



## MINUTES OF AN OFFICIAL MEETING

**Regular Meeting of:** Plan Commission

**Date and Time:** Monday, July 10, 2023, at 6:30 pm

**Location:** City Hall Council Chambers, 2000 North Calhoun Road, Brookfield WI

**Members Present:** Alderman Gary Mahkorn (acting Chair), Alderman Mike Hallquist, Alderman Rick Owen, Commissioner Michael Franz, Commissioner Scott Thomas, Commissioner Austin Moore

**Others Present:** Director of Community Development Dan Ertl, Fire Chief Dave Mason, City Engineer Dan Erickson, Planning Administrator Richard VanDerWal, Associate Planner Emily Zandt, Alderman Jerry Mellone, Alderman Chris Blackburn

**Members Absent/Excused:** Mayor Steven Ponto (Chairman)

7/10/2023 - Minutes

1. Roll Call

Alderman Gary Mahkorn noted a quorum present and called the Plan Commission to order at 6:32 pm.

2. Announcements

- a. The Next Regularly Scheduled meeting is August 7, 2023, 6:30 PM

3. Approval of Minutes

- a. Minutes of the June 12, 2023, meeting

**Motion by Alderman Mike Hallquist, second by Alderman Rick Owen to approve the minutes of the June 12, 2023, Plan Commission meeting with technical corrections. Motion carried 6-0.**

4. Unfinished Business

- a. Recommendation regarding amendments to various sections of Chapter 17 of the Municipal Code regarding the permission to have more than one principal building associated with a conditional use on lots located within R-2 and R-3 Zoning Districts. (DE/JA) \*\*Requires Common Council Action\*\*

**Previously Reported:** As part of the Sikh conditional use application process, Staff realized there is an issue with the City's Zoning Code that would not have allowed the applicant to keep the existing building as an auxiliary building and build a new gurdwara. If both buildings remained, they could not both be principal buildings but the existing building also could not be an "accessory building" because it is not the type listed in the permitted accessory buildings for the R-1 District at §17.28.010.F., nor does it meet the regulations for accessory buildings, such as maximum height (15') at §17.36.030.B.

To allow both buildings to remain on this parcel, should the applicants wish, or for other similarly

situated conditional use requests, some adjustments to the Code are necessary. There are at least four other parcels with conditional uses that contain more than one principal building[1].

Staff's initial thoughts on ways to address this issue are: 1) to specifically allow certain types of conditional uses to have more than one principal building; and 2) authorize additional types of accessory buildings in residential districts for specific types of conditional uses. If changes are made to accessory uses, there would need to be some changes to accessory building regulations in Title 15 and in the residential zoning districts as well.

New information: At the June 12 meeting, the Plan Commission endorsed the concept for allowing an accessory building for certain types of conditional uses as presented by Staff. Staff has refined the June proposal and offer the following for consideration at the July 10 Plan Commission meeting and the July 18, 2023, public hearing:

Create

1) 17.108.050.T.2. Number of principal and accessory buildings for certain institutional conditional uses

In the R-2 and R-3 single-family residential zoning districts there shall be no more than one principal building on a lot, except for a religious, school, hospital, residential care facility, park conditional uses which may have more than one principal and one or more accessory buildings when the parcel is more than 120,000 square feet in size and in compliance with all other regulations such as lot coverage.

2.) 17.28.010.A.F.13. Permitted uses.

A. One-family dwellings;

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F. The following accessory buildings and uses subject to the conditions specified:

13. In addition to an accessory building listed herein , a religious, school, hospital, residential care facility or park conditional use may have additional accessory buildings as long as all buildings on the parcel meet the provisions of this section, Section 17.116.040.A., and no accessory building is more than 25 feet high.

Amend

17.104.010 Building must be on a lot.

Every building hereafter erected, structurally altered or moved from one location to another in the city shall be located on a lot. In all single-family residential districts there shall be no more than one principal building on a lot, except as approved under the conditional use procedures outlined in Section 17.108.050.

REQUESTS

- That the Plan Commission recommend to the Common Council that it create the proposed Sections 17.108.050.T.2. regulating the number of principal and accessory buildings for certain types of conditional uses; and 17.28.010.A.F.13. which allows certain types of conditional uses in the Residential 1 district to have more than one accessory building.
- That the Plan Commission recommend to the Common Council that it amend Section 17.104.010 by removing the provisions about the number of principal buildings on a residential lot with conditional uses on them.
- That the Mayor authorize consideration by the Common Council on the same night as the public hearing, per Reso. 10302-22, when it is scheduled.

**Motion by Alderman Mike Hallquist, second by Citizen Commissioner Austin Moore to recommend to the Common Council approval the creation of Section 17.108.050.T.2 and amendment to Section 17.104.010 to allow for multiple principal and accessory structures for a Conditional Use Permit in a residential zoning district, and that the Common Council take action the same night as the public hearing, per Res. 10302-22, when it is scheduled. Motion carried 6-0.**

5. New Business

- a. Request of FSU Holdings One, LLC, and Chick-fil-A, Inc., 5200 Buffington Road, Atlanta, GA 30349 – c/o Kayla Fortner, PE, Development Manager of Jones Lang LaSalle, for approval of a minor revision to plan and method of operation permitting site and exterior building modifications of a fast food restaurant with drive-thru in association with drive-thru improvements to Chick-fil-A at 12625 W Capitol (NE ¼ of Sec. 12) – RV \*\*Requires Common Council Action\*\*

Report:

1. The site consists of one lot located in the 124th – Capitol Node Targeted Investment Area (TIA), one of eleven areas identified in the City of Brookfield 2050 Comprehensive Plan (Comp Plan) that foster community reinvestment by supporting new economic development and sustainable, mixed-use redevelopment with sensitivity to surrounding neighborhoods. The adopted node plan is The Development Plan for Brookfield's 124th Street Corridor – 2011 (Node Plan). The adopted land use of the Node Plan for the site is "Higher Density Shopping". The adopted land use of the Comp Plan is "Shopping/Services Focused – Higher Density". The site is zoned "B-3" Regional Business District with MSO Ordinances 1693 and 2267-11. Ordinance 2267-11 permits fast food with drive-thru restaurants as a use variation and special characteristics of zoning regulations which establish traffic circulation and impacts, hours of operation, location and operating hours of outdoor seating, and adequacy of parking stall supply as determined through review and acceptance of plan and method of operation. Proposed site and exterior building modifications for a fast food restaurant with drive-thru services are permitted by the zoning, except for lot coverage and landscape surface ratio. Proposal improves compliance in comparison to existing lot coverage and landscape surface ratio, but does not ultimately conform to zoning regulations.
2. Proposed Site Development Characteristics:

Lot Area: 762,787 (17.51 ac)

Building Setback: Unchanged

Pavement Setback: 18.5' (20' existing)

Building Offset: 68' West, adjacent lot 12655 W. Capitol Drive (25' min.), East unchanged, South unchanged

Pavement Offset: West unchanged, East unchanged, South unchanged

Building Height: 24' (35' max.)

Building Size: 30,803 sq. ft. (19,667 sq. ft. existing, 11,136 sq. ft. new)

Parking Spaces: 881 surface (897 existing, 840 req. per 04/12/2013 parking study, 59 proposed for lease parcel of 72 generated by use)

Floor Area Ratio: Unchanged

Impervious Surface Area: 677,835 sq. ft. (677,963 sq. ft. existing)

Greenspace Area: 84,952 sq. ft. (84,824 sq. ft. existing)

Lot Coverage: 88.86% (70% max., 88.88% existing)

Landscape Area Ratio: 11.14% (30% min., 11.12% existing)

1. Applicant requests plan commission approval in authorizing a greater lot coverage than the zoning district's 70% maximum regulation pursuant to Section 17.116.040.B. of the Municipal Code and for reduced landscape surface ratio from the zoning district's 30% minimum regulation pursuant to Section 17.116.050. The submitted statement of operations/application letter attests: the overall Shoppers World existing site does not meet the current code standards; under the lease, Chick-fil-A only has the right to landscape its site; after Chick-fil-A's reinvestment project (minor revision to plan and method of operation), the Chick-fil-A site (lease parcel) would satisfy lot coverage and landscape surface ratio zoning regulations within its boundaries. Sections 17.116.040.B. and 17.116.050 permit authorization of lot coverage and landscape surface ratio which differ from suggested district regulations respectively upon such approval of the plan commission through its recommendation under the commission's review authority in Section 17.100 Site Plan Approval regarding location, revised, minor revision, or plan and method of operation, and suitability of the site for the use requested. See applicant's submitted Area Exhibit A and Area Exhibit B regarding the request.

2. Submitted site plan indicates existing ingress/egress of the site is unchanged. Internal site drive ingress at the southeast corner of the Chick-fil-A lease parcel is modified to become a larger drive opening to permit extension of dual lane drive-thru operations at this location. City Engineer recommends the plan commission require that such connection be modified to a reduced width that is more consistent with City driveway connection standards as an approval condition in authorizing the applicant's requested adjustment to lot coverage and landscape surface ratio regulations. Existing angled parking east of the drive aisle connecting to site drive-thru entry is removed and replaced to become an extension of the dual lane drive-thru. These lanes are further extended around the west side of the existing building to a point just past the pickup window. A total of sixteen (16) parking spaces are removed to make the necessary adjustments for the dual lane drive-thru improvements. Trash and recycling bin storage is unchanged. An existing flag pole that resides within City easement for public watermain on the east side of the building shall be removed and relocated outside of the easement, currently shown to move directly west of its existing location on the submitted site plan. A traffic impact analysis was not required for the request as it does not create a change exceeding 100 vehicles in the peak hour where such analysis is required by code (§17.100.070.H).

3. Proposed exterior building modifications are consistent with the Site Development and Landscape Standards (SDLS). Modifications are limited to replacement of the drive-thru canopy on the west side of the building with a canopy that serves the dual lane improvements at the location. New drive-thru canopy along the west of the building is consistent with existing site materials and colors. All finishes and details of the proposal coordinate to achieve a cohesive site design. Any temporary structures that were permitted for shelter in the drive-thru during the COVID-19 pandemic which remain on site shall be removed. These structures do not conform to the standards of the SDLS for permanent use, and no replacement structures have been proposed as part of this request. A separate application for the design and location of drive-thru shelter(s) should be pursued by the applicant if desired.

4. The applicant submitted a landscape plan for review and compliance with City standards.

5. The applicant is in receipt of a missive dated June 21, 2023, by Fire Chief David Mason identifying life safety code compliance requirements. Current code does not require fire sprinkler protection for non-combustible canopies that do not have occupancy above or cover the primary egress. The submitted plans indicate a non-combustible construction for the overhead canopy along the west side of the building covering drive-thru service.

6. Grading, drainage, erosion control, and SWMP application have been submitted to the Engineering Division.

**Staff Recommendation:** The Plan Commission approves the greater lot coverage and reduced

landscape surface ratio of the requested minor revision to plan and method of operation pursuant to 17.116.040.B. and 17.116.050 respectively, and recommends the Common Council approves the minor revision to plan and method of operation permitting site and exterior building modifications of a fast food restaurant with drive-thru in association with drive-thru improvements to Chick-fil-A at 12625 W Capitol Drive, subject to items 1-11 below, because it determines, as the Plan Commission has determined, that the proposed structure and use:

A. Will not have a substantial adverse effect on traffic safety, subject to the conditions for modifying plans as directed to the applicant, because the traffic demand will generate less than the 100 vehicles per peak hour where the City requires a traffic analysis under §17.100.070.H.

B. Will be consistent with the Municipal Code because it meets the requirements therein, subject to authorization for adjustment to lot coverage and landscape surface ratio regulations.

C. Will be adequately served with present or planned municipal services based upon demand for such services in comparison to existing conditions for the subject property – parcel is adequately served by existing City sewer and City water main and the proposed site improvement will not affect the use of such utilities.

D. Will be substantially in conformance with the Site Development and Landscape Standards, April 19, 2022, where applicable, because the proposed building architecture and site improvements fulfill the stated standards therein.

1. Statement of Operations/Application Letter dated June 5, 2023 by Chick-fil-A, Inc., John Romanello and Danielle Gray.
2. Site plan dated September 27, 2021 by GBC Design, Inc., including adjustment to access drive connection at the south east corner of the CFA Lease Parcel to a width consistent with City driveway opening standards and technical corrections presented by the City Engineering Division.
3. Building plans, elevations, and material samples dated June 1, 2023 by E+H Architects P.C., including technical corrections.
4. Compliance with site access and life safety code requirements specified in a missive dated June 21, 2023, by Fire Chief David Mason.
5. Site utility, grading, drainage, and erosion control plans are subject to final approval of the City of Brookfield Engineering Division prior to the issuance of building permits.
6. Payment of applicable fees to the Community Development Department prior to issuance of a building permit: \$ TBD Engineering Review Fee.
7. Lighting in compliance with sections 15.16.080 and 17.120.070 of the City of Brookfield municipal code.
8. All signage subject to separate review by Zoning and Building Administrator.
9. Landscape plan dated June 1, 2023 by Manley Land Design, Inc., subject to City of Brookfield consultant review and technical corrections secured with a letter-of-credit or cash deposit (City forms available from the Department of Community Development).
10. 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).
11. Revised plan and method of operation approval expires on July 18, 2025 unless a building permit is obtained prior thereto.

**Motion by Alderman Mike Hallquist, second by Citizen Commissioner Scott Thomas to approve staff recommendation for approving the greater lot coverage and reduced landscape surface ratio of the requested minor revision to plan and method of operation pursuant to 17.116.040.B. and 17.116.050 respectively, and recommending the Common Council approves the minor revision to plan and method of operation permitting site and exterior building**

**modifications of a fast food restaurant with drive-thru in association with drive-thru improvements to Chick-fil-A at 12625 W Capitol Drive, subject to A through D and 1 through 11 listed in the staff recommendation and adding that maximum driveway width is limited to twenty-four feet per the City Engineer memo submitted to the record and dated July 10, 2023. Motion carried 6-0.**

- b. Request of TCB-Brookfield, LLC, and Newport Capital Partners, 353 North Clark Street, Suite 3625, Chicago, IL 60654 – c/o Alex Smith, Vice President Asset Management, for approval of a revised plan and method of operation permitting building demolition, modifications to building architecture, new building construction of an approximate 3,200 square foot dining establishment, modifications to site landscaping and parking, and application of trade dress/branding, in association with the operation of a casual dining restaurant with pickup window, Café Zupas, at 17105 W Bluemound Road, and exterior renovation of The Plaza shopping center at the southeast corner of North Calhoun Road and West Bluemound Road. (SW ¼ Section 27) – RV \*\*Requires Common Council Action\*\*

Report:

1. The site consists of one lot located in the Bluemound Road/I-94 Area Targeted Investment Area (TIA), one of eleven areas identified in the City of Brookfield 2050 Comprehensive Plan (Comp 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 Calhoun Road South Neighborhood Plan (Neighborhood Plan). The adopted land use strategy of the Neighborhood Plan applicable to the subject site is to encourage density through infill mixed-use development. This mixed-use land use should allow the horizontal mixing and vertical layering of high density residential, loft office, and retail development. The proposed land use of the Comp Plan is "Shopping/Services Focused - Higher Density. The site is zoned "B-3" Regional Business District. The proposed redevelopment for a casual dining restaurant with pickup window is consistent with the land use recommendations of the Comp Plan and Neighborhood Plan, and the applicable zoning regulations for the site.

2. Proposed Site Development Characteristics:

Lot Area: 465,152 sq. ft. (10.67842 ac)

Building Setback: 138' North (100' min.), West unchanged

Pavement Setback: North unchanged, West unchanged

Building Offset: East unchanged, South unchanged

Pavement Offset: East unchanged, South unchanged

Building Height: 26' new building, existing unchanged (35' max.)

Building Size: 103,102 sq. ft. (99,874 sq. ft. existing retained, 3,208 sq. ft. new)

Parking Spaces: 529 surface (527 existing, 100 proposed for tax parcel of 48 generated by use)

Floor Area Ratio: 22.17% (30% max.)

Impervious Surface Area: 406,220 sq. ft. (406,040 sq. ft. existing)

Greenspace Area: 58,932 sq. ft. (59,112 sq. ft. existing)

Lot Coverage: 87.33% (70% max., 87.29% existing)

Landscape Area Ratio: 12.67% (30% min., 12.71% existing)

3. Applicant requests Plan Commission approval in authorizing a greater lot coverage than the zoning district's 70% maximum regulation pursuant to Section 17.116.040.B. of the Municipal Code and for reduced landscape surface ratio from the zoning district's 30% minimum regulation pursuant to Section 17.116.050. The submitted statement of operations/application letter attests: the overall Plaza existing site does not meet the current code standards, the Café Zupa's redevelopment project (revised plan and method of operation) is not a material change from the existing conditions, planned internal site landscaping of the Plaza courtyard is not factored in the immediate plans (imminent site landscaping project will improve compliance), and greenspace will be added where possible on future projects. Sections 17.116.040.B. and 17.116.050 permit authorization of lot coverage and landscape surface ratio which differ from suggested district regulations respectively upon such approval of the plan commission through its recommendation under the commission's review authority in Section 17.100 Site Plan Approval regarding location, revised, minor revision, or plan and method of operation, and suitability of the site for the use requested.

4. Submitted site plan indicates existing ingress/egress of the site is unchanged. New dual lane pickup window operations are integrated into the new and existing building portions with drive lane entry coming from the north along the west of the new building portion, wrapping south between the new and existing buildings, and exiting along the east of new building portion for an overall integral design. Handicap parking spaces are situated along the front of the new building portion with temporary pickup window parking to replace area of existing handicap parking to the west across the internal shopping center drive aisle. Trash and recycling bin storage to be located in an enclosure contiguous with existing building south of the new building's pickup window lanes with doors opening to the easterly service drive and appropriately screened from public view. Pickup window operations traffic report was submitted for the request to demonstrate sufficient vehicle queuing is provided to accommodate the proposal. The Engineering Division reviewed the report and advises the Plan Commission to require the applicant to eliminate the parking stalls adjacent to the building between the east/west site access drive and the northern elevation of the new building, permitting landscaping and/or outdoor dining patio and sidewalk in its place on the plans, as a condition in authorizing the applicant's requested adjustment to lot coverage and landscape surface ratio regulations. A complete traffic impact analysis report was not required for the request as it does not create a change exceeding 100 vehicles in the peak hour where such analysis is required by code (§17.100.070.H).

5. The new building's mass and scale are appropriately designed, fenestration is appropriately positioned, and pedestrian scale elements enable recognition of its main entrance. Architecture, materials, and color of the overall Plaza shopping center is modified to achieve consistency with the new building portion. Existing brick is stained white, siding materials are updated with EIFS and wood-look cladding, porticos are refreshed with black metal columns and details, red awnings are removed, new pre-finished metal gutters depicted in white, and overall existing surfaces are painted to match new building color palette. No single material is utilized for more than sixty percent of the facade presentation. The utility area and trash enclosure is appropriately screened with building materials and orientated away from public view. Canopy over the pickup window lanes features a pitched roof and remaining portion of new building features parapets which integrate into the existing building's architecture. Overall, the proposal achieves a cohesive site design. Building materials used throughout are:

#### Existing Building

- Brick stained white
- Dormers clad in wood-look fiber cement siding
- Black metal column enclosures
- New EIFS siding of signage band
- Existing surfaces painted to match new color equivalent

#### New Building

- Norman brick Belden Brick veneer in “Alaska Velour, Ivory Mortar” (white & off-white palette) and “Downing Black Velour, Black Mortar” (black) color schemes
- Nichiha fiber cement siding in VintageWood (wood look) “Redwood” (auburn)
- Cembrit fiber cement panel in “S 212 Luna” (light grey)
- Dryvit Freestyle EIFS painted dark grey
- Architectural shingles matching overall shopping center pitched roof
- Parapet, metal columns, and aluminum canopy powder coated “Graphite Black” (near-black graphite)
- Kawneer clear vision glass storefront window and door systems in clear anodized aluminum finish (exceeds minimum 20% on public facing façade)

6. Applicant is requesting approval to apply trade dress elements and colors to the building. These elements include: unique “Brookfield Theme” mural on the northern elevation at the westerly corner near building entry; a faux neon LED sign “Good Things Happen Here” with “Brookfield” place marker in white and red, affixed atop the “Brookfield Theme” mural; white and black “Nourish the Good Life” mural on the north elevation, located on the extruded building mass east of main entry and above faux foliage trellis and illuminated by goose-neck lamps from above. The Plaza is a shopping center characterized by uniform architecture. Per Ordinance No. 2296-12, the Plan Commission will consider the application of trade dress or branding to tenant spaces of centers characterized by uniform architecture under the following conditions:

a. The applicant can demonstrate investment in and commitment to a trade dress/branding program. Staff finding: A corporate trade dress/branding program was submitted with application materials that successfully demonstrates such commitment.

b. The trade dress/branding is not a detriment from building form or architecture in centers characterized by uniform architecture. Staff finding: The applicant is revising the center’s architecture for consistency, and elements of trade dress have been modified to conform to existing center’s architecture which will remain.

c. The trade dress/branding is consistent with or complimentary to the forms, colors and textures in use at the center or building cluster. Staff finding: The applicant is revising the center’s colors and textures for consistency, and the unique applications of color and lighting are related to art murals associated with the branding, a condition which has been supported in previous trade dress approvals by the Plan Commission and Common Council.

d. The application of trade dress/branding is reserved to the anchor tenant spaces when applied in centers characterized by uniform architecture. Staff finding: The proposed location of the trade dress/branding is reserved to one of the three anchor tenant spaces of the center (CVS west-end anchor, Guitar Center core anchor, proposed Café Zupas north-end anchor)

e. The application of trade dress/branding is reserved to no more than two anchors tenant spaces when applied in centers characterized by uniform architecture. Staff finding: Application of trade dress/branding is reserved to no more than two anchors and, if applied, would not exceed such limit at the center.

7. In staff’s opinion, the requested applications of trade dress are not a detriment to the architectural or aesthetic goals outlined in the SDLS. Staff recommends the Plan Commission opine on the requested elements of trade dress as needed and either approve, approve conditioned upon specific modifications, or deny the elements of trade dress with specific findings for denial.

8. The applicant submitted a landscape plan for review and compliance with City standards.

9. The applicant is in receipt of a missive dated June 21, 2023, by Fire Chief David Mason identifying site access, fire alarm, suppression, and life safety code compliance requirements.



10. Grading, drainage, erosion control, and SWMP application have been submitted to the Engineering Division.

**Staff Recommendation:** The Plan Commission approves the greater lot coverage and reduced landscape surface ratio of the requested minor revision to plan and method of operation pursuant to 17.116.040.B. and 17.116.050 respectively, and recommends the Common Council approves the revised plan and method of operation permitting building demolition, modifications to building architecture, new building construction of an approximate 3,200 square foot dining establishment, modifications to site landscaping and parking, and application of trade dress/branding, in association with the operation of a casual dining restaurant with pickup window, Café Zupas, at 17105 W Bluemound Road, and exterior renovation of The Plaza shopping center at the southeast corner of North Calhoun Road and West Bluemound Road, subject to items 1-11 below, because it determines, as the Plan Commission has determined, that the proposed structure and use:

A. Will not have a substantial adverse effect on traffic safety, subject to the conditions for modifying plans as directed to the applicant, because the traffic demand will generate less than the 100 vehicles per peak hour where the City requires a traffic analysis under §17.100.070.H.

B. Will be consistent with the Municipal Code because it meets the requirements therein, subject to authorization for adjustment to lot coverage and landscape surface ratio regulations.

C. Will be adequately served with present or planned municipal services based upon demand for such services in comparison to existing conditions for the subject property – parcel is adequately served by existing City sewer and City water main and the proposed site improvement will not affect the use of such utilities.

D. Will be substantially in conformance with the Site Development and Landscape Standards, April 19, 2022, where applicable, because the proposed building architecture, site improvements, requested application of trade dress/branding, and landscaping fulfill the stated standards therein.

1. Statement of Operations/Application Letter dated July 6, 2023 by TCB-Brookfield, LLC, and Newport Capital Partners, Alex Smith, Vice President Asset Management.
2. Site plan dated July 5, 2023 by R.A.Smith, including removal of the parking stalls adjacent to the building between the east/west site access drive and the northern elevation of the new building with such stalls being replaced by landscaping and/or outdoor dining patio and sidewalk on the plan, and technical corrections presented by the City Engineering Division.
3. Building plans, elevations, and material samples dated May 22, 2023 by Café Zupas, which includes requested trade dress/branding, and building renderings dated June 2, 2023 by OKW Architects, all subject to technical corrections presented by Department of Community Development and Inspections.
4. Compliance with site access, fire alarm, suppression, and life safety code compliance requirements specified in a missive dated June 21, 2023, by Fire Chief David Mason.
5. Site utility, grading, drainage, and erosion control plans are subject to final approval of the City of Brookfield Engineering Division prior to the issuance of building permits.
6. Payment of applicable fees to the Community Development Department prior to issuance of a building permit: \$ TBD Engineering Review Fee.
7. Lighting in compliance with sections 15.16.080 and 17.120.070 of the City of Brookfield municipal code.
8. All signage subject to separate review by Zoning and Building Administrator.
9. Submittal of final site landscape plan per 17.100.122 of the City of Brookfield municipal code, preliminary plan dated June 5, 2023 by R.A.Smith, prepared by registered landscape architect consistent with the requirements of the Site Development and Landscape Standards subject to Community Development and Inspections Department review and approval.
10. 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).

11.Revised plan and method of operation approval expires on July 18, 2025 unless a building permit is obtained prior thereto.

**Motion by Alderman Mike Hallquist, second by Alderman Rick Owen to approve staff recommendation for approval of the greater lot coverage and reduced landscape surface ratio of the requested minor revision to plan and method of operation pursuant to 17.116.040.B. and 17.116.050 respectively, and recommends the Common Council approves the revised plan and method of operation permitting building demolition, modifications to building architecture, new building construction of an approximate 3,200 square foot dining establishment, modifications to site landscaping and parking, and application of trade dress/branding, in association with the operation of a casual dining restaurant with pickup window, Café Zupas, at 17105 W Bluemound Road, and exterior renovation of The Plaza shopping center at the southeast corner of North Calhoun Road and West Bluemound Road, subject to A through D and 1 through 11 listed in the staff recommendation and adding that priority for pedestrian and traffic directing signage is a requirement in consideration of the Zoning and Building Administrator’s review and approval of site signage application. Motion carried 6-0.**

- c. Request of John and Marilyn Spitz Joint Trust, 3240 Gateway Road, Brookfield, WI 53045 – John Spitz, Grantor, for approval of a revised plan and method of operation permitting approximate 11,000 square foot building addition and site modifications in association with warehouse expansion and truck maneuvering improvements at said address. (SW ¼ Sec. 7) – RV \*\*Requires Common Council Action\*\*

Report:

1. The site consists of one lot located in the Gateway West Targeted Investment Area (TIA), one of eleven areas identified in the City of Brookfield 2050 Comprehensive Plan (Comp Plan) that foster community reinvestment by supporting new economic development and sustainable, mixed-use redevelopment with sensitivity to surrounding neighborhoods. The adopted land use of the Comp Plan is “Shopping/Services Focused – Higher Density”. The site is zoned “O&LI” Office & Limited Industry District. The proposed site development configuration and associated operation of a general contractor company is permitted by the zoning.

2. Proposed Site Development Characteristics:

Lot Area: 88,426 sq. ft. (2.02998 ac)

Building Setback: Unchanged

Pavement Setback: Unchanged

Building Offset: 25’ North (25’ min.), 26.35’ East (25’ min.), 56.6’ South, unchanged (25’ min.)

Pavement Offset: 26’ East (10’ min.), 10’ South (10’ min.)

Building Height: 24’ (35’ max.)

Building Size: 30,803 sq. ft. (19,667 sq. ft. existing, 11,136 sq. ft. new)

Parking Spaces: 21 surface (19 req.)

Floor Area Ratio: 34.8% (45% max)

Impervious Surface Area: 52,784 sq. ft. (31,124 sq. ft. existing)

Greenspace Area: 32,913 sq. ft. (57,302 sq. ft. existing)

Lot Coverage: 59.7% (75% max)

Landscape Area Ratio: 40.3% (25% min)

3. Submitted site plan indicates existing ingress/egress of the site is unchanged. Existing parking lot and site pavement is expanded to accommodate the proposed building addition. Trash and recycling bins to be stored within the principal building. A traffic impact analysis was not required for the request as it does not exceed a change of 100 vehicles in the peak hour where such analysis is required by code (§17.100.070.H).

4. Proposed architecture and building materials of the building addition are consistent with the Site Development and Landscape Standards (SDLS). Existing building and new building addition architecture are consistent in the application of materials and colors. Vision glass is applied consistent with existing window systems for natural daylighting of the new warehouse space. All finishes and details of the proposed building addition are denoted as matching the existing building. Overall, the proposal achieves a cohesive design.

5. The applicant submitted a preliminary landscape plan for review and compliance with City standards. Required new plantings are limited to buffer planting requirements of the SDLS along the south property line adjacent to the expansion of the vehicle use area.

6. The applicant is in receipt of a missive dated June 20, 2023, by Fire Chief David Mason identifying fire prevention, suppression, and life safety code compliance requirements.

7. Grading, drainage, erosion control, and SWMP application have been submitted to the Engineering Division.

**Staff Recommendation:** The Plan Commission recommends the Common Council approves the revised plan and method of operation permitting building addition and site modifications of a light industrial building in association with warehouse expansion and truck maneuvering improvements at 3240 Gateway Road, subject to items 1-11 below, because it determines, as the Plan Commission has determined, that the proposed structure and use:

A. Will not have a substantial adverse effect on traffic safety because the traffic demand will generate less than the 100 vehicles per peak hour where the City requires a traffic analysis under §17.100.070.H.

B. Will be consistent with the Municipal Code because it meets the requirements therein.

C. Will be adequately served with present or planned municipal services based upon demand for such services in comparison to existing conditions for the subject property – parcel is adequately served by existing City sewer and City water main and the proposed site improvement will not affect the use of such utilities.

D. Will be substantially in conformance with the Site Development and Landscape Standards, April 19, 2022, where applicable, because the proposed building architecture and site improvements fulfill the stated standards therein.

1. Statement of Operations/Application Letter dated June 2, 2023 by Western Contractors, Inc., John Spitz, Owner & President.

2. Site plan dated June 9, 2023 by Lake Country Engineering, Inc., including technical corrections presented by the City Engineering Division.

3. Building plans, elevations, and material samples dated June 1, 2023 by Western Contractors, Inc., including technical corrections.

4. Compliance with site access, fire suppression, and alarm requirements specified in a missive

dated June 20, 2023, by Fire Chief David Mason.

5. Site utility, grading, drainage, and erosion control plans are subject to final approval of the City of Brookfield Engineering Division prior to the issuance of building permits.
6. Payment of applicable fees to the Community Development Department prior to issuance of a building permit: \$ TBD Engineering Review Fee
7. Lighting in compliance with sections 15.16.080 and 17.120.070 of the City of Brookfield municipal code.
8. All signage subject to separate review by Zoning and Building Administrator.
9. Submittal of final site landscape plan per 17.100.122 of the City of Brookfield municipal code, preliminary plan dated June 1, 2023, prepared by registered landscape architect consistent with the requirements of the Site Development and Landscape Standards subject to Community Development and Inspections Department review and approval.
10. 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).
11. Revised plan and method of operation approval expires on July 18, 2025 unless a building permit is obtained prior thereto.

**Motion by Alderman Rick Owen, second by Alderman Mike Hallquist to approve staff recommendation for approval, and recommendation to the Common Council to approve, the revised plan and method of operation permitting building addition and site modifications of a light industrial building in association with warehouse expansion and truck maneuvering improvements at 3240 Gateway Road, subject to the conditions listed in the staff recommendation. Motion carried 6-0.**

- d. Recommendation regarding an amendment to Chapter 17 of the Municipal Code regarding fees for temporary use permits. (DE/JM) \*\*Requires Common Council Action\*\*

Please find attached an update to the temporary use ordinance, with changes noted in red text. The matter is set for a public hearing on July 18, 2023, with Council set to act on it the same evening. The purpose of this ordinance is to require temporary use applicants and permittees to pay for City resources that the City incurs to protect the public health, safety, and welfare due to their event. To accomplish this objective, applicants would need to prepay for any City resources that City staff are estimated to be required due to the event and to pay for any City resources that were actually incurred for the event, regardless of whether they were anticipated. Any costs that were prepaid but not incurred would be returned to the applicant.

Several issues precipitated this proposed ordinance change. First, previously, some festivals hired off-duty officers to act as security. Although they were off-duty and paid by event organizers, the Police Department permitted the officers to use City of Brookfield equipment and wear full police uniform.

While utilizing their typical uniform and equipment made the officers safer, unfortunately, the distinction between being on-duty and off-duty became less clear for worker's compensation purposes. Second, due to off duty injury concerns, fewer officers wish to work for the festivals on their off days. This has led to police supervisors playing a more active role in filling the off-duty employment requests, which is not a desirable situation for the Police Department administration. Several permitted events generate very legitimate public safety concerns, which requires the Police Department to staff the event. In the event off duty officers are not secured by the permittee, the Police Department needs to call in officers on overtime at the City's sole cost to ensure that the City is adequately staffed during these events. The Chief feels the proposed ordinance change is the most effective way to provide professional police services, while also protecting both our officers and the City's interests.

Finally, in June 2023, numerous fights and disturbances occurred during a festival in the City. At one point, 15 police officers, including officers from New Berlin Police Department, were on scene to quell the disturbances. Two officers, including one on-duty and one off-duty working for the festival, suffered

injuries due to these disturbances; one officer required transport to the hospital.

To ensure that festivals are safe and not burdensome to the City budget and staffing, City staff believe that requiring applicants to pay for City resources will help them plan events in a responsible manner and not unduly burden City overtime budgets. Additionally, the City's police officers would be adequately protected under worker's compensation law.

**Motion by Alderman Rick Owen, second by Alderman Mike Hallquist to approve the proposed text amendment to the Temporary Use ordinance, as presented. Motion carried 6-0.**

- e. Annexation Petition for property in the Town of Brookfield Tax Key BKFT1029999001 (NE ¼ of Sec. 6) - JA/EZ \*\*Requires Common Council Action\*\*

1. The Plan Commission is required to oversee and make recommendations to the Council regarding annexations. §2.08.040.B., Brookfield Municipal Code.
2. Rupesh Agrawal submitted an annexation petition on June 5, 2023, to the City Clerk. Mr. Agrawal is the sole owner of the parcel located at 4785 Lannon Road in NE ¼ of Section 6 in the Town of Brookfield. The property is on the west side of Lannon Road, approximately 700' south of the intersection with W. Lisbon Road, directly adjacent to the City boundary.
3. The petition is for direct unanimous annexation and meets the statutory requirements of Wis. Stat. § 66.0217(2) & (5).
4. A city or village must accept or reject an annexation petition within 60 days of its receipt, which would be August 4. Wis. Stats. §66.0217(7)(a)1.
5. In counties with a population over 50,000 people, the annexation petitioner must send notice of the petition within 5 days of filing the petition (or publishing notice) to the Department of Administration for its review. Wis. Stat. § 66.0217(6)(a). The DOA is to determine whether the annexation is in the public interest. *Id.*
6. Mr. Agrawal's was required to file his petition or notice with DOA by June 12. The date is June 10, but since that is a Saturday, it goes to the next day that is not a Sunday. Wis. Stats. §990.001(4).
7. The DOA is required to send its public interest determination to the municipalities within 20 days of receiving notice about the annexation petition, which would be no later than July 3, if the notice/petition had been filed on June 12. *Id.* The 20<sup>th</sup> day would be July 2, but that is a Sunday. Wis. Stats. §990.001(4).
8. The annexing municipality must review the DOA's determination before annexing any territory. Wis. Stat. §66.0217(6)(a).
9. The City has not received a public interest determination from the DOA.
10. City Staff confirmed with the DOA that it did not receive a copy of the petition.
11. Mr. Agrawal cannot remedy the procedural errors and DOA cannot prepare and send a public interest determination once June 12 passed. Accordingly, the petition must be rejected.
12. There may be other procedures outlined by the Department of Administration's checklists that the petitioner may have missed that are beyond the scope of the City's review, but which may result in the petition being invalid.

**Staff Request:** That the Plan Commission recommend to the Common Council that it reject the annexation petition for the property owned by Rupesh Agrawal filed with the City Clerk on June 5, 2023, for failing to comply with statutory annexation procedure.

**Motion by Alderman Mike Hallquist, second by Citizen Commissioner Austin Moore to recommend that the Common Council reject the annexation petition for the property owned by Rupesh Agrawal filed with the City Clerk on June 5, 2023, for failing to comply with statutory annexation procedure. Motion carried 6-0.**

6. Adjournment

**Motion by Alderman Rick Owen, second by Alderman Mike Hallquist to adjourn the meeting at 8:25 pm. Motion carried unanimously.**

Respectfully Submitted: Daniel F. Ertl - Director of Community Development