



CITY OF WAUWATOSA

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COMMUNITY DEVELOPMENT COMMITTEE MEETING Tuesday, April 13, 2010

PRESENT: Alds. Birschel, Dennik, Hansen, Herzog, McBride, Meaux, Nikcevich, Stepaniak - 8

ALSO N. Welch, Community Dev. Dir.; A. Kesner, City Attorney; E. Miller Carter, Asst.
PRESENT: City Atty.; J. Archambo, City Admin.

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

Repeal of Local Smoke-Free Restaurants Ordinance, Adoption of Statewide Smoking Ban

Ms. Miller Carter, Assistant City Attorney, reported that with the statewide smoking ban taking effect in July, the City Attorney's office recommends adopting the new state statute in its entirety to replace the city's existing smoke-free restaurants ordinance. The new statewide ban is stricter than the local ordinance since it will encompass more areas where smoking is not permitted. If adopted in its entirety, enforcement of anti-smoking laws can continue at the local level, violations can be prosecuted in municipal court, and forfeitures for ordinance violations would be considered city revenue.

Moved by Ald. McBride, seconded by Ald. Stepaniak to recommend
to Council repeal of the local ordinance and adoption of the state statute --

The committee discussed available options. Ms. Miller Carter explained that the local ordinance will be superseded. If the Council repealed the existing ordinance but did not enact the state law, any violations would be prosecuted in circuit court and the city would not collect any revenue from forfeitures. In answer to a question, City Administrator Archambo said that he is not aware of any additional budgetary allocations or fiscal impact for enforcement of the state statute or since adoption of the local ordinance.

At the direction of the Chair, the committee voted separately on each part of the motion.

Roll call vote on repeal of the local ordinance, Ayes: 8
Roll call vote on adoption of the state statute, Ayes: 6, Noes: 2
(Dennik, Herzog)

Conditional Use – Wireless Antennas at 7500 W. North Avenue

The committee reviewed a request by Rosemarie Barrette, agent for Clearwire, for a Conditional Use in the AA Business District at 7500 W. North Avenue to install wireless antennas and associated equipment on the roof of The Lutheran Home. Ms. Welch reported that there are a number of existing antennas at this site. The Plan Commission unanimously recommended approval.

Moved by Ald. Birschel, seconded by Ald. Dennik to recommend to
Council approval of the Conditional Use. Ayes: 8

Conditional Use – Wireless Antennas at 2303 N. Mayfair Road

The committee reviewed a request by Rosemarie Barrette, agent for Clearwire, for a Conditional Use in the AA Commercial District at 2303 N. Mayfair Road to install wireless rooftop antennas and associated equipment. Ms. Welch reported that there are a number of existing antennas at this site. The Plan Commission unanimously recommended approval.

Moved by Ald. Birschel, seconded by Ald. Dennik to recommend to Council approval of the Conditional Use. Ayes: 8

Conditional Use – Wireless Antennas at 2435 N. 89th Street

The committee reviewed a request by Rosemarie Barrette, agent for Clearwire, for a Conditional Use in the AA Single Family Residence District at 2435 N. 89th Street to install wireless antennas and associated equipment on the roof of McKinley School. Ms. Welch reported that the Plan Commission forwarded this matter with a request that the applicant provide a rendering depicting the visual impact on neighboring residents. Ms. Barrette indicated that the information would be available at the next meeting.

Moved by Ald. Birschel, seconded by Ald. McBride to hold this matter to the next regular meeting on April 27, 2010. Ayes: 8

Conditional Use – Wireless Antennas at 7500 Milwaukee Avenue

The committee reviewed a request by Rosemarie Barrette, agent for Clearwire, for a Conditional Use in the BB Two Family Residence District at 7500 Milwaukee Avenue to install wireless antennas and associated equipment on the roof of East High School. Ms. Welch reported that this would be the first antenna installation on the school's roof. The Plan Commission unanimously recommended approval.

In response to questions, Ms. Barrette explained that Clearwire is just entering this market area as a wireless internet provider. They launched service in Chicago at the end of 2009. They have negotiated leases with the Wauwatosa School District for all the school installations. The antenna height is about 4 feet.

Moved by Ald. McBride, seconded by Ald. Nikcevich to recommend to Council approval of the Conditional Use. Ayes: 8

Conditional Use – Wireless Antennas at 2166 N. 68th Street

The committee reviewed a request by Rosemarie Barrette, agent for Clearwire, for a Conditional Use in the AA Single Family Residence District at 2166 N. 68th Street to install wireless antennas and associated equipment on the roof of Washington School. Ms. Welch reported that a neighboring resident who appeared at the Plan Commission meeting was unaware that there are existing rooftop antennas. The fact that this installation will be smaller and even less visible addressed his concerns. The Plan Commission unanimously recommended approval.

Moved by Ald. Birschel, seconded by Ald. Nikcevich to recommend to Council approval of the Conditional Use. Ayes: 8

Conditional Use – Wireless Antennas at 1060 Glenview Avenue

The committee reviewed a request by Rosemarie Barrette, agent for Clearwire, for a Conditional Use in the AA Single Family Residence District at 1060 Glenview Avenue to install wireless rooftop antennas and associated equipment at Wilson School. Ms. Welch reported that this would be the first antenna installation at

this site. The antennas would be installed on the building's smokestack and painted to match that structure. The Plan Commission unanimously recommended approval.

Moved by Ald. Hansen, seconded by Ald. Nikcevich to recommend to Council approval of the Conditional Use. Ayes: 8

Street Festival Permit – Tosafest 2010

The committee reviewed a request by Peter Russo of the Wauwatosa Village Task Force for a Street Festival permit for use of the Village area for Tosafest 2010 on September 10 and 11, 2010. Hours of operation, including setup and takedown time, would be 2-11:30 p.m. on Friday, September 10, with the festival opening at 6 p.m.; and 11 a.m. to 11:30 p.m. on Saturday, September 11. Music would end by 11 p.m. on both nights. Final takedown and cleanup would take place from 7 a.m. to noon on Sunday, September 12.

Moved by Ald. Hansen, seconded by Ald. Meaux to recommend to Council approval of the Street Festival permit. Ayes: 8

Street Festival Permit – Chili-n on the Avenue

The committee reviewed a request by Meg Miller and Michael Phillips of the North Avenue Neighborhood Alliance for a Street Festival permit for a Chili'n on the Avenue chili cook-off event on Saturday, July 24, 2010, from 11 a.m. to 5 p.m. North Avenue would be closed to traffic between N. 68th Street and N. 71st Street. Ms. Welch reported that the applicants have been working through details with the Director of Public Works, who is satisfied that their plans would achieve a positive event.

Meg Miller, 2466 N. 72nd Street, added that the Director of Public Works has recommended also requesting use of the municipal parking lot at 69th Street.

Bobby Pantuso, 2414 N. 67th Street, the incoming alderperson for the adjacent neighborhood, said he has been involved in the planning and hopes this will be an annual event. It will be nationally sanctioned and should draw participants from surrounding states, to the benefit of the North Avenue business area.

Moved by Ald. Stepaniak, seconded by Ald. Nikcevich to recommend to Council approval of the Street Festival permit. Ayes: 8

Ordinance – Fence Setback Requirements

An ordinance amending Section 15.28.020A.1 and creating Section 15.28.030A.4 of the Code to add additional fence setback requirements from permanent structures on adjacent parcels returned to the committee following introduction to Council.

Ms. Welch reported that the Community Development Department does not support adoption of the ordinance as it stands. While she sympathizes with the resident whose situation prompted this proposal, she noted that there are many such cases across the city. As currently written, the ordinance would essentially put a burden on one neighbor to move his fence and give up a portion of his yard in order to allow another neighbor access to a structure that in many cases does not meet currently required zoning setbacks. She sees this as an enforcement nightmare, expanding the number of people needing a permit and also requiring surveys of both lots to identify any structures affected by a fence. Residents do not now need a permit for a 4-1/2 ft. fence on the property line nor are surveys required. It is likely that problems would not be identified until after a fence has been erected. Since the ordinance would not be retroactive, it would not solve pre-existing problems and would create a situation of trying to establish whether a fence was erected pre-or-post adoption.

Ms. Welch noted that other municipalities have been somewhat reluctant to mandate how neighbors should interact with each other. Also, if there are problems between neighbors, access to maintain the 30-inch strip of land between the fence and the structure could be an issue. There may be unintended neighborhood effects that go beyond solving a particular problem and actually make it worse. If a property has a conforming setback, there would be 18 inches between the property line and any structure. With non-conforming structures, residents would be forcing another neighbor to compensate by giving up a portion of their yard.

Ed Sternberg, 2527 Lefebber Avenue, said he discussed this situation with Ald. Stepaniak and asked for some provision to allow neighboring residents to obey the law in terms of maintaining property next to a fence. Since setback requirements changed in 1971, there is not a problem in most of the newer areas of the city, but it is a concern in older neighborhoods where structures were built to pre-1971 requirements. In the situation affecting his property, the fence has not yet been constructed, so the ordinance might provide some benefit. He was not sure it would make much difference in terms of the need for a survey, which it is wise to get in any case.

The Chair questioned how and by whom the area between the fence and structure is generally maintained. Mr. Sternberg said that it is usually maintained by the owner of the structure. Standard practice in his neighborhood has been to use brick pavers there rather than trying to grow grass.

Ald. Stepaniak said that the intent was to provide that a fence could not be constructed within a certain distance of a building, the only exception being granting of a permanent easement to the adjacent property owner so that he has access for maintenance. The issue has arisen a handful of times in the past 10 years in the 5th District where lots are fairly small. This seems to be a reasonable accommodation to the problem. Although the committee changed the access area from 18 to 30 inches at the last meeting, Ald. Stepaniak said that he would not favor returning to the original 18 inches based upon reflection and comments from others.

Moved by Ald. Stepaniak, seconded by Ald. Meaux to recommend to Council adoption of the ordinance contingent upon changing the distance from a permanent structure to 18 inches --

Ald. Meaux indicated that he seconded for discussion purposes but does not believe the ordinance is necessary. Although these situations arise from time to time, he does not support creating legislation that negates the necessity for neighbors to negotiate a solution themselves.

Ald. McBride raised the question of adverse possession, which the Chair had also mentioned earlier. He favored holding the ordinance for a few weeks to talk to the City Attorney about that and to consider the Community Development Director's concerns. Ald. Birschel supported that approach.

Moved by Ald. Stepaniak, seconded by Ald. Meaux to hold the matter for two weeks. Ayes: 5; Noes: 3 (Dennik, Hanson, Herzog)

The Chair said that he has encountered only one similar situation in ten years, and this ordinance would not be applicable. He felt that issues like this should be resolved between neighbors rather than permanently taking a portion of a neighbor's property. Ald. Hansen also felt that a new ordinance is not warranted.

The meeting adjourned at 8:52 p.m.

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Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin