

**A RESOLUTION # 2013-10  
FOR A ZONING CHANGE FROM B-4 RIVER DISTRICT TO PLANNED  
DEVELOPMENT DISTRICT**

*WHEREAS*, Harbor Retirement Associates, LLC has submitted an application pursuant to code 535-22 for a zoning change to Planned Development District for properties at 1111 E. Capitol Drive and 3907-09 E. Sherburn Place; and on July 17, 2013 the Village Board reviewed;

*WHEREAS*, the Plan Commission has reviewed the petition on July 16, 2013 as considered the pre-petition conference established in code 535-25D(4), reviewed on July 23, 2013, and made a recommendation to approve the Planned Development District Findings per 535-22D(4)[a] including conditions set forth on September 10, 2013, and following procedures set forth in Sec. 62.23(7)(d), Wis. Stats;

*WHEREAS*, the Design Review Board has reviewed the application and applicable plans on August 22, 2013 and approved the concept on September 12, 2013; and staff has reviewed application and all supplemental materials.

*THEREFORE*, at a regular meeting of the Shorewood Village Board on September 16, 2013 and after public hearing that was duly noticed and published by law, a quorum being present and a majority of the Board voting therefore, the Village Board hereby approved the application for the zoning change from B-4 River District to Planned Development District for Harbor Retirement Associates, LLC after making the following findings with the conditions listed:

*Article IV Zoning Districts 535-22 Subsection D.4(a)*. In order to approve the amendment to the existing Planned Development District to match the current development proposal by HRA, the Plan Commission and the Village Board must “find that the facts submitted with the application and presented at the hearings establish that” several requirements are met.

**Required finding i:**

“The development plan is in accord with the intent and purpose of the Village’s comprehensive plan, this ordinance, and is in the public interest.”

Factual findings to support an ultimate finding of fact that the plan meets this required finding:

--With respect to the B-4 River District, the Master Plan objective (codified in the applicable B-4 zoning ordinance) is to encourage high quality development. The proposed site plan is consistent with this objective because it

proposes a high density, high quality project with a property value in excess of \$20 million on the two northern parcels of the site. The site plan permits future development of the remaining parcel in the River District with potential property values in excess of \$12 million. This combined development greatly exceeds the current value of these properties.

--The current Planned Development District, previously zoned B-4, is part of the River District zoning ordinance and expressly encourages “a high quality planned development that incorporates views of the Milwaukee River and a sensitive design approach toward the natural features of the river corridor” per §535-21D. The proposed site plan makes effective, sensitive use of the irregular shape of the developable land to optimize views and access to the river. Residents of the proposed development will have spectacular views of the river from both private residences and public areas of the development. The proposed pedestrian trail at the top of the bluff will encourage increased public access to river views, while protecting the environmental integrity of the bluff. The proposed conveyance of the bluff to the Village under the proposed development plan will ensure the long term protection of the bluff from environmental degradation. The proposed site plan is substantially more environmentally sensitive to the river than current development in the River District while at the same time increasing public access to views of the river. The proposed development increases the amount of green space than what currently exists.

--The B-4 River District zoning requires that the site plan “maintain or enhance a green, wooded appearance from the Milwaukee River, with lower building heights nearer to the river and taller building heights away from the river and near the Oak Leaf Trail” per §535-21D(2). The B-4 building height overlay states “the maximum [building height] shall be 60 feet not to exceed four stories in the buildable area between the setback line” and “the maximum [building height] shall be 84 feet not to exceed six stories in the buildable area” per §535-21F(3). The proposed site plan meets the River Shoreland building setback, measured greater than 20 feet to the east from the bluffline per §535-9H(8) and the building height overlay. The site plan enhances the green, wooded appearance from the Milwaukee River as no vegetation below the bluffline will be removed and the existing tree canopy remain and the one-story building section cannot be viewed from the river and a small section of the four-story building may be visible.

--The Master Plan seeks development of the River District consistent with the protections set forth in the river shoreland ordinance. The proposed site plan complies with all relevant provisions of the shoreland ordinance.

--The Master Plan and B-4 River District zoning ordinance require the coordinated planning and encourage the planning of consolidated access points, driveways, and streets to be shared by all properties in the district per §535-21D(2). The proposed site plan meets this objective by maintaining the number

of current access points to Capitol Drive, and moves the shared road to align with the existing Estabrook Parkway.

--The Master Plan and B-4 River District zoning ordinance require predominantly underground or structured parking per §535-21D(2). The proposed site plan places a high percentage of the parking under the proposed building. Currently, little of the parking is underground or structured parking.

--The Master Plan and B-4 River District zoning ordinance require that a minimum of 20% of the buildable area of the site be maintained as landscaped green spaced per §535-21D(2). The proposed site plan exceeds this requirement and adds a detention basin. The proposed site plan is a substantial improvement on the current landscaping in the River District.

### **Required finding ii:**

“The area to be developed is not less than 75,000 square feet, or that it is undertaken in connection with a public improvement, in which case it is not less than 25,000 square feet and will be developed in an efficient and economically satisfactory manner, and will contribute to the improvement of the area in which the development is to be located”(Ord 1917, 10.23.2006)

**Factual findings to support an ultimate finding of fact that the plan meets this required finding:**

--The land associated with the HRA project was surveyed and the total area of the land was found to be approximately 138,326 square feet.

--The Milwaukee River Bluff area for the portion of the parcels that are part of the proposed HRA development is approximately 17,599 square feet. Subtracting the approximate Milwaukee River Bluff area from the approximate square footage of the actual HRA proposal, is 120,727 square feet.

--There is 120,727 square feet of property that is developable by HRA, which is greater than the minimum area threshold, 75,000 square feet, for amending the Planned Development District. The new road will be 24 feet wide by approximately 470 feet in length, leaving the buildable site in excess of 100,000 square feet.

--Currently, the site that HRA proposes to construct a senior care facility is on a vacant parcel that was once a family restaurant and a second parcel that has two vacant multi-family residential buildings. Neither of these uses is visually interesting or particularly welcoming to residents and visitors to the Village that arrive along Capitol Drive from the west. HRA proposes a landscaped parcel and

a structure that is visually interesting and different from what is typically found in the Village. Further, HRA proposes a pedestrian pathway along the Milwaukee River Bluff from Capitol Drive to their southern property line, separated by the street curb by a five foot green parkway. This Milwaukee River pedestrian pathway will provide visual access to the Milwaukee River as well as a place to recreate and enjoy nature and the outdoors near downtown Shorewood. The new road on the west side of the buildable parcel area will allow for on-street parking on one side allowing for the public to access the River Bluff amenities.

--HRA's proposal of constructing a senior care facility will contribute to the overall improvement of the area in which the proposed development is located and is eligible for rezoning to Planned Development District.

--The Plan Commission should recommend the rezoning of the land associated with the HRA proposal to Planned Development District because the development is greater than 75,000 square feet and the overall development will contribute to the improvement of the area along the east bluff of the Milwaukee River south of Capitol Drive.

**Required finding iii:**

“The various stages, if any, by which the development is proposed to be constructed or undertaken as stated in the development plan, are practical, are capable of standing on their own as separate and independent stages should the development not be completed timely, and are in the public interest”

Factual findings to support an ultimate finding of fact that the plan meets this required finding:

It has been found that the development schedule is considered to be practical and shall be constructed in one complete stage, to begin in the spring of 2014 with expected construction approximately 14-16 months.

**Required finding iv:**

“Public facilities and utilities, existing or proposed, either in conjunction with the plan or separately, are or will be adequate by the time the development plan is completed”

Suggested factual findings to support an ultimate finding of fact that the plan meets this required finding:

### **Stormwater Management and Drainage**

The subject property is located adjacent to the Milwaukee River and direct drainage to the river must be performed with utmost care and as a last resort. The Village requires that existing storm sewers on Sherburn Place and Capitol Drive be evaluated for available capacity and used to the greatest extent possible to convey runoff to the river.

The proposed project will disturb more than 1.0 acre of land, and therefore, it is subject to compliance with both quantity and quality standards, which must be met regardless of the net change in imperviousness at the site. The proposed development includes facilities to reduce peak discharges according to Shorewood's stormwater management requirements. In considering stormwater quality management techniques, we require the applicant to use creative and novel methods that reduce total runoff and improve water quality. In-line filter devices are acceptable when appropriate, as are rain gardens, and other on-lot systems that make sense for the site. We also require reduced connectedness, on-site runoff management, filter strips, dispersed flow, inverted parking lot islands, and other low impact methods.

### **Sanitary Sewer Service**

The subject property is in the separate sewer service area and located within Sewershed SH-5002 (Basin 2). As with all sewer basins in the MMSD service area, SH-5002 has a maximum peak hourly flow restriction imposed by the Sewerage District. After applying demolition credits, we have concluded that the daily maximum peak flows from the proposed project are less than maximum limits.

Even with demolition flow credits, the maximum allowable daily peak flow in Basin 2 will not be high enough to accommodate all of the proposed re-development in the Milwaukee River bluff area. We therefore recommend that the Village consider requiring that all re-development in the Milwaukee River bluff area to have INFILTRATION RESISTANT sewer infrastructure construction, including annual maintenance and inspection agreements.

### **Water Service**

Based on our review of the Village's existing water system that would serve the proposed development, we recommend the existing watermain be upgraded to meet domestic use and fire flow requirements. Currently, there is a 6-inch diameter dead end watermain located in Capitol Drive at the location of the proposed development that would provide water to the proposed development. To the east of the proposed development, an 8 inch watermain exists.

The capacity of the 6-inch main will be severely stressed in providing potable water to the development. The main should be upsized to a 12-inch main from the existing 12-inch main at the Capitol Drive and Wilson Avenue intersection to the proposed development. The capacity of the 12-inch

watermain will adequately provide domestic water use to the existing businesses along Capitol Drive, and the new development and will greatly improve the available fire flow to this section along Capitol Drive.

**Required finding v:**

“The proposed changes, if any, to the Village map with regard to street and alley location, levels, closing or vacations, are necessary, desirable and in the public interest”

Factual findings to support an ultimate finding of fact that the plan meets this required finding:

It has been found that the proposed changes to the Village map with regard to street and alley location, levels, closing or vacations, are necessary, desirable and in the public interest. A vacation is necessary for portions of the public right-of-way, known as Sherburn Place. The proposed site plan includes a new public road placed parallel with the existing bluffline and aligns with the existing Estabrook Parkway that begins on the northern side of E. Capitol Drive.

**Required finding vi:**

“That the development as proposed will create an environment of sustained desirability and stability, will not be detrimental to present and potential surrounding uses, will not adversely affect neighboring property values or be incompatible with the character of the surrounding area, but will have an overall beneficial effect which could not be achieved under other zoning districts.”

Factual findings to support an ultimate finding of fact that the plan meets this required finding:

--The proposed development cannot be achieved under the B-4 River District zoning as the development occurs across two parcels. Under B-4 zoning, multifamily residential dwelling with at least two floors are permitted. The irregular shape and relatively small size of the current front two parcels are not sufficiently large enough to permit economic development by the applicant.

--Because the proposed development is separated from adjoining properties by public rights of way and the Oak Leaf Trail, the proposed development will not be detrimental to present and future uses of surrounding areas.

--The substantial increase in property value resulting from the high quality of the proposed development, especially in comparison to the substantially lesser quality and value of current development in the River District should have a positive effect on neighboring property values.

--The proposed development as a high quality community-based residential facility and residential care apartment community will not be incompatible with the character of the surrounding area or the remainder of the River District in part because the development will be largely self-contained. In addition, the proposed development will act as a visual and audio buffer to the high traffic volumes on Capitol Drive, thereby enhancing future compatible residential development in the remaining rear parcel in the River District.

--The proposed development will create an environment of sustained desirability and stability because the developer possesses the financial resources and business competence to be a long term resident of the Village of Shorewood.

**Required finding vii:**

“Any exception from standard ordinance requirements is warranted by the design and amenities incorporated in the development plan.”

Factual findings to support an ultimate finding of fact that the plan meets this required finding:

--Because of the high value and quality of the proposed development, it is warranted to develop across two parcels in the River District for a residential care facility other than the B-4 multifamily permitted use. The across-parcel development and one-story section of the development as contemplated by the code, authorizes it under a PDD rezone.

**Required finding viii:**

“The area surrounding said development can be planned and zoned in coordination and substantial compatibility with the proposed development.”

Factual findings to support an ultimate finding of fact that the plan meets this required finding:

--The proposed development will have no negative impact on the planning or zoning of surrounding areas because the River District is separated by public rights of way and the Oak Leaf Trail from surrounding areas.

--The site plan for the proposed development is coordinated with the surrounding area through its improved design for vehicular access.

**Required findings ix:**

“The proposed method of financing the development is feasible and that it is probable that proponents of the plan will be able to finance or arrange to finance the development”

Factual findings to support an ultimate finding of fact that the plan meets this required finding:

--HarborChase of Shorewood will be financed in partnership with CNL Financial Group, who will maintain long-term ownership of the community. The management company for Shorewood will be Harbor Retirement Associates, LLC (HRA). HRA will manage the property under a long-term agreement. The Shorewood development will be the third time CNL Healthcare Properties has partnered with HRA. CNL Financial Group (CNL) is a leading private investment management firm providing global real estate and alternative investments. Since inception in 1973, CNL and/or its affiliates have formed or acquired companies with more than \$29 billion in assets. CNL is headquartered in Orlando, Florida.

It should be noted that, the PDD ordinance was established with the understanding that not all the details of a proposal could be provided, and does provide details regarding denial or conditional approval as outlined below:

**(b)** If, from the facts presented, the Plan Commission or the Village Board is unable to make the necessary findings, the application shall be denied.

**(c)** In taking action, the Plan Commission may recommend a denial of the development plan and development schedule as submitted, or may recommend approval of said plan and schedule subject to specified amendments.

**(d)** The Plan Commission or the Village Board may conditionally approve a plan subject to modification and/or subject to a showing that the method of financing the development plan is feasible and that it is probable that the proponents of the plan will be able to finance or arrange to finance the development plan, such showing to be made at a time thereafter to be determined by the Plan Commission or the Village Board, but prior to the giving of final approval hereunder.

**(e)** The Village Board may rezone hereunder to take effect upon final approval of a plan filed pursuant to the provisions of this ordinance and/or subject to the issuance of



a building permit for the implementation of a plan approved by the Village Board in accordance with the provisions of this ordinance.

**(f)** At the time of adopting any ordinance establishing a Planned Development District, the Village Board shall make appropriate arrangements with the applicant as may be permitted under law which will assure the accomplishment and completion at scheduled times of the development plan, in accordance with approvals given.

**(g)** If no development has occurred to effectuate a planned development within a time limit, if any, established by the Village Board, or if the development is not completed timely, the Plan Commission shall review the action and determine whether or not the continuation of a given planned development is in the public interest. Upon its determination, it shall make recommendations to the Village Board in accordance therewith.

**(h)** Upon receipt of the recommendation of the Plan Commission, in the event no development has occurred to effectuate a planned development within a time limit established or if the development is not completed timely, the Village Board shall determine what action, if any, shall be taken, including whether or not the area shall be rezoned to its former classification.

**(i)** Any changes or additions to the original approved development plan shall require re-submittal and approval by the Plan Commission, and if such changes or additions are substantial in the opinion of the Plan Commission such plan as modified shall be considered as an original application, and the requirements for same shall govern prior to final approval of such modifications.

### **Conditions**

On the basis of the findings described, the Shorewood Plan Commission recommends that the application of HRA Senior Living for a zoning change for certain properties in the B-4 River District to Planned Development District be approved with the following conditions:

1. That a conditional use permit is granted for construction and for the grading, path and road construction pursuant to the Village's River Shoreland Ordinance before commencing activities within the area between the river ordinary high-water mark and the setbacks.
2. That the Design Review Board finalize design approval.
3. That an exterior lighting plan be submitted and approved by Village Staff.
4. That a final landscape plan be submitted and approved by Village Staff.
5. That a certified professional engineer hired by the applicant certifies to the village that the project by the River Shoreland Ordinance: does not adversely affect the slope stability of the bluff; does not increase the runoff of water on the surface of the bluff; does not create or add to a problem of erosion on the shoreland or bluff;

- or does not adversely affect the structural integrity of any structure located on adjoining or adjacent lots.
6. That all utility and storm water plans are approved by the Village Engineer and the Department of Public Works.
  7. That the necessary right-of-way for the east elevation is determined by the Village and vacated.
  8. That the building and site plan is in substantial compliance with plans, specifications and designs as submitted and approved by all relevant staff and municipal entities.
  9. That the final plans comply with all applicable federal, state, local laws, statutes, ordinance and best practices.
  10. That a developer agreement be entered into and approved by the Community Development Authority and Village Board.

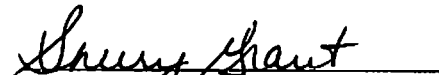
**PASSED AND ADOPTED** by the Village Board of the Village of Shorewood this 16th day of September, 2013.

VILLAGE OF SHOREWOOD



\_\_\_\_\_  
Guy Johnson, Village President

Countersigned:



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Sherry Grant  
Village Clerk/Treasurer