



**OFFICIAL RECORD OF A REGULARLY SCHEDULED MEETING OF THE
PLAN COMMISSION HELD ON JANUARY 14, 2019, AT 6:30 PM IN THE
COUNCIL CHAMBERS OF CITY HALL, 2000 NORTH CALHOUN ROAD,
BROOKFIELD, WISCONSIN**

*Video recordings of Plan Commission meetings are available on the city website at
<https://cityofbrookfield.viebit.com>*

MAYOR STEVEN PONTO PRESIDING

OTHER MEMBERS PRESENT: Alderman Gary Mahkorn, Alderman Mark Nelson, Alderman Rick Owen, Commissioner Steve Petitt, Commissioner Mike Smith

MEMBERS ABSENT AND EXCUSED: Commissioner Rich Tennessen

OTHERS PRESENT: Director of Community Development Dan Ertl, Planning Administrator Mike Theis, Fire Chief Charlie Myers, City Engineer Jeff Chase, Neighborhood Planner Richard VanDerWal, Alderman Chris Blackburn, Alderman Scott Berg

Mayor Ponto noted a quorum present and called the Plan Commission to order at 6:31 pm.

Announcements / Reports

The next regularly scheduled meeting is February 11, 2019 at 6:30pm.

Item 1 December 10, 2018 Plan Commission Official Record / Meeting Minutes

Approval of Official Record from the December 10, 2018 Plan Commission meeting.

Motion to approve the December 10, 2018 Plan Commission Meeting Official Record.

Motion by Gary Mahkorn

Seconded by Mark Nelson

Motion carried 6-0

Item 2 December 20, 2018 Plan Review Board

Approval of the December 20, 2018 Plan Review Board actions and recommendations of meeting minutes.

Motion to approve the December 20, 2018 Plan Review Board meeting actions and recommendations.

Motion by Mark Nelson

Item 3 Brookfield Care Group, LLC Minor Revision to Plan and Method of Operation

Request of Brookfield Care Group, LLC, 5101 NE 82nd Avenue, Suite 200, Vancouver, WA 98662 – Owner (aka JEA Senior Living) - Rachel Rudiger, Land Use and Design Manager for approval of a minor revision to plan and method of operation extending the project completion deadline for an approximate 34,492 sq. ft. one-story memory care facility at 4065 North Calhoun Road. (SE ¼ of Sec. 4) – MT ****Requires Common Council Approval****

- Report:** 1. The applicant received Plan Commission approval of a conditional use ordinance, new plan and method of operation, development agreement and vacation/relocation of public access and municipal utility easements permitting the construction of an approximate 34,492 sq. ft. one-story memory care facility at 4065 North Calhoun Road operated by JEA Senior Living on August 10, 2016.
2. A development agreement was recorded on January 17, 2017. The development agreement allows the applicant to request extensions to the completion schedule. The applicant is requesting a project completion extension with revised occupancy date of April 30, 2019. The applicant's missive dated December 13, 2018 lists causes for delay including failure to request an extension prior to project completion expiration in November 2018.
3. Sureties for the project are in the form of bonds requiring no modification due to revision of the project completion date. A revised temporary streetyard landscape maintenance easement with new expiration date is required.
4. For purposes of context, the concept of project completion schedules was initiated due to construction sites that were neglected or abandoned. That is not the case with the applicant's site. None the less, extensions to project completion schedules provide the Plan Commission opportunity to take corrective action at a site. In this instance, Crest Hill Drive (a private road with public access easement) was closed for prolonged periods of time due to the applicant's construction staging methodology. That practice cannot continue.

Recommendation: The site is not abandoned nor neglected; just behind schedule. Staff recommends the Plan Commission approve a project completion extension thru May 30, 2019 subject to Crest Hill Drive being open for use by the traveling public at all hours of the day, every day and receipt of a revised temporary streetyard landscape maintenance easement.

Refer to video recording of this item at <https://cityofbrookfield.viebit.com/player.php?hash=2WGxoMdD7FsQ> for the discussion.

Motion to approve staff recommendation for approval of a minor revision to plan and method of operation, amended to extend the project completion deadline to July 31, 2019 for an approximate 34,492 sq. ft. one-story memory care facility at 4065 North Calhoun Road subject to Crest Hill Drive being open for use by the traveling public at all hours of the day, every day and receipt of a revised temporary streetyard landscape maintenance easement.

*Motion by Gary Mahkorn
Seconded by Mark Nelson
Motion carried 6-0*

Item 4 Herzing University Public Hearing Request

Request of Herzing University- Brookfield Campus, 555 South Executive Drive, Brookfield, WI 53005, and CBL & Associates Properties, Inc., Chattanooga, TN c/o Jarvis Racine, Campus President, for approval of a conditional use public hearing to

remodel and utilize an approximate 23,000 square foot building located at 15895 W. Bluemound Road for an accredited university.

Report: 1. The applicant is seeking approval of a conditional use permitting the remodeling and use of the former Fresh Market grocery building consisting of approximately 23,000 sq. ft. one-story located at the northwest corner of Brookfield Square mall- 15895 W. Bluemound Road. The new use would be the relocated home of the Herzing University campus from its current location at 555 South Executive Drive.

2. See the attached description of their statement of operations. In summary, Herzing has 45 fulltime staff and instructors and about 250 students attending classes from 7:30 .m. to 10p.m Monday- Friday7:30 a.m. to 4:30 p.m. Friday and Saturdays from 8:00 a.m. to 1 p.m.

3. Herzing plans to add windows and other elements to the exterior of the building making it more usable for educational use. Building plans were not available for viewing as of this writing but will be available at the meeting.

4. The relocation of Herzing to this Brookfield Square location is part of an accommodation to vacate the former Allstate Building located at 555 S. Executive Drive to facilitate the Landmark Credit Union corporate campus plans for Allstate that were reviewed by Plan Commsison recently. The staff has accommodated an accelerated process in order for the real estate transactional processes need for the Landmark to move forward on a timely basis. Herzing has a lease that permits theme to stay until August 2020, but the planned relocation under the current application would permit an earlier exit by Herzing

5. The Brookfield Square site is part of District J of the Calhoun Road South Land Use and transportation Plan defined by: "The general strategy for this District is the creation of fully mixed-use, interactive, urban infill district combining regional and service retail, entertainment, office, housing, hospitality, convention, medical, and public uses fronting an improved gridded street framework. This District is intended to become the primary commercial core for the city and the western metro area at large, and should be positioned to accommodate higher density development defined by strict design controls established by the city. The mixed-use approach is intended to provide a mechanism to enhance the value of existing development and induce demand for additional development....."

The applicant has made the case that the influx of staff, faculty and students into the mall property is consistent with the City's goals of developing mixed-use and interactive uses adding to the vibrancy that is being re-established at Brookfield Square.

6. The new use would require compliance with fire codes.

7. The new use appears to not add traffic that was not accounted for in the previous traffic studies but this conclusion should be confirmed by the City Engineer and reports forthcoming from applicant if needed.

Recommendation: Since a case has been made that the application for conditional use is consistent with the City's land use goals for the area, a recommendation is made to schedule a conditional use public hearing subject to a more complete application including, but not limited to:

- Building elevations and building samples
- Architectural renderings of all four sides of the building
- Fees
- Lease with CBL

A general presentation of the project background and intent, statement of operations, benefit to the community and Brookfield Square and the proposed architectural upgrades to the building was led by Jarvis Racine, Herzing Universty, after Renee Herzing introduced her team.

A representaive of CBL & Associates Properties, Inc. spoke about the evolving nature of "malls" - now called suburban town centers- and how Herzing fits into the new direction CBL hopes to take their town centers.

Refer to video recording of this item at <https://cityofbrookfield.viebit.com/player.php?hash=2WGxoMdD7FsQ> for the discussion.

Motion to approve staff recommendation for approval to schedule a conditional use public hearing to remodel and utilize an approximate 23,000 square foot building located at 15895 W. Bluemound Road for an accredited university, with added directive to modify the building architecture to incorporate additional vision glass where possible.

*Motion by Gary Mahkorn
Seconded by Steve Pettit
Motion carried 6-0*

Item 5 Legislative Referral - Short-term Home Rentals

Legislative referral – Postponed request of Alderman Berg to review the possible impact of and propose appropriate regulation for short-term home rentals, e.g. Airbnb. – MT

Report: 1. The legislative referral of Alderman Berg “to review the possible impact of, and propose appropriate regulation for, short term home rentals, e.g. Airbnb” was referred to the Legislative and Licensing Committee and Plan Commission at the May 2, 2017 meeting of the Common Council. It was postponed at the December 10, 2018 Plan Commission meeting.

2. On October 18, 2018 Zoning and Building Administrator Larry Goudy reported the following on the topic.

“The City of Brookfield municipal code single family residential zoning sections indicate one family dwellings as a permitted use. The following is the code definition of family:

“Family” means one or more persons related by blood, adoption or marriage living and cooking together as a single housekeeping unit exclusive of household servants. A number of persons, but not exceeding two, living together as a single housekeeping unit though not related by blood, adoption or marriage shall be deemed to constitute a family.

“Adoption,” as herein defined, means persons who are in a bona fide process of adoption.

The code does not state that one’s home cannot be rented out. Although we do not have a way to track the number of homes that are rented, I can tell you from experience that there are many in the City of Brookfield. Inspection Services usually finds out about these as a result of a complaint investigation. I have no statistical proof that complaint activity is different on rentals than owner occupied homes. Every time we have encountered renters at a single family home, it has been a long term rental (a year or more). To the best of my knowledge, Inspection Services staff has never received a complaint about short term rentals. I’m sure they’ve occurred during a Harley Davidson event, but we have not been made aware of them.

To date, I am not aware of short term rentals being a problem in the City of Brookfield.”

3. On November 12, 2018 City Attorney Jenna Merten reported the following regarding limits of regulation.

“Per state law (Sec. 66.1014), the City can regulate under these parameters:

- 1) We can’t prohibit the rental of a residential dwelling for 7 days or longer (we can prohibit less than 7 days)
- 2) We can limit the amount of time a property can be rented within a consecutive 365-day period to no fewer than 180 days consecutively.
- 3) We can require anyone who maintains, manages, or operates a short-term rental for more than 10 nights each year to obtain a license.
- 4) We can impose room tax, subject to certain caps.

Also, we may be able to impose other regulations related to health, safety, and welfare, such as requiring the rental to be within the host’s primary residence (not in a main property and an accessory building), requiring inspections, restricting the number of occupants based on bedrooms, imposing parking regulations, etc.

Please advise if you need any further guidance or have questions.”

4. Since Alderman Berg’s legislative referral, the city has approved the following list of hotels adding 437 hotel rooms, some of which are currently under construction.

1. Hilton Garden Inn – Room count = 168 Rooms
 2. Fairfield Inn – Room count = 137 Rooms
 3. Holiday Inn Express – Room count = 132 Rooms
- 437 Rooms Total

Recommendation: The City Zoning and Building Administrator reports no awareness of short-term home rentals being a problem in the City of Brookfield. The Brookfield hotel market has delivered 437 additional hotel rooms since the time of the legislative referral. If there is an inverse correlation between demand for short-term home rental and hotel room supply, recent hotel approvals in the city should have diminished the demand (need) for short-term home rentals. Staff suggests the Plan Commission conclude that regulation of short-term home rentals is not required at this time.

Alderman Berg spoke on behalf of his constituents.

Refer to video recording of this item at <https://cityofbrookfield.viebit.com/player.php?hash=2WGxoMdD7FsQ> for the discussion.

Motion to accept staff recommendation that no regulation of short-term home rentals is required at this time and to agenda the matter as such at a future Common Council meeting.

Motion by Gary Mahkorn
Seconded by Mark Nelson
Motion carried 6-0

Adjournment

Motion by Gary Mahkorn
Seconded by Rick Owen
Motion carried unanimously
Meeting adjourned at 7:37pm

Record respectfully submitted by Richard VanDerWal, Neighborhood Planner