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Department of Community Development
Taped and Televised

**PLANNING COMMISSION
Regular Meeting
Monday, December 4, 2023
6:00 PM
Christine Nuernberg Hall**

Minutes

1) Call to Order, Roll Call

Present:

Chair Andrew Nerbun
Alderman Robert Strzelczyk
Commissioner Nancy Urbani
Commissioner Bruce Barnes
Commissioner Martin Choren
Commissioner Dan Gentges
Commissioner Rebecca Schaefer
Commissioner John Stoker
Commissioner Stephanie Hawley – **Absent**

Mayor Nerbun called the meeting to order at 6:00 p.m.

a) Approval of Minutes from October 23, 2023.

Action

Ald. Strzelczyk made a motion to approve the minutes from October 23, 2023.

Commissioner Urbani seconded the motion.

A voice vote was taken; vote passed (7-0)

RESULT:	APPROVED [7 TO 0]
MOVER:	Robert Strzelczyk, Alderman
SECONDER:	Urbani, Commissioner
AYES:	Urbani, Nerbun, Strzelczyk, Barnes, Choren, Gentges, Stoker
ABSENT:	Hawley

2) Consent Agenda/Public Hearing

- a) Infinite Gymnastics. The applicant is seeking conditional use grant approval to allow for a fitness center for the property located at 6350 W. Donges Bay Road.

Action

Commissioner Stoker made a motion to go into public hearing.

Commissioner Urbani seconded the motion.

A voice vote was taken; vote passed (7-0)

No public comment.

Action

Ald. Strzelczyk made a motion to close the public hearing.

Commissioner Stoker seconded the motion.

A voice vote was taken; vote passed (7-0)

3) Consent Agenda/Regular Business

- 1) Espire Homes, Inc. The applicant is seeking minor request approval for a fill permit to allow for 5,000 C.Y. of fill for the property located at 14141 N. Lake Shore Drive..
- 2) Joy Stringer and Warren Stringer Jr. The applicant is seeking certified survey map approval to allow for a 2-lot land division for the property located at 11700 N. Wasaukee Road.
- 3) Oliver Investment Group. The applicant is seeking setback waiver approval for the property located at 1836 W. Mequon Road.
- 4) Torrey Drive, LLC. The applicant is seeking street tree plan and final plat approval for a 11-lot subdivision for the property located at 10766 Torrey Drive.

Item 3(a) was removed from the consent agenda.

Commissioner Stoker recused himself.

There was a question from the Commission regarding the plan for the trees at the Torrey Drive development and whether there will be streetlights at this development.

Assistant Director Jac Zader stated that this development was approved by the Tree Board and planting of the trees will be sometime prior to June. No streetlights have been proposed for this development.

Action

Ald. Strzelczyk made a motion to approve the Consent Agenda items (not including 3a).

Commissioner Gentges seconded the motion.

A voice vote was taken; vote passed (7-0) (Recused: Stoker)

RESULT:	APPROVED [8 TO 0]
MOVER:	Robert Strzelczyk, Alderman
SECONDER:	Dan Gentges, Commissioner
AYES:	Urbani, Nerbun, Strzelczyk, Barnes, Choren, Gentges, Schaefer
ABSENT:	Hawley
RECUSED:	Stoker

Assistant City Engineer, Cole McCraw, stated that the request is for a fill permit for a home that is currently under construction in the Lake Shore Estates subdivision. A grading plan and green infrastructure plan were submitted by the applicant. The fill permit is required due to their fill and earthwork exceeding 1,000 C.Y. The grading plan proposes 5,000 C.Y. of fill. He explained that rain gardens are being installed, which are required to capture some of the runoff from the roofs, collection from the downspouts and sump pump. The grading plan was reviewed by staff to ensure consistency with the existing drainage patterns in the area as well as to ensure no upstream drainage is impacted by the grading plan.

Public Comment

Willian Schumaker – 13947 N. Lake Shore Drive - he is the property owner to the south of this site, and he is concerned about the foundation which has already been poured and is about 10 feet above the ground. He stated that his property is low, and he is concerned about the requested amount of fill being added to the existing site and possibly causing a negative impact to his property.

Asst. City Eng McCraw stated that this is a unique situation in that this fill issue was discovered in the middle of the building phase and the reason the foundation has already been poured. The 5,000 C.Y. is needed to conform to their plan.

He answered a question from the Commission regarding the reason for the height of the foundation. He stated that there are some existing wetlands nearby which indicates ground water and a proposed walk-out basement, with the land sloping down to the wetland area, triggered the need for fill and is the reason for the height difference.

Asst. City Eng. McCraw also responded to a request from the Commission to explain how the two proposed ponds work on the site. He explained that the requirement for the rain gardens is to ensure the drainage pattern is consistent with the drainage patterns in the area, and that water is not getting pushed into an area where it is not already going, and that the upstream drainage pattern is not impacted.

He added that the rain gardens are sized in consistency with MMSD requirements; ½ inch of precipitation needs to be captured off all the hard surfaces on site. The two rain gardens will be located downstream of the hard surface and will aid in slowing down the natural flow.

Staff commented that changes are being made to the building permit application process so that this issue can be addressed prior to the on-site building process starting.

Action

Ald. Strzelczyk made a motion to approve the fill permit.

Commissioner Stoker seconded the motion.

A voice vote was taken; vote passed (8-0)

RESULT:	APPROVED [8 TO 0]
MOVER:	Robert Strzelczyk, Alderman
SECONDER:	John Stoker, Commissioner
AYES:	Urbani, Nerbun, Strzelczyk, Barnes, Choren, Gentges, Schaefer, Stoker
ABSENT:	Hawley

4) Regular Business/Public Hearing

- a) Congregation Agudas Achim Chabad, Inc. The applicant is seeking conditional use grant approval to allow for a restaurant for the property located at 2233 W. Mequon Road.

Asst. Dir. Zader stated that this is the Deli on Crown, which has been existing for several years. It was originally approved as a cafeteria at the facility and has since morphed into a public space. Due to the public aspect, they are required to have a conditional use grant (“CUG”) for a restaurant. Due to the rezoning to IPS from Residential, they have the option to get this approval.

He explained that it is a small operation of approximately 880 sq. ft. with a capacity of about 30 people. Typically, they are open daily 11 am-3 pm, with some occasional instances of extended hours allowing them to be open until 8 pm. There have not been any complaints about the use at this site and staff recommends approval.

Action

Ald. Strzelczyk made a motion to approve the CUG.

Commissioner Stoker seconded the motion.

A voice vote was taken; vote passed (8-0)

RESULT:	APPROVED [8 TO 0]
MOVER:	Robert Strzelczyk, Alderman
SECONDER:	John Stoker, Commissioner
AYES:	Urbani, Nerbun, Strzelczyk, Barnes, Choren, Gentges, Schaefer, Stoker
ABSENT:	Hawley

5) Regular Business

- 1) Lakeside Development. The applicant is seeking land use plan, concept plan and rezoning recommendation approval from R-3 to R-5/PUD for a 19-lot cluster open space preservation subdivision for the property located at 11743 N. Port Washington Road.

Public Comment

Douglas Jainsch – 11805 N. Port Washington Road – he is opposed to this development as he feels there are too many lots and does not feel the proposed development fits well in this area.

Asst. Dir. Zader stated that there are 3 parcels that make up the 10 acres of the proposed development. This approval requires a public hearing in front of the Common Council in January, this is the first step in the process. Staff worked with the applicant and agreed that R-5 would be an appropriate fit here as this development is a buffer between plex zoning to the south and residential zoning to the north. The development would be comprised of ½ acre condominiums.

Some of the issues that have been vetted included:

- There will be a public road and as part of the approval, ROW will be dedicated so that if the property to the north is ever developed the public road can be connected to that site.
- There is agreement that the access point should be located to the north.
- All the trees will be preserved and will be part of an open space area for the condominiums. The line of white pines will also be preserved.
- The City Forester identified two specimen trees located near the building pad for Lot 3 that he recommends be preserved, but the applicant has stated that they may not be able to be preserved as recommended due to the grading plan.
- Staff have requested the building pads be pushed back 10 feet off the ROW line to avoid any conflict with grading issues.

Staff recommends approval subject to all the conditions in the staff report.

There was some feedback from the Commission regarding the density of the proposed development.

Asst. Dir. Zader answered that concern explaining that there are very few R-5 zoned developments proposed in the city, although there are several R-6 zoned developments, which allow up to 4 units per acre. He commented that this is a transition area as there is commercial uses along Port Washington Road, Aster Woods and the other condominium developments further south, the two Lexington mixed use buildings all neighboring this site which have much more intense uses. The plex concept does not work on this site because the two parcels are too narrow, and the R-5 zoning is most likely an isolated request for this specific site.

The applicant, Scott Humber from Lakeside Development Company, stated that this type of housing is a direct result of their client feedback; clients are looking for first floor primary suites located in a community without an acre lot to maintain. They believe mostly empty nesters will

be attracted to this development.

Action

Commission Barnes made a motion to approve per staff recommendations.

Commissioner Choren seconded the motion.

A roll call vote was called; vote passed (6-2) (No: Schaefer, Ald. Strzelczyk)

RESULT:	APPROVED [6 TO 2]
MOVER:	Bruce Barnes, Commissioner
SECONDER:	Martin Choren, Commissioner
AYES:	Urbani, Nerbun, Barnes, Choren, Gentges, Stoker
NAYS:	Strzelczyk, Schaefer
ABSENT:	Hawley

- 2) St. Francis Borgia Church. The applicant is seeking minor request approval for a fill permit to allow for 1,500 C.Y. of on-site earthwork on the parcel located at 7963 W. Pioneer Road.

Asst. City Eng. McCraw stated that this request is for fill and excavation approval located on Pioneer Road for a cemetery just west of Wauwatosa Road. The applicant wants to install an aesthetic pond as there is an issue with flooding near some of the graves. The installed pipe will allow the runoff to be redirected to a different location on their site. The 1,500 C.Y. of soil will stay on the site and will not be exported. There are a few staff conditions that need to be adhered to procedurally, however staff recommends approval.

Action

Ald. Strzelczyk made a motion to approve the fill permit.

Commissioner Stoker seconded the motion.

A voice vote was taken; vote passed (8-0)

RESULT:	APPROVED [8 TO 0]
MOVER:	Robert Strzelczyk, Alderman
SECONDER:	John Stoker, Commissioner
AYES:	Urbani, Nerbun, Strzelczyk, Barnes, Choren, Gentges, Schaefer, Stoker
ABSENT:	Hawley

- 3) Attorney Rex Anderegg for Domagala. The applicant is seeking minor request approval for a temporary use and structure for a recreational vehicle to be used as temporary living accommodations through 10.31.24 for the property located at 326 W. Seacroft Court.

Planner Hoier stated that a trailer has been present on Seacroft Court since at least August 4th, which is when Code Enforcement Officer, Scott Pinzer, sent the first order to correct. The original building permit for the home renovation was issued on August 9, 2021, and an addition was authorized in October 2023. The building permits have been renewed. The applicant is requesting a recreational vehicle be allowed on the property, which does not meet the required standards for a caretaker or an ADU per the code. Residential parcels with temporary dwelling

units for commercial uses are not allowed. The proposed time frame also exceeds the allowed time frame for temporary use, the applicant requested December 2023 through October 2024, the code only allows use from May – October, with a maximum of 18 months. Additionally, the specifications for the trailer list it at 28-feet which exceeds the length allowed.

He added that the HOA does not support this request as it violates two of their declarations for the neighborhood association:

- Construction needs to be contained to one year.
- No temporary structure can be used as a temporary residence.

It was stated that this was a complaint from a neighbor and that all code enforcement throughout the city is complaint based. Staff is not out looking for violations, response is based on complaints filed with city staff.

The applicant, Attorney Anderegg representing the Domagala's, stated that the trailer is not intended for living quarters. It is to be used as a working space for the employees on site as a break space and workspace. A watch man does occasionally stay overnight. He explained that this is a renovation of a larger home (12,000+ sq. ft.) and it is time consuming to complete all the reconstruction. He believes that the requested temporary permit does not set a precedent, nor does it violate the ordinance; but that it would actually allow the project to be completed sooner.

Community Development Director Kim Tollefson stated that in May 2023 some changes to the ordinance were made that allow for additional flexibility of trailers on private property:

- One vehicle of this type is allowed, so long as it does not exceed 20-feet in length, can be stored unenclosed (height and weight requirements apply).
- Only one type of this type of piece of equipment is allowed on the property at one time (must be under 20-feet in length).
- Some on site locational requirements apply.
- One vehicle not to exceed 27-feet in height can be stored on site from May 1st through October 31st, with an extension of less than 7 consecutive days.

The Commission provided feedback that the length of time requested is too long to be allowed. It was suggested that the on-site activities could be done in a trailer that is allowed per the code (20-foot).

Action

Ald. Strzelczyk made a motion to deny the request for temporary use.

Commissioner Urbani seconded the motion.

A voice vote was taken; vote passed (8-0)

RESULT:	DENIAL [8 TO 0]
MOVER:	Nancy Urbani, Robert Strzelczyk
AYES:	Urbani, Nerbun, Strzelczyk, Barnes, Choren, Gentges, Schaefer, Stoker
ABSENT:	Hawley

- 4) Design 2 Construct for Sagrillo. The applicant is seeking building and site plan approval to allow for 4,382 square foot two-story building for the property located at 10404 N. Washington Road (ReFresh Aesthetic Center). REMOVE FROM TABLE

Action

Ald. Strzelczyk made a motion to remove the item from the table.

Commissioner Choren seconded the motion.

A voice vote was taken; vote passed (8-0)

Planner Hoier stated that this building and site plan was before the Commission in September. He reminded the Commission that this proposal includes a significant dedication of ROW by the applicant, building and site waivers and the sidewalk to be replaced and straighten out by the applicant, which the section north of the lot line will be reimbursed by the TIF.

Staff, Commissioner architect Choren and the applicant and applicant's architect had two meetings to discuss the building materials, treatment room window coverings and the box style of the building.

Planner Hoier discussed some of the latest changes to the building and showed an update rendering:

- Removal of the building material from the top portion of the building.
- Arched caps on 2nd floor windows were added.
- West side façade feature was added.
- Aluminum wood-colored feature was added to the middle of the building.
- A door was installed on east side façade.

Although many of the recommendations from the Commission architect and staff were achieved, staff does not believe that the Commissions' original concerns were addressed and recommends the following additions be modified before final approval is granted:

- Arched windows on the 1st and 2nd floors including the cap element.
- Revising the south façade entrance to represent symmetry (khaki stone).
- Additional details to be added on the east façade.
- Double window on the 2nd floor of the east façade above the doorway.
- Architect should address the floorplan and screening for visual obstruction in the service areas and the treatment rooms.
- The janitorial closet should be addressed/screened.
- Lack of emphasis of the building along Port Washington Road addressed.

- Rooftop features to be added as projections.

The applicant architect explained many of the changes that were made to the building plan.

The Commission provided feedback that they support many of the modifications to the building design. They appreciate the collaboration of the applicant, staff and Commission architect working together.

Outstanding issues:

- East side – it is not on a public road, and there is not much visibility.
- Janitor closet is an issue due to its location and high visibility.
- Right side of the building does not look as finished as the rest of the building.

Action

Ald. Strzelczyk made a motion to approve one more plan review with staff, the applicant and the Commission architect to reach consensus on the remaining outstanding issues.

Commissioner Gentges seconded the motion.

A roll voice vote was taken; vote passed (8-0)

RESULT:	APPROVED WITH CONDITIONS [8 TO 0]
MOVER:	Andrew Nerbun, Chair
SECONDER:	Dan Gentges, Commissioner
AYES:	Urbani, Nerbun, Strzelczyk, Barnes, Choren, Gentges, Schaefer, Stoker
ABSENT:	Hawley

6) Policy

1) Sign Code Updates

City Attorney, Brian Sajdak, stated that the sign code has been updated due to recent case law changes, political firestorms, statutory pressures and a threatened lawsuit. The changes relate mainly to the right-of-way and public properties. He explained the reasons for the changes, the definitions associated with these changes and what the new sign code requirements include.

Highlights of the revised sign code sections:

- Findings Purpose and Definitions – defined the purpose of the sign code and enhanced some of the standards, combined all definitions into one section and eliminated content-based definitions.
- Permits, Prohibited Signs & Exemptions – clarified and streamlined the language so that it is easier to understand, consolidated sections, included exceptions for signs allowed by other laws.
- Residential Area Signs – temporary signs allowed with a maximum of 15 sq. ft. of total signage, cannot exceed 4-ft in height and cannot be posted for longer than four months.

No major changes for non-temporary signs (commercial, directional, building name, subdivision monument or home occupation).

- Public Property & ROW – cleaned up and integrated into the full code. Returned to a ROW-first standard.
- Non-Residential Areas – incorporated sections, removed content-based language and fixed a known issues regarding window signs, updated to match current zoning, master sign plan clarification and development fences vs. signs addressed.
- Other Changes – authorize staff to deny a sign permit for legibility and strengthen language related to maintenance and appearance.

Mayor Nerbun suggested that a definition of standards of “legibility” be incorporated to avoid further interpretations.

Action

Ald. Strzelczyk made a recommendation of approval the revised sign code to the Common Council for approval to include a standard of legibility.

Commissioner Gentges seconded the recommendation.

A voice vote was taken; vote passed (8-0)

RESULT:	RECOMMENDED [8 TO 0]
MOVER:	Robert Strzelczyk, Alderman
SECONDER:	Dan Gentges, Commissioner
AYES:	Urbani, Nerbun, Strzelczyk, Barnes, Choren, Gentges, Schaefer, Stoker
ABSENT:	Hawley

7) Announcements

The next meeting is Monday, January 22, 2024, at 6:00 p.m.

The 2024 meeting date calendar is included in the packet.

8) Adjourn

Action

Commissioner Stoker a motion to adjourn the meeting.

Commissioner Schaefer seconded the motion.

A voice vote was taken; vote passed (8-0)

RESULT:	APPROVED [8 TO 0]
MOVER:	John Stoker, Commissioner
SECONDER:	Rebecca Schaefer, Commissioner
AYES:	Urbani, Nerbun, Strzelczyk, Barnes, Choren, Gentges, Schaefer, Stoker
ABSENT:	Hawley

The meeting concluded at 8: 37 p.m.

Respectfully Submitted,

Jac Zader