



THESE ARE THE MINUTES OF THE **BOARD OF APPEALS** MEETING ON THURSDAY, **SEPTEMBER 12, 2019**, AT 7:00 P.M. HELD IN THE COUNCIL CHAMBERS AT CITY HALL, 2000 N. CALHOUN ROAD, BROOKFIELD.

MEMBERS PRESENT: Kevin Bublitz, Rod Carter, Frank DeGuire, Gordon Rozmus, Alderman Bill Carnell,

MEMBERS ABSENT & EXCUSED: Robert Buikema, Alderman Ron Balzer (alt.)

ALSO PRESENT: Zoning & Building Administrator Larry Goudy

Kevin Bublitz called the meeting to order at 7:05 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. Bublitz 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. **May 9, 2019, Minutes**

- Rod Carter moved approval of the May 9, 2019, Board of Appeals meeting minutes. Seconded by Alderman Frank DeGuire 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 September 12, 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. **Milwaukee Tool, 13135 W. Lisbon Rd.: Two Monument Signs and Entrance Structure**

The first item was the request of Milwaukee Tool, Lot 1 CSM 11750 Rec 8-16-18 as Doc 4356106 combining all of parcel 3 CSM 3242 and lands all being in the W1/2 SE ¼ T7N R20E to appeal Sections 17.72.020 and 15.16.190 C, to permit two monument signs and an entrance structure at 13135 W. Lisbon Road. The required setback area does not permit structures of any kind and the sign code limits the property to one monument sign.

Mr. Larry Goudy, Zoning and Building Administrator, stated Milwaukee Tool is requesting to do an entry feature at their main corporate building. They are requesting a structure that is approximately 100' in width and 16' in depth and has a monument sign on either side of it.

They have a median in the middle. Per sign code Section 15.16.190 C., limits a property to one free standing sign. Also Section 17.72.020 states that there shall be no structures of any kind within the setback. However, signs are allowed to be in the setback area. In this zoning district, the setback is 50' from the property line. The proposed feature is approximately between 20' and 25' off the property line. Staff received no comments after sending out notifications.

Matt Mano, SPS Architects, Water St., stated the intent of the structure is to help indicate where the corporate campus is located. There are more buildings to the north and multiple entrances. It would help people from out of state or the country to help them find the facility. To the property to the north (Eastgate facility), there is a median located within their drive. That is being mimicked to the Milwaukee Tool property. Their hope is that the campuses with have design matches at all entrances.

Mr. Rozmus asked if this is an ingress and egress opening (two openings) where one lane will be for entrance and one for exiting. Mr. Mano replied yes, there are two lanes each, an entrance and an exit. Alderman Carnell asked if Lisbon Road is two lanes and if there is enough room for a four-lane expansion. Mr. Mano replied yes. Alderman Carnell asked if it would be close to any utilities such as sewer and water. Mr. Mano replied he doesn't believe so. Mr. Bublitz asked could this be moved back any further. Mr. Mano replied it could be moved back a bit further. Mr. Goudy added that any public utilities are not on the private property. They are in the road right-of-way.

Mr. Carter asked if there are alternate plans that would be less invasive. Mr. Mano replied nothing that has been submitted, but they have thought about it. 1,500 people are on campus. They also looked at putting a sign in the middle of the island but felt that would cause line of sight problems.

Alderman Carnell asked if there would be a need of a dedicated right and left turn lane in the future. Mr. Mano replied possibly yes, and this request would allow enough room for that.

Mr. Bublitz reviewed standards for sign variances.

Mr. DeGuire asked how many visitors typically daily. Mr. Mano replied on a weekly basis, they have people coming in for training. This is the training headquarters for the large parent company. Each week, there is probably two or three buses coming in.

Mr. Carter asked if we limit the monument sign to one, would that upset the design? Mr. Mano replied it would look nice and his preference is two for balance. If it's on one side and not the other, then it might look unbalanced. They were thinking of putting in it in the center and making it two-sided. Mr. Goudy added that Westmoor Country Club has something similar to this (two signs). It was granted years ago as a variance. The median is not yet constructed.

Mr. Rozmus stated the site is large being at 5.7 acres. This is the major entrance and there is a lot of parking. A central sign may serve the same purpose. It was asked how far back the sign could be moved. Mr. Mano replied maybe 30' from the right of way line. Mr. Bublitz asked can the curbs be moved back by 5'. Mr. Mano replied no, the backside is a drive

aisle.

Alderman Carnell asked if there were other entrances and exits onto Lisbon Road. Mr. Mano replied there is one to the east used for semi-trucks, one toward the front entrance for a smaller scale, and one to the west for the retail store.

Mr. Bublitz stated there would not be undue concentration of signage to the property, it wouldn't render it difficult or confusing to read the existing signs, the sign is unique and of a good design, and it would enhance the area. There wouldn't be any unusual site factors that would preclude the construction of it.

Mr. Carter stated there are some egress and ingress issues making a single sign less practical.

- Alderman Carnell moved to approve two variances as requested – allow two monument signs and to allow the structure in the setback.

Mr. Rozmus wanted to know if we would push it back more so it's not in the setback.

- Alderman Carnell withdrew his motion.
- Alderman Carnell moved to approve the variance for the two signs. The motion was seconded by Rod Carter and carried Aye's 4- No's 1 with Gordon Rozmus voting no.
- Alderman Carnell moved to approve the structure as proposed in the setback. The motion was seconded by Frank DeGuire and carried Aye's 3, No's 2 with Kevin Bublitz and Rod Carter voting no.

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3b. Outback Steakhouse, 295 S. Moorland Rd.: Four Wall Signs

The next item was the request of Outback Steakhouse, Lot 1 CSM 11206, Parcel 1 of CSM 4532, the parcel in deeds 1097198 & 1081537 being except the part taken from CSM #11737 being part of the SW ¼ and SE ¼ of Sec 27 and part of the NE ¼ of the NE ¼ of Sec 34 T7N R20E to appeal Section 15.16.225 D, to permit four wall signs at 295 S. Moorland Rd. The sign code permits a maximum of three signs. The total of the proposed signs also exceeds the maximum of 200 square feet for the site by 16.16 square feet. Two of the wall signs exceed .5 x lineal front foot of elevation by 6.01 square foot/sign.

Mr. Goudy stated the sign code gives two options for businesses that have four-sided architecture. The basic sign code allows two signs – either two wall signs or a monument plus a wall sign. In this case, a monument sign is not allowed because they are part of the mall area. They could have two wall signs based on their frontage. The other option is when there is four sided architecture and there is no parking in between the building and the street, which would be Moorland Road, three walls signs are allowed. It's based on individual linear frontage of each elevation, times .5. The maximum of the three signs together cannot go over 200 square feet accumulative. Outback is requesting four signs of equal size, 54 sq. ft. each. That would require a variance because a maximum of three signs are allowed. Second, they violate

the overall square foot of individual sides of the building. The total of the four signs comes to 216.04 sq. feet, instead of 200 sq. ft. Notices were sent out and no comments were received. "The Australia" graphic does not count as a sign. Informational signs do not count either.

Landon White, representative of Outback, stated there has been a revision to Outback's sign proposal to include two code compliant signs. In summary, Sign A (located on East elevation) is 54 sq. ft. w; Sign F (located on West elevation) is 36 sq. ft., Sign B (located on South elevation) is 48 sq. ft, and Sign D (located on North elevation) is 48 sq. ft. for a total of 186 sq. ft. Sign A would exceed the allowable square footage per Code calculations.

Mr. Carter stated that typically sign variance requests would be denied for outbuildings which make these type of requests. Chick-fil-A was denied their request for a fourth sign. Mr. Carter stated there have been predecessors before this and they have held them to abide by the code. Mr. Bublitz thought that we have allowed the square footage to be split up different at other sites. Mr. Rozmus felt the larger sign on the front of the building is probably reasonable because of the volume and speed of traffic on Moorland Road. Chick-fil-A opted not to have a sign on the shopping center side. They were allowed three signs.

Mr. Bublitz asked if we went down to three signs, could we allocate in a manner to make the other signs larger. Mr. Goudy replied it seems they are already on that maximum size on the other three signs.

Mr. Bublitz stated he feels comfortable with an oversized sign on the front but he feels we are obligated to adhere to the standard of three signs.

Landon White stated Chick-fil-A doesn't front on two major roads and it is slightly different.

Mr. Rozmus stated he would like this to be consistent with Chick-fil-A, even though there is no drive-thru.

- Kevin Bublitz moved approval the requested variance for the 54 sq. ft. sign at location A and to deny the request for the fourth sign, due to consideration of the heavy traffic volumes on Moorland Road and entrance road to Brookfield Square drive. Those factors allow people to see those signs. This is consistent with past decisions of the Board. The motion was seconded by Rod Carter and carried unanimously.

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3c. **Jennifer and Aaron Putnam, 18560 Benington Dr.: Fence**

The next item is the request of Jennifer and Aaron Putnam, Lot 1 Blk 3 Rolling Meadows Pt SW ¼ Sec. 21 T7N R20E to appeal Section 15.04.340 to permit a fence at 18560 Benington Drive. The fence is 6' in height, 142' in length and solid which is not permitted by code.

Mr. Goudy stated this was brought to staff's attention by a citizen complaint. Staff verified that the fence was new. They had a pre-existing fence at this location that was legal non-conforming. The fence code came into play in 1979. The old fence was probably in existence prior to that. It was removed and replaced by Badger Fence. They erected a new

142' long, 6' high solid fence in that same location. No permit was taken out. Staff issued orders to correct in this location for removal of the fence and the applicant has chosen to apply for a variance to allow it. Notification was sent to the surrounding neighborhood and have received no comments.

Aaron Putnam stated he had a similar fence installed. The fence had deteriorated and was falling down. They had called the City about obtaining a permit. Jennifer Putnam stated on March 25, 2019, she called the City and asked if damage to a preexisting fence could be fixed or repaired and was told yes. She then asked if a permit was necessary. Staff replied no. She stated she spoke with Badger Fence after she received the letter and they said they have had issues with the City of Brookfield before. Badger Fence said they were familiar with the code but not with a preexisting structure. Given that, they were under the impression, as was she, that since they had the structure and it was in disrepair, the Code says we have to maintain the fence.

Mr. Bublitz stated that it is a strong concept in Brookfield that fences are not allowed. It is an open concept. Mr. Goudy stated Brookfield is not a fence-friendly community.

Mrs. Putnam stated it was not their intent to fence off their neighbors. Mr. Putnam added that they only wanted to replace it. He stated that there is a difference between his yard and his neighbor's yard and how it is maintained. Mrs. Putnam stated that the back of her house is very close to the back of their neighbor's house.

Ald. Carnell stated that the code allows for privacy fences. Mr. Goudy replied that the code allows for a privacy fence that is 20 lineal feet when it is around a sitting area/patio area in the rear yard. This fence is on the lot line. The code also allows for a decorative fence that is no higher in 4' in height and is a minimum of 50% open.

Mr. Goudy replied it would be highly unusual for the administrative assistants in his department to make a statement that a permit would not be required. Maybe there was confusion in the conversation, however. If you do have an older fence and it's in need of a small repair, we call that maintenance. That is a lot different than a full replacement. The contractor should have known because they do a lot of work here. That is surprising.

Mrs. Putnam stated it is not clear on the sheet on pre-existing fences. Further, she has a record on her phone that she spoke with Arlyn Hoem and she told her she didn't need a permit. Mr. Rozmus stated this is a new fence, not a preexisting fence that was repaired. Mr. Carter read the fact sheet and verified that a permit is required.

Janine Bamberger, 18620 Benington Dr., stated they have lived there for 33 years. It seems it was the right thing for the Putnam's to do because the fence was so damaged. They saved money by trying to preserve the fence. She spoke in support of the fence. It was a repair.

Mrs. Putnam asked if they were to simply fix the part of the fence that was bad, it would have looked odd. Mr. Goudy explained the concept of legal nonconforming structures. When the fence was removed, it was not allowed to go back in that location. It would not be okay to repair 20' of the fence every year as they would be considered a full replacement. If there is a rotten post or a panel that needs to be replaced, that is considered maintenance. Anything of

substance over 16' is beyond maintenance. Once it is removed, it must comply with the existing code.

Janet and Pat Williams, 18530 Benington Dr., stated they live next door to the Putnam's. She has lived there for 33 years. Their backyards are really close to each other. When their fence was deteriorating, she gave them bad advice as she told the Putnam's they didn't need a permit. Pat Williams stated it is a nice looking fence and their backyard neighbor is so close. He felt the fence improves the value on both sides of the fence.

Ald. Carnell asked if they spoke with the fence company on the possibility of removing every other slat and to cut it down to 4 feet. Mrs. Putnam replied she spoke with Badger Fence and they didn't quote her a price because they wanted to see what happened tonight. It is something they can do, but she said they have already paid a lot for the fence. Ald. Carnell stated it seems they have some fault in this. There have been no discussion from the Leg. & Lic. Committee to allow 6 foot fences at all in their past discussions. Many times the way around this is through landscaping.

Mr. Carter stated he is troubled by Badger Fence. He knows that a lot of money has been put into the fence. He knows of two families similar to this with non-conforming fences. They adhered to the code, though.

Mrs. Putnam wanted to make it clear that they wouldn't have proceeded with this had she received different information.

Mr. Rozmus also faults the contractor. Many work without getting permits. He asked if the new neighbors made any comments. It was replied no.

Mr. Bublitz stated the fence code and the open concept is well known in Brookfield. He has known people who had to remove them. Alderman Carnell stated this is difficult because many people don't get permits when they should. Mr. Goudy stated the complainant was not someone in the neighborhood. It was someone that couldn't do it themselves. Mr. Carter stated someone out there is watching us too. Precedence would be set. Mrs. Putnam stated that there was no malicious intent here. It is not a brand new structure. There was a question if we can table and give applicant an opportunity to make it code compliant. Mr. Bublitz stated the answer is to deny. Mr. Putnam stated he didn't want to pay Badger Fence again.

There was discussion to cut the boards down to 4 feet and remove 1/2 of the boards. There was a feeling that would look worse.

Mr. Carter stated there has been a legislative decision dictating how fences should look. The contractor isn't here. Further, there was a complaint about the fence. It sets precedent.

- Rod Carter moved to deny the variance request on the basis that it doesn't comply with the Code and hardship was not shown.

Mrs. Janet Bamberger, 18620 Benington, questioned the variance that was granted in the previously in the meeting and how that didn't meet the code. She stated this Board has the right to grant a variance. Rules are made for the betterment of the whole. She was simply fixing something that was broken.

Mr. Bublitz stated the idea is when there is something non-conforming and at the end of its useful life, it goes away. Mrs. Putnam added she wouldn't have done it, if she didn't get bad advice by City Hall.

Mr. Rozmus added that someone who was denied a permit in the past is now looking for other fences that are nonconforming. In this case, it's somewhat of a hardship that these applicants didn't create for themselves. A contractor created for them. He sees a hardship here. The intention was good, they had called the City, and had hired a contractor who should have known better.

Mr. Putnam stated the new neighbors behind her bought the house with the idea the fence was there and what are the ramifications of that. Mr. Bublitz replied the fence is on the Putnam's property, and it doesn't matter what the neighbor's opinion is. Mrs. Putnam stated she had talked with the backyard neighbors in length about the fence because it was so ugly. It actually fell in their back yard. She doesn't want the new neighbors to hate them for something that wasn't in their control.

Mr. Carter wished they would have pushed their fence company to solve this or appear at the board. They are not willing to back their client. He would like to see the contractor fix this. The applicants could have gone the route of landscaping had they known.

- Rod Carter withdrew his motion.
- Frank DeGuire moved that the variance be granted, for reasons that the applicants intended to conform had they known, there are some unique property characteristics for privacy issues and the hardship was created by the contractor (not the Putnam's), and there is no harm to public interest given by the neighbor's. The motion was seconded by Kevin Bublitz and carried Ayes 4, No's 1 with Rod Carter voting no.

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4d. **Richard Bienz, 2665 N. 130th St.: Lotsplit**

The next item was the request of Richard Bienz, PT SE ¼ SEC 13 T7N R20E COM 179.40 FT E OF NW CORNER TH E 179.40' TH S 342.03' TH W 179.40' TH N 342.03' TO PT OF BEG to appeal Section 17.32.040, to allow for a lotsplit at 2665 N. 130th Street. The applicant is required to dedicate 15' of frontage to the city as part of the development of a new lot. Subsequently, the new lot would fall below the required 25,000 square foot minimum. The new lot would be 23,740 square feet.

Mr. Goudy stated this property is at the corner of 130th Street and Center Street. For reasons unknown to staff and the applicant, the lot was developed without dedication of right-of-way. In order to do a lotsplit, the owner is required to grant the ultimate right-of-way. Granting 15' is required to make it a 60' right-of-way (which was verified by the Board of Public Works on May 14, 2019). By granting 15', the lot goes under the minimum size for that residential zoning code of 25,000 sq. ft. The new lot would be 23,740 sq. ft. It is unlikely the road would ever be expanded, per the city's engineering department. However, there could be a need in that area for utilities or public improvements. Notification was sent out to the

surrounding area and no comments were received.

Attorney Michelle Martin, representing the Bienz's, appeared along with Richard and Marsha Bienz. This is a unique situation. In 1964, Richard Bienz's parents bought this lot. At that time, the city had two separate tax key numbers for this and taxed it as two separate lots. Old maps show that this has a line splitting it as two separate lots. Somewhere around 1990, the city changed it to one tax key number and made it one lot. This lot is 61,000 + sq. ft. When taking off the 15' dedication needed for 130th Street, the lot is 5% or 1260 sq. ft. short. Most of the lots in the neighborhood are less than 25,000 sq. ft. By doing this, it won't appear unusual or out of place. The likelihood of widening the road is not in the foreseeable future. Water and sewer are already in the right-of-way. She stated you won't know by looking at the lot that it is undersized. All other zoning requirements can be met by this division. The reason for the variance is because the city is requiring 15' to be dedicated. All the improvements are placed on the southern portion of the lot. They are unsure why the city made the property into one tax key number. Mr. Rozmus explained that it is very common to combine tax key numbers. Attorney Martin stated that no other lots around the Bienz's lot could be divided. Either the lots are too small or the improvements are such the lots can't be split. Mr. Rozmus asked if it could meet setback requirements? Mr. Goudy replied yes.

- Gordon Rozmus moved approval of the variance as requested and 15' of dedication. The motion was seconded by Kevin Bublitz and carried unanimously.

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- Frank DeGuire moved to adjourn. Seconded by Gordon Rozmus and carried unanimously. Meeting ended at 8:35 p.m.

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