



**Plan Commission
Meeting Minutes
January 29, 2019**

3930 N. Murray Ave Village of Shorewood, WI 53211

1. Call to order.

The meeting was called to order at 6:38 p.m.

2. Roll call.

President Allison Rozek	Aye
Trustee Davida Amenta – Acting Chair	Aye
Leah Blankenship	No
Eric Couto	Aye
Tim Hansmann	No
Therese Klein	No
Barbara Kiely Miller	No
Sangeeta Patel	Aye
Daniel Wycklendt	Aye

3. Approval of September 25, 2018 meeting minutes.

Mr. Couto moved to approve the minutes, seconded by Mr. Wycklendt.

Trustee Amenta asked that any reference of the current study in the minutes reflect that the study was a parking study and not a traffic study.

Vote 5-0 to approve with stated changes.

4. Statement of Public Notice.

Staff posted and publicly noticed the meeting according to local and state regulations.

5. Public Hearing: Conditional use application for a proposed mental health clinic at commercial property 3970 N. Oakland Avenue, Units 402 and 404, business owner Family Healing and Wellness Clinic LLC.

President Rozek opened the public hearing at 6:40 p.m.

Planning Director Bart Griepentrog introduced the item per the memo that was provided to the Plan Commission. Mr. Griepentrog informed the commissioners that three letters were received from citizens regarding the conditional use application. The letters were printed and provided at their desks for review. The letters will be entered into public record with the minutes from the meeting.

With no public comments the public hearing was closed at 6:46 p.m.

6. Consideration of conditional use application for a proposed mental health clinic at commercial property 3970 N. Oakland Avenue, Units 402 and 404, business owner Family Healing and Wellness Clinic LLC.

Village Attorney Nathan Bayer explained that often he is asked why the Village Code has a provision under 535-25 which gives criteria for which we are to determine whether a conditional use is to be approved of not yet in 535-27 the code defines a bunch of commercial uses that are favored conditional uses in certain areas. The reason for that is

that initially under 535-25 it states that if you are going to allow something beyond the scope of the existing zoning then this is the criteria you use to determine those. Over time there have been certain types of residential and commercial uses that have been determined favorable but still give the Plan Commission the discretion to review them by conditional use. A clinic is an example of a favorable use in B-1 district.

President Rozek asked if favorable uses could be combined with allowed uses at some point in the code. Attorney Bayer said that would be up to the Village Board and that while generally some uses may work in a district they may not work in other locations within the district.

Mr. Cuoto asked how many tenants are currently in the 3970 Oakland building. Mr. Griepentrog stated that there are currently 15 but there are a few tenants recently discovered without occupancy which could raise the number to 14-16 tenants. Mr. Cuoto also added that per the business's webpage they state they are currently operating out of the location and he asked if this was accurate. Mr. Griepentrog stated the business should not be open for operation and that they have applied for occupancy. An inspection is scheduled for tomorrow at which time they could receive temporary or full occupancy. Mr. Griepentrog added that he was very clear in communicating that conditional use approval and occupancy approval are required before opening.

Mr. Wycklendt asked if they specialize in the treatment in children. Mr. Griepentrog stated that a lot of their clients are families and children. Mr. Wycklendt said that with them treating families and children then the concerns of residents are a little less worrisome.

President Rozek added that the village has a shortage of child/adolescent psychotherapists and that this is a fabulous location for the business with so many families struggling to get appointments. President Rozek stated her full support of the application.

Trustee Amenta referred to the letter from Patricia Winter in which she refers to court records and asked whether this had any relevance to the Plan Commission's decision. Mr. Griepentrog confirmed with the police department that the court records were public record and not deemed relevant to the proposed business use.

Mr. Wycklendt moved to approve the conditional use application for a mental health clinic at commercial property 3970 N. Oakland Avenue, Units 402 and 404, based on meeting the conditions stipulated in 535-25C. Seconded by Trustee Amenta. Vote 4-1 approved. Mr. Cuoto voting nay.

7. Discussion and recommendation of certified survey map for the consolidation of three existing lots at commercial properties 4023-27 N. Oakland Avenue, property owner Columbia St. Mary's Inc.

Mr. Griepentrog introduced the item and summarized the memo that was provided to the Plan Commission. Mr. Griepentrog explained that the Plan Commission has 60 days from time of submittal to recommend the certified survey map to the Village Board and at that time the Village Board has 30 days to act on the recommendation. Mr. Griepentrog added that the combination of the three lots was being done primarily for building code purposes to avoid the need for firewalls within the building. Staff has no objections to the proposed application based on technical reviews.

Trustee Amenta asked if there are fire walls in the building currently. Mr. Griepentrog stated that there are no firewalls in the building currently. He added that he cannot speak to how that was permitted/allowed in the past but the building technically requires a

firewall along lot lines. Trustee Amenta asked how long the building has been there. Attorney Bayer stated the building may predate the code. Mr. Griepentrog believes there was an addition at some point to the northern part of the building but does not have the exact date of the addition.

President Rozek asked if this application was the first time the applicant was listed as Columbia St. Mary's Inc. of Wisconsin as a non-profit entity. Mr. Griepentrog did not know how they were listed on previous applications but stated all applications have been provided to the Commissioners in all previous packets.

President Rozek asked Attorney Bayer if a Wisconsin non-profit corporation is non-tax paying. Attorney Bayer stated that there is no straight answer to the question and there is numerous case law that relates to whether a medical clinic is tax exempt and a lot of the determinations show they are not. Attorney Bayer added that the tax status of the entity does not have any bearing on the consolidation of the parcels. Under Code Section 470-11 the review of the Plan Commission is limited to whether or not the consolidation would create a variance in the width, area or shape with the lots in the immediate neighborhood as to cause a substantial depreciation in property values within the neighborhood.

Ms. Patel asked if the firewall provision was the only regulatory issue affected by the consolidation of the three parcels. Mr. Griepentrog stated yes.

President Rozek asked about the easements on the property and if the easements would have to be updated. Attorney Bayer stated the easements run with the land.

Mr. Griepentrog clarified that the northern parcel is part of a PDD and the other parcels where the building is located are B-1. Mr. Griepentrog recommended that after the parcels are combined that the northern portion of the lot be rezoned to be B-1 so that the property is all under one zoning and that a future zoning map will be cleaner.

President Rozek asked how lots can be combined with two different zonings. Mr. Griepentrog added that when the PDD was adopted a legal description defining that boundary may have been included and that even with combining the parcels it can remain as a split zoned parcel. It is preferred that the zoning be cleaned up and all zoned B-1 but is not necessary.

Attorney Bayer stated that zoning is totally independent of the legal description of a parcel. President Rozek asked for a zoning map to be brought before the Village Board at the time of consideration.

Trustee Amenta moved to recommend approval by the Village Board of certified survey map for the consolidation of three existing lots at commercial property 4023-27 N. Oakland Avenue, property owner Columbia St. Mary's Inc. Seconded by Mr. Wycklendt.

Ms. Patel asked what the difference was between the B-1 and PDD zoning. President Rozek explained that a PDD has specific criteria/standards and B-1 is general zoning.

Vote 4-0-1 approved. President Rozek abstained from vote.

Trustee Amenta moved to give direction to Planning and Development Director to recommend to the Village Board that the PDD parcel be rezoned as B-1. Seconded by President Rozek. Vote 5-0 to approve.

8. Recommendation for an Ordinance Amendment regarding Conditional Use Permit Regulations.

Mr. Griepentrog introduced the item and summarized the memo that was provided to the Plan Commission.

President Rozek asked about Section 535-25G that states “Any conditional use approved by the Plan Commission shall be construed to run with the land” and whether this means that when a conditional use is approved it is with the same factors moving forward. Mr. Griepentrog explained that if a business is taken over by a new owner or the property is sold, the conditional use application runs with the land not with the owner or the applicant. Attorney Bayer added that a conditional use can be withdrawn if it goes outside of the parameters that were approved also. Mr. Griepentrog stated the new language was to clarify that if a new owner took over a business and ran it exactly the same way they would have the right to do so under the previous conditional use approval.

Trustee Amenta asked why the Plan Commission would not want a new operator to come back before the Plan Commission. Mr. Griepentrog gave an example stating that if a restaurant changes ownership and the use is not changing just who is running the business it is still bound by the previous conditional use approval. Mr. Griepentrog added that if the nature of the business changed then it would be subject to zoning enforcement which would require a new conditional use or termination of the previous one.

President Rozek still felt like the proposed language just focused on the use and not the exact standards of the approval.

Mr. Cuoto asked who determines if a use has changed. Mr. Griepentrog explained that the determination would be made by Planning and Development after reviewing an occupancy/occupancy renewal application and plan of operations submitted.

Trustee Amenta asked whether it would be easier to have new business owners (same business with a new owner) come before the Plan Commission for approval than relying on a police power to figure if they are living up to the previously approved conditional use conditions. Mr. Wycklendt stated that puts more burden on current business owners looking to sell their viable businesses.

Ms. Patel suggested using the same language from proposed Section J (1) which states “in conformity with the original application or any conditions imposed within the approval” in Section G for clarification.

Trustee Amenta asked about clarification of timelines once a conditional use is approved and if there are any approved conditional uses that are not currently occupied or under construction. Mr. Griepentrog stated the only two he is aware of that are under construction are Casa de Corazon (4114 Oakland Avenue) and Ascension Health (4023-27 Oakland Avenue).

Trustee Amenta moved to recommend to the Village Board a proposed Ordinance Amendment regarding Conditional Use Permit regulations with the change to subsection G to read “*Any conditional use approved in conformity with the original application or any conditions imposed within the approval by the Plan Commission shall be construed to run with the land and benefit all future owners and occupants of the affected premises*”. Seconded by President Rozek. Vote 5-0 to approve.

9. Schedule next meeting.

Mr. Griepentrog stated no applications have been submitted for a February meeting.

10. Future agenda items.

President Rozek asked if the Plan Commission should adopt the same procedure the Village Board has for future agenda items which is someone makes a motion for an agenda item there is a second, discussion and a vote to place an item on the next meeting. Mr. Griepentrog stated he would be in support of that method because he would have clarity moving forward with an item.

Mr. Griepentrog added that the Commission previously worked on and had discussions about front yard porch/patio modifications. Recently, a resident was denied a permit to modify a porch based on current standards and he would be willing to research the topic and bring it back before the commission.

President Rozek moved to direct staff to finalize a recommendation for the Plan Commission on porches and front yard setbacks. Seconded by Mr. Cuoto. Vote 5-0 to approve.

Mr. Cuoto asked that there was more to do in regards to updating and cleaning up the zoning code in general and that if there are months when there are no applications or a lot of agenda items the Commission could work their way through the procedure of updating the code. Mr. Griepentrog stated that his 2019 work plan has him updating the sign code that is outdated due to a recent Supreme Court decision first and then after address the zoning code.

11. Adjournment.

Mr. Cuoto moved to adjourn the meeting at 7:39 p.m., seconded by Mr. Wycklendt. Vote to adjourn 5-0.

Recorded by,



Crystal Kopydlowski
Planning Department Administrative Clerk