. Becker supported this request, which he felt is good for the neighborhood. He spoke of the need to bring businesses in on North Avenue regardless of certain parking limitations. This is a good business and a good daytime operation that sometimes schedules appointments up to 8 p.m.

Jeff Growell, 2100 Pewaukee Road, Waukesha, representing the applicant, noted that eight parking spaces apparently are required. Mr. Grogan could create up to six parking stalls at the back of his property, depending on how cars are stacked. By removing the side parking area and driveway, he would be eliminating the need for employees to back out onto North Avenue. Photos taken at different times on various days were submitted to the Plan Commission to illustrate that parking on surrounding streets is not a problem. Mr. Grogan has confirmed that he would be able to lease some two to four off-site parking spaces for employees in Subway's lot but has not yet negotiated the monthly cost.

Greg Ziemet, 2350 N. 91st Street, pointed out that this is an urban community and questioned placing limitations based on parking spaces on a business that is trying to expand.

Ald. Donegan recalled that there was consensus at the last meeting to support the expansion, but staff was asked to provide some rationale that would allow Council to waive parking requirements in this case without compromising the ability to enforce those requirements overall. Mr. Kesner explained that any decision in an individual, unique situation like this would be made from a policy standpoint and, from a legal standpoint, would easily be distinguished from setting a precedent.

Moved by Ald. Donegan, seconded by Ald. Krill to recommend approval of the Conditional Use, including waiver of parking requirements, based on the fact that the subject parking spaces were primarily utilized by employees and are largely being recreated and because the benefits of this business expansion clearly outweigh the loss of parking that would benefit other North Avenue businesses –

Ald. Donegan accepted an amendment by Ald. Krill to add the following as additional circumstances that justify waiver of the parking requirement: the business has primarily daytime hours and there have been no complaints about availability of daytime parking; the nature of the business is such that customers do not park for long periods of time; spaces are available through leasing or piggy-backing employee parking at the rear of the building to make up for the lost parking; and elimination of a drive approach will create one additional space and eliminate a dangerous situation when vehicles back out into traffic.

Vote on the motion as amended, Ayes: 7

Proposed Ordinance – Trellises and Fences

The committee reviewed a proposed ordinance amending Chapter 24.23 of the Code relating to regulation of trellises and fences. Ms. Szudy reported that staff drafted the ordinance in order to provide a definition of trellises and restrictions for freestanding trellises that are currently unrestricted. Increasingly, staff has received complaints regarding trellises or trellis-like fence structures that are erected to get around fence regulations.

Greg Ziemet, 2350 N. 91st Street, presented photos of a trellises at his property line that support clematis vines. He installed them because the property had no landscaping when he moved there nine years ago. He was not trying to circumvent fence regulations but to improve the view for himself and his neighbors and provide some privacy. He believes these trellises would now be considered non-complaint. He acknowledged the need for rules and regulations but said this ordinance oversteps what is acceptable to him and a lot of his neighbors.

In response to a question from the Chair, Ms. Szudy said that the trellises on Mr. Ziemet's property appear to be over the proposed 6 ft. height limitation but otherwise would be in compliance. Since they would predate any new ordinance, they would not need to be removed.

David Dineen, 2331 N. 91st Street, felt that the ordinance should be rewritten to be more specific to the problem being addressed or the issue should be addressed in a different manner. He described a neighbor's 3 ½ ft. raised deck, which looks down on his patio with only a 4 ½ ft. fence in between.

Dawn Zahren, 2334 N. 64th Street, a real estate professional, cautioned against doing things that would keep people from moving here. Sometimes perception can be greater than what is actually on the books, she noted.

Ald. Herzog commented that the ordinance doesn't adequately address the problem or perhaps is addressing a problem that really isn't there. He questioned language regarding arbors, and said the ordinance also doesn't

clearly distinguish between freestanding trellises and those along the side of a house. There is no language regarding placement of a 6 ft. high trellis within the setback. Also, the fact that trellises purchased at home improvement stores are generally 8 feet high should be considered, as was the case with the 4 ½ ft. fence height limitation that was imposed to match the typical 4 ½ ft. height of purchased fence sections. He acknowledged that residents could plant arbor vitae screening but felt that they should have some options; trellises add beauty and value to a house.

Moved by Ald. Herzog, seconded by Ald. Krill to recommend to Council denial of the ordinance –

Ald. Birschel commented on a specific situation in his district with a trellis-topped fence and said that 6 ft. fences are proliferating in the city and are not coming before the Board of Zoning Appeals for a variance.

Vote on the motion: Ayes: 6; Noes: 1 (Treis)

Proposed Ordinance – Convenient Cash and Similar Establishments

The committee reviewed a proposed ordinance amending Chapters 24.23 AA Business Districts and 24.24 AA Commercial Districts to allow convenient cash businesses as a Conditional Use and creating Section 24.46.100 establishing restrictions upon the location of convenient cash and other similar establishments.

Mr. Kesner reported that it is not possible to totally prohibit these types of businesses from every location; but based on successful cases in Madison and Racine, we can reasonably regulate them. As now drafted, the proposed ordinance prohibits this type of business within 2,000 feet of a similar business and within 200 feet of residences. There are also provisions relating to glass windows and doors being kept free of advertising, minimum size of such establishments, and a requirement for proven security measures including possibly wireless cameras that would send a signal through the police dispatch system in case of emergency. The businesses would be allowed only in AA Business and AA Commercial zoning; previous action prohibited them in the North Avenue and Village Trade Districts.

Jeff Decora, 2021 N. 71st Street, said that the distance from residential districts is an important safety issue. The draft ordinance originally specified 500 feet. He would like the distance to be extended as far out as possible.

Mr. Kesner said that distances approved in other cities was further researched after the public hearing, and it was found that most specify 150 feet with some 200-250 feet. Staff checked distances on a map and found that 500 feet would probably be unreasonably restrictive. A limitation of 200 feet would be enough to provide for possible locations in AA Business and AA Commercial areas while restricting them from neighborhoods where there are more pedestrians and businesses are really integrated into the neighborhood.

Dawn Zaren, 2335 N. 64th Street, asked about hours of operation. Mr. Kesner said that the businesses would be prohibited from operation between 9 p.m. and 9 a.m. Karen Freiberg, 2031 Martha Washington Drive, expressed support of the ordinance.

Kathy Ehley, 7437 Kenwood Avenue, requested more information on possible locations. Mr. Kesner said that one example would be the small retail strip on Capitol Drive adjacent to Home Depot, which would be more than 200 feet from any residential neighborhood. There are a couple of other locations along Mayfair Road in business and commercial areas that do not immediately back onto residential property including, perhaps, the west side of the street north of Potter Road and possibly across from Mayfair.

Ald. Donegan commented on the need to ensure that we have an ordinance that we can enforce.

Ald. Herzog asked about limiting the number per aldermanic district and increasing the distance from residential to 300 feet. Mr. Kesner said it would be difficult to insert a limit per district, but the ordinance does prohibit them within 2,000 feet of each other, which equates to about one-half mile in either direction. The maximum seen in other ordinances was 2,500 feet, which would clearly allow only one between any major streets. The Plan Commission recommended 300-500 feet from residences, but that was amended to 200 feet following the public hearing when 250 feet was found to be the highest in other ordinances. Mr. Kesner confirmed that the businesses would require separate Conditional Use approval.

Ald. Herzog noted that the city notifies property owners within 200 feet of Conditional Use applications. Could we require the applicant to notify property owners within a greater distance? Mr. Kesner suggested that the applicant be required to provide fee sufficient to provide that notice.

Moved by Ald. Herzog, seconded by Ald. Donegan to recommend adoption of the ordinance with the following changes: 1) In section C 1, change the distances allowed between businesses of this type from 2,000 feet to 2,500 feet; 2) in section C 2, change the distance allowed from residential from 200 feet to 250 feet and insert a requirement that the applicant provide a sufficient application fee to allow the city to provide notices of the Conditional Use application to property owners within 250 feet. Ayes: 7

(The committee recessed at 9:40 p.m. and reconvened at 9:46 p.m.)

Offer by Toldt Development – Purchase and Development of Public Works Site South of Walnut Road

Ms. Szudy reported that Toldt Development has submitted an offer to purchase agreement for the public works site south of Walnut Road as the next step in the process recently approved by the Common Council. She noted that approval of this agreement would not in any way approve the potential planned development. Requirements prior to sale of the land and issuance of any building permit include: consideration of rezoning and a preliminary project plan by the Plan Commission, a formal public hearing on the rezoning before the Common Council, a report from the Design Review Board, review and recommendation of the proposal by this committee, and final approval of the rezoning and preliminary plan by the Common Council. Once the developer has revised his plans to meet any conditions set out in the preliminary approval process, the project will be reviewed for final plan approval by the Plan Commission, the Committee on Community Development, and the Common Council. The process will provide many opportunities for public input at public meetings in addition to the public hearing. The developer has also offered to meet with neighborhood groups.

Mr. Kesner noted that the proposed Agreement for Purchase and Sale outlines of number of conditions prior to actual purchase including the method of establishing a purchase price based on appraisal. It requires earnest money payments by the buyer after a number of specific steps have been accomplished and outlines a number of contingencies including all the normal development approvals required for a planned development. If the decision is to move forward, Mr. Kesner recommended proceeding with this agreement, which he believes protects the interest of the city.

Attorney Brian Randall of Friebert, Finerty & St. John, 330 E. Kilbourn Avenue, Milwaukee, spoke on behalf of Helmut Toldt of Toldt Development, 4040 N. Calhoun Road, Brookfield, who was also present. Mr. Randall noted that Mr. Toldt has provided the committee with a summary of the proposed development in response to their request for more details. Nothing substantive has changed in the proposal since the first submittal in response to the city's 2002 Request for Proposals. There are 427 proposed residential units including condominiums, apartments, and live/work spaces in various configurations. All roads and infrastructure would be at the developer's expense; no TIF funding is being requested. The project's value to the tax base will be \$55 million after approximately a five-year buildout.

Mr. Randall reaffirmed the process of meetings and approvals required for preliminary and final plans for the proposed development. Under a development agreement, he noted, the developer will ultimately have a contract with the city on the terms and conditions, all subject to Council approval. Toldt Development would not take title to the area until the process of approvals on the rezoning and planned development are completed. The purchase agreement will have a contingency period of 365 days to allow for those necessary approvals. Earnest money of \$50,000 will be paid in installments as benchmarks are met: the first \$10,000 upon Common Council approval of the agreement; the second after soil and geotechnical testing, which will likely be completed this fall; the third upon completion of the environmental investigation; the fourth upon approval of the preliminary plan and rezoning, likely in early 2008; and the fifth upon receipt of any pre-construction permits or any other necessary approvals for environmental, traffic, or stormwater issues. A sixth \$10,000 payment would be made if it is necessary to exercise the 180-day extension provision.

Ralph McCarthy, 1665 N. 117th Street, a former alderperson for this area, commended Helmut Toldt as a very accomplished, capable, and trustworthy developer. Citing concerns about traffic on 116th Street, he urged this committee to pay very close attention to the traffic situation. He suggested some improvements to the agreement in terms of insurance coverage: 1) require that the developer provide an Evidence of Insurance form indicating the coverage being provided, which is more binding than a Certificate of Insurance; 2) request at least a \$10 million umbrella policy; 3) include coverage for contamination or other issues that could arise in connection with the area's former use; and 4) the city should be named as an "additional insured" on these policies. Mr. McCarthy indicated that he would work with Ald. Birschel as the process moves along to keep neighbors informed and satisfied that this will be an asset to the community.

Mr. Randall indicated that he would be willing to amend the agreement upon recommendation of the City Attorney. Mr. Kesner felt that there is sufficient coverage but agreed that an umbrella provision would protect the city even more.

Ald. Herzog suggested adding language to the appraisal section of the agreement to require a "disinterested, independent, licensed, and qualified" appraiser. He also suggested that the 180-day extension provision require a *non-refundable* \$10,000 payment, since there otherwise is no disadvantage to extending the timeframe. Mr. Randall agreed to those changes.

Ald. Birschel reported that Mr. Toldt is willing to meet with neighbors at any time. He mentioned hearing recently from a manager at Bostich about the high volume of traffic at N. 113th Street and Watertown Plank Road and agreed that a traffic study is needed.

Moved by Ald. Herzog, seconded by Ald. Krill to recommend to Council approval of execution of the proposed Agreement for Purchase and Sale with the following changes: that the appraiser be "disinterested, independent, licensed, and qualified; that the effective date of the appraisal be January 1, 2008; that the \$10,000 in earnest money to be paid for a 180-day extension be non-refundable and not act as a credit at closing; that an "Evidence of Insurance" form be required; that umbrella coverage of \$10 million be required; that the City of Wauwatosa be named as an additional insured; and that insurance coverage be expanded to include any other hazardous contaminants. Ayes: 7

The meeting adjourned at 10:12 p.m.

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Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin