



THESE ARE THE MINUTES OF THE **PLAN REVIEW BOARD** MEETING HELD ON THURSDAY, **FEBRUARY 18, 2021** AT 4:30 P.M. IN THE COMMON COUNCIL CHAMBERS OF CITY HALL, 2000 NORTH CALHOUN ROAD, BROOKFIELD, WISCONSIN

MAYOR STEVE PONTO PRESIDING

MEMBERS PRESENT: Alderman Mark Nelson, Commissioner Steve Petitt (3 members physically present to meet quorum)

STAFF PRESENT: Neighborhood Planner Richard VanDerWal, Administration & Licensing Clerk Mary Schulz

1. Roll Call

Mayor Ponto called the Plan Review Board meeting to order at 4:31 p.m. A quorum was present.

2. Announcements

- a. Approval of these items must also be given at the regular Plan Commission meeting of March 8, 2021 and the Common Council meeting of March 16, 2021.
- b. The next regularly scheduled Plan Review Board meeting will be held on March 18, 2021.

3. New Business

a. **Estate of Adeline I. Kuchenbecker: preliminary and final CSM**

Request of the Estate of Adeline I. Kuchenbecker, 990 LaFayette Court, Brookfield, WI 53005 – Patricia Marek, Personal Representative, for approval of a preliminary and final Certified Survey Map combining two lots, lot 3 and 4 in Block 17 of Kinsey's Garvendale, at 12955 Robinwood Street. (SE ¼ of Sec. 36) - RV

Richard VanDerWal reported: 1. The applicant's two lots are located in Kinsey's Garvendale, one of five subdivisions platted in the 1920s with "city size" lots. The City zoning code terms these lots "substantially substandard". The City adopted resolutions that defined minimum lot combinations, or portions thereof, for these subdivisions that would constitute "buildable" conforming lots from the substantially substandard lots. The intention of these efforts was to establish greater compliance with the minimum requirements, service delivery, and general characteristics of the City's base residential single family zoning districts while acknowledging the existing homes, streets, and utility infrastructure of these subdivisions made absolute compliance with the base zoning districts impractical.

1. 2017 Wisconsin Act 67 establishes that, notwithstanding any other law or rule, or any action or proceeding under the common law, no political subdivision may enact or enforce an ordinance or take any other action that prohibits a property owner from doing any of the following:

- I. Conveying an ownership interest in a substandard lot.

- II. Using a substandard lot as a building site if all of the following apply:
 - a. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
 - b. The substandard lot or parcel is developed to comply with all other ordinances of the political subdivision

2. The applicant's lots have never been developed. Act 67 establishes both lots as buildable; however, the applicant is requesting approval of a Certified Survey Map (CSM) that would merge the two substantially substandard lots in order to permit building a home in the area where the dividing lot line currently exists between the lots. The resultant lot of the proposed CSM conforms to the dimensions of the majority of lots in the subdivision, and is closer to meeting the minimum requirements of the base-zoning district as the City previously intended for such conditions prior to Act 67.

Staff's recommendation: Request is consistent with all applicable ordinances and City standards; there are no grounds to deny the request. Staff recommends the plan commission approve the Certified Survey Map subject to securing of sanitary sewer laterals via surety and Engineering Division review and approval, including technical corrections, prior to recording.

Gary and Patricia Marek, Representatives, appeared before the board for comments and/or questions.

Mr. Marek stated concern regarding the surety bond for the sewer. They are selling the lot, not building on it. They have an offer from a buyer at this point and part of the agreement was that they agreed to do the CSM to combine the lots and the offer states they will not put in the sewer lateral.

Mr. VanDerWal replied that the 'to be buyer' can post the surety. The city does not care who posts it as long as the surety assures that the lateral from the property to the street will be completed before the lot can be considered an approved lot. It is not necessary that the Marek's post the surety, just that the surety has to be in place.

Mayor Ponto questioned if there will be an issue with the buyer. Mr. Marek was unsure when the buyer would post the surety bond. He felt it would be at the time when a building permit was applied for. Commissioner Petitt noted the city's sales agreement states that a property cannot be sold unless a surety bond for sewer lateral is in place. Therefore, the surety bond needs to be in place before a building permit is received. Commissioner Petitt wondered if the board could approve the CSM without having a surety bond in place, as long there is a surety bond before everything is finalized.

Mr. Marek noted they could sell the two lots together as one or sell them as two separate lots. Commissioner Petitt asked if the Marek's would have to have two surety bonds if selling two separate lots. Mr. VanDerWal stated the Marek's would not be 'on the hook' in either situation. The difference is that in order for either of the lots to be hooked up to city services, there needs to be a surety in place that covers the work in the right-of-way for the lateral. The lots are not considered 'approved' lots unless the laterals are in place. He added that with Act 67, the properties could be sold; in this case, it is not a condition that the property could not be sold to the buyers with this circumstance. It is a matter of getting all the items in alignment prior to the application of a building permit. The surety must be in place for the lateral for the new lot. The city does not care if the surety bond is taken care of by the seller or the buyer or if it is one lot or two lots. In both cases, it does not hold up the sale of the lot(s).

Commissioner Petitt wanted to know how the new buyer would know to submit a surety bond for the lateral. Mr. Marek indicated that part of a real estate sale, they would have to disclose that there is no sewer lateral to the lot(s). At that point, the buyer would have to contact the city's engineering department regarding the lateral. Mr. VanDerWal added he has spoken to the buyer's to clarify the process of the CSM and their potential purchase in pursuing a home site placed over the area where the lot line currently exists between the lots after they are combined.

Mayor Ponto asked in order to have a CSM finalized, there has to be a surety bond posted. Mr. VanDerWal replied yes, the surety must be in place with the Engineering department so the improvement is secured prior to the lot being officially created with the CSM. Commissioner Petitt questioned if the buyer was requesting that the CSM be in place before the surety bond is posted. Mr. Marek said yes, it was part of the agreement. Mr. Marek summarized that the CSM cannot be created and recorded until there is a surety bond for the sewer lateral. Mr. VanDerWal stated yes, that is how it is presented right now. Alderman Nelson asked is this something we are requesting or is it indeed a requirement. Mr. VanDerWal replied it is based on the subdivision code, which states that lots need to be improved in order for a lot be recorded. This is the city's requirement. Mr. VanDerWal added that under the current two lot configuration, the lots are saleable and buildable without the surety in place. Alderman Nelson replied that the staff recommendation is the prudent way to do this, but given the current conditions, could the City approve the CSM and allow it to be recorded and have the timing of the surety requirement to be in place prior to building permits. Mr. VanDerWal replied that the City Attorney should review and confirm, but recommended if the Plan Commission were to motion to approve the CSM without the surety prior to recording, include the requirement that a surety be required prior to building permits for building a home on the lot in the motion.

Motion by Alderman Nelson, seconded by Commissioner Petitt, to approve the CSM, not requiring the surety prior to recording the CSM, but require the surety prior to submitting building applications for building a home on the lot at 12955 Robinwood Street. Motion carried 3-0.

b. John Spitz: minor revision to plan and method of operation

Request of John Spitz, Owner, 3240 Gateway Road, Brookfield WI 53045, for approval of a minor revision to plan and method of operation in association with expansion of pavement at said address. (SW ¼ of Sec. 7) – RV

Richard VanDerWal reported: 1. The proposal is located in the Northwest Gateway Node Targeted Investment Area (TIA), one of eleven areas identified in the *City of Brookfield 2050 Comprehensive Plan* that foster community reinvestment by supporting new economic development and sustainable, mixed-use redevelopment with sensitivity to surrounding neighborhoods. The adopted neighborhood plan is the *Northwest Gateway Neighborhood Plan* (Neighborhood Plan). The Neighborhood Plan does not include a recommended land use for this site. The adopted land use of the City of Brookfield 2050 Comprehensive Plan is "Employment Focused – Lower Density". The site is zoned "O&LI" Office and Limited Industry District. Requested expansion of paved areas for vehicular maneuvering is a permitted use.

2. Preliminary grading, drainage, erosion control, and storm water management application have been submitted to the Engineering Division.

3. Applicant is aware that expansion of parking spaces beyond existing requires administrative review and approval of layout by Fire Department, Engineering Division, and Department of Community Development staff. Applicant is also aware of Section 17.72.010.B.3. of the zoning code:

All operations and activities of all uses within this district shall be conducted wholly inside a building or buildings, except as listed within this district.

Staff's recommendation: Request is consistent with applicable zoning and code requirements. Staff recommends the plan review board approve the minor revision to plan and method of operation subject to:

1. Statement of operations dated January 28, 2021 by John Spitz, Owner, 3240 Gateway Road, Brookfield, WI 53045.
2. Site utility, grading, drainage, and erosion control plans subject to final approval of the city of Brookfield Engineering Division prior to the issuance of building permits. The developer of the project will be required to submit Item A below before the issuance of a building permit:
 - a. A copy of the approved Grading and Drainage Plan, as approved by the city of Brookfield Engineering Division.
3. Storm water management application completed and approved by the Engineering Division.
4. Once a building permit is issued by Inspection Services, the owner shall receive an occupancy permit within eighteen (18) months or the owner of the property may be subject to the penalty provisions of the Zoning Code, Section 17.100.130 or the owner shall remove construction equipment and debris from the site, fine grade and seed the site, and stabilize surface water drainage leaving the site to City Engineering Department specifications within four (4) months or the owner of the property may be subject to the penalty provisions of the Zoning Code – Section 17.100.130. (Ordinance #2134-08).
5. Minor revision to plan and method of operation approval expires on March 16, 2023 unless a building permit is obtained prior thereto.

Mr. VanDerWal added the Engineering Division wanted to add clarification that this submittal is only for proposed increase in pavement/impervious area. A future building addition will require a separate submittal to the Plan Commission and Engineering review and approval at that time.

Alderman Nelson asked where the new blacktop surface going to be on the site. Mr. VanDerWal said the blacktop would expand east of the building. The blacktop will occupy the southern edge of the property. It is a significant piece of blacktop to be used only for vehicle turnaround. Long-term storage of items outside on the blacktop is prohibited and no work or operations can be performed on the surface. Commissioner Petitt was concerned if the site meets storm water management requirements. Mr. VanDerWal noted that Theresa Caven, Project Engineer – Storm water, checked the site and this plan is within the capacity of the existing storm water facilities for the industrial park.

Motion by Alderman Nelson, seconded by Commissioner Petitt, to approve a minor revision to plan and method of operation in association with expansion of pavement at 3240 Gateway Road. Motion carried 3-0

4. Adjournment

Motion by Commissioner Petitt, seconded by Alderman Nelson to adjourn the Plan Review Board meeting. Motion carried 3-0. 4:54 p.m.

Minutes respectfully submitted by Mary Schulz, Administration & Licensing Clerk