



THESE ARE THE MINUTES OF THE **BOARD OF APPEALS** MEETING ON THURSDAY, **MARCH 7, 2019**, AT 7:00 P.M. HELD IN THE COUNCIL CHAMBERS AT CITY HALL, 2000 N. CALHOUN ROAD, BROOKFIELD.

MEMBERS PRESENT: Rod Carter, Robert Buikema, Gordon Rozmus, Frank DeGuire, Alderman Ron Balzer (alt.)

MEMBERS ABSENT & EXCUSED: Kevin Butlitz, Alderman Bill Carnell (alt.)

ALSO PRESENT: Zoning & Building Administrator Larry Goudy

Rod Carter ?? called the meeting to order at 7:01 p.m. He stated that the notice of hearing has been duly published pursuant to the State open meetings law and explained the procedure to present the appeals to the Board this evening.

1. **Roll Call**

Mr. Carter indicated that a quorum is present and that the request for variances must receive the affirmative vote of three members of the Board in order for a request to be granted.

New Business:

2a. **December 13, 2018, Minutes**

- Robert Buikema moved approval of the December 13, 2018, Board of Appeals meeting minutes. Seconded by Gordon Rozmus and carried unanimously.

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Public Hearing & Consideration of Appeal: *Certain requests for building permits have been submitted to the City of Brookfield and have been denied by the Zoning & Building Administrator because they did not comply with the Zoning, Building or Sign Code of the City of Brookfield. There will be a Public Hearing held before the Board of Appeals on March 7, 2019, at 7:00 pm at the Common Council Chambers for the express purpose of considering the following request(s) for variance. Please note that following the public hearing(s) the Board intends to take action by considering the request indicated:*

3a. **CP Capitol I LLC, Wyndham Point Condos, 4065 Wyndham Point Cir.: Floor Area Ratio**

The next item is the request of CP Capitol 1 LLC, Wyndham Point Condos, Wyndham Pointe at Brookfield Condominiums SE ¼ Sec 2 T7N R20E to appeal the Modified Suburban Overlay Ordinances No. 2075-06 and 2322-13 to permit a building at 4065 Wyndham Point Circle which exceeds the 23% maximum floor area ratio. The last building is proposed as a single family, 2,698 sq. ft. which would increase the floor area ratio for the site to 24%. This is an area variance.

Mr. Larry Goudy, Zoning and Building Administrator, stated Floor Area Ratio is the City of Brookfield's calculation to determine the mass of structures that allowed. It is a comparison

of the square footage of the building to the square footage of the lot. It includes each story of the structure. On a normal residential lot, the Floor Area Ratio is 25%. On a normal multi-family lot, it's 20%. This one in particular was granted by Ordinance #2075-06 some differences than normal. They were granted decreases in setbacks from the street and a floor area ratio maximum of 23%. 23% was granted for the condominium development as a whole. There was a subsequent Ordinance passed in 2013 which established a 23% floor area ratio, along with two story buildings. The two family condos are being constructed. The applicant is proposing a single family building at 2,698 sq. ft. According to a calculation by staff, they only have 1,417 sq. ft. left until they reach the maximum floor area ratio. Ordinance #2322-13 allowed for two-story units under a different development group. They are a slightly smaller footprint, but two-story units. The proposed 2,698 sq. ft. building would increase the floor area ratio for the entire development to 24% from 23%. The only contact he received from the residents notified was an email from one of the property owners on Woodland Place. The property owner basically was objecting to this proposal.

John Pellman, developer of CP Capitol I LLC, stated there was a different ownership group at the time in 2006. A very well-known developer that started the project went bankrupt. It left the company with a debt of \$650,000 for the land and infrastructure. Two other partners left last year. Mr. Pellman bought them out and now has sole ownership in the company. His goal is to obtain the approval to increase the overall floor area ratio by approximately 1,300 sq. ft. for the entire project to allow them to build a single-family unit. From all the owners in Wyndham Point Condos, only one comment was received. This comment was positive. One of the existing owners would like to purchase this new single family. Back in 2013, we asked to allow two-story units. The single family units were too expensive to build and selling them would cost less than what they were built for. In 2013 there was an oversight as to what the total square footage would come out to be from going to a ranch to a two-story. The architect who was handling this passed away unexpectedly. At the time of his passing, they thought they were in compliance. This is a huge economic hardship for him right now. With small developments like this, typically the developer takes any profit he has in the last building. All the buildings prior to that, he is paying down the debt, etc. If this doesn't get approved, not only doesn't he have a profit but he will have a hard time paying off the remaining mortgage. He has a commitment to do the last asphalt lift and he doesn't know how he would take on that responsibility.

Josh Johnson, expediting the project (and John's son), stated he is trying to keep conformity with this whole development. It is the largest building pad and will have 40' to the closest building. The rear of the property will be 37' instead of 20' required to the back. He increased the square footage but gave it more green space in the overall project. There is much more space in the rear of the property.

John Pellman added the properties to the rear of this building will be almost completely screened by very large trees. None of those trees are on his property so they will not be disturbed. No one should see the building from the rear.

Josh Johnson stated that the 2,698 sq. ft. for the house includes the garage space which is 455 sq. feet. The covered porch can get subtracted (64 sq. ft.). The house itself is about 2,100 sq. ft. He added a bump-out bay window on the side of the building for architectural reasons. If that was eliminated, it would reduce it by 40 sq. ft. He would like conformity within the development.

Debra Peterson, 4045 N. 145th St., stated the lot is so small and looks like it will be squeezed in. She disagrees with the proposal. It is set further back than what the rendering shows. The single-family house would be east of her back yard. Josh Johnson stated that Ms. Peterson has a problem with the two-family that is currently being built behind them. The building could have been 8-10' higher but they reduced it. He stated he has worked with the City and has tried to work with Ms. Peterson. Mrs. Debra Peterson stated she was not aware of the 2013 change and was shocked when they were being built. She doesn't feel they fit into the neighborhood.

Richard Peterson, 4045 N. 145th St., stated for the past 20 years he has owned that house. He doesn't want to live there anymore because of his view. He showed a picture of the view he has. He is so upset that this went on without being notified.

Alderman Balzer asked if plantings would help the Petersons. She did not get a notification letter. Josh Peterson replied he is willing to work with them on the plantings, but these are different issues. (Larry Goudy clarified with Community Development staff that the Petersons were noticed back in 2013.) Mr. Pellman stated he can sympathize with the Petersons but he has done everything that the City required. He will put up additional plantings. He has put up extra trees on the west side of the development and other areas to help with the screening. He will work with the Petersons.

Alderman Balzer stated he doesn't have a problem with the single-family house. He felt the developer should work with the Petersons.

Mr. Rozmus stated the difficulty here is that the City approved the project. The number of units have been approved. He is sympathetic to the owners and have seen many changes. It is a difficult situation. Mr. Rozmus stated he has lived in his house for 50 years and have seen many changes as well. He is also interested in looking at the quality of what is being done and the surrounding area. If the variance was not approved, the changes would probably still be a two-story but wouldn't have the proper proportions.

Mr. Carter asked why this isn't before the Plan Commission to review the development as a whole. The Plan Commission modified it the first time. Mr. Goudy replied our new City Attorney doesn't believe that Modified Suburban Overlay (MSO) ordinances are the proper way to make changes, in these circumstances. She felt the Board of Appeals was the proper way to go, pursuant to state law.

Mr. Buikema felt this is putting the board in a tough spot. It would have to be 1,000+ square feet less. It wouldn't look consistent with the rest of the subdivision. The neighbors want to be heard, though. The other issue is what is building on the other lot. He can't do anything but ask the developer to work with the Petersons. He doesn't feel strongly about making this building smaller. He felt this is more of a planning decision. Mr. Goudy replied there is a different administration with different thoughts on what is commonly called a MSO. The base zoning is M-1 and the City has put an overlay zoning on the property. The current City Attorney feels that is closer to spot zoning and is not the proper methodology for change, especially for an area variance. If this was referred to the Plan Commission, Mr. Goudy felt it wouldn't be taken there. The proper place is with the Board of Appeals.

Mr. Buikema stated the lot situation is unique. It has to go in that lot. He is not sure

the financial hardship is convincing as a hardship should be along the lines of the property, the location and how it fits on the lot. In regards to public interest, some neighbors are not satisfied.

Richard Peterson stated he can work with the developer to try to shield the lower level with arborvitaes. Mr. Pellman stated he will absolutely work with them to screen the lower level with arborvitaes. When the building is done and planting season comes around (end of May), his landscaper will discuss the plantings with the owners (pay for them and plant them). Mrs. Peterson stated she would like arborvitae all the way to the shed.

- Rob Buikema moved to approve the variance based on the unique aspects of the property, weighing the hardships of the neighbors, and submitting a landscape plan after the two parties work through that. The motion was seconded by Alderman Ron Balzer.

It was asked what the problem is with the other property owner who is more impacted by this. Mr. Goudy stated an email was received that initially the owner was against increasing the size of the building by 24%. Before Mr. Goudy had a chance to respond to that email, he received another email from him to saying that he was not objecting. Mr. Goudy explained that it was the development as a whole and then his response was "ok" put him down as objecting.

Mr. DeGuire asked are we setting the city up for negative precedent. He asked are we comfortable enough. Mr. Carter replied he feels uncomfortable with this. He sympathizes with both parties but he felt it opened the door to negative precedent, and still in his mind that this is a Plan Commission decision. Mr. Rozmus stated he doesn't feel this is spot zoning. The city had the right to set special setbacks to suit each development. Mr. Carter stated in full disclosure, he has a confusing opinion from the City Attorney regarding land use. That, in addition to staff comments at the meeting, combined with this, he doesn't feel comfortable voting on this. He will abstain from voting.

- The vote on the motion carried Ayes 4-0 with Rod Carter abstaining.
- Rob Buikema moved to adjourn. Seconded by Rod Carter and carried unanimously. Meeting ended at 7:45 p.m.

Minutes submitted by Renee J. Tadych, Deputy City Clerk.