



OFFICIAL RECORD OF A SPECIAL MEETING OF THE PLAN COMMISSION HELD ON SEPTEMBER 17, 2019, AT 7:45 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 Rick Owen, Alderman Gary Mahkorn, Alderman Mark Nelson, Commissioner Lisa Chang, Commissioner Mike Smith

MEMBERS ABSENT AND EXCUSED: Commissioner Steve Petitt

OTHERS PRESENT: Director of Community Development Dan Ertl, Fire Chief Charlie Myers, City Attorney Jenna Merten, Director of Public Works Tom Grisa, City Clerk Kelly Michaels, Ald. Bill Carnell, Ald. Bob Reddin, Ald. Jeff McCarthy, Ald. Buck Jurken, Ald. Scott Berg, Ald. Christopher Blackburn, Ald. Jerry Mellone, Ald. Renee Lowerr, Ald. Brad Blumer

Mayor Ponto noted a quorum present and called the Special Plan Commission to order at 7:46 pm.

Item 1 Kelly Homes LLC/Grace Landing of Brookfield: Conditional Use, Plan and Method of Operation, Development Agreement

Postponed request of Kelly Homes LLC, 2490 Byron Ct., Brookfield, WI 53045, Duane McAllister, Manager, for approval of a conditional use, new plan and method of operation, and development agreement permitting construction of Grace Landing of Brookfield, a three building Community Based Residential Facility (CBRF) with eight bedrooms per building located at 16760 W. North Avenue. (SW ¼ of Sec. 15) – DE **Requires Common Council approval”

Report: 1. Action on this item was postponed at the September 9, 2019 Plan Commission meeting.

2. The site is located in the Civic Center Targeted Investment Area (TIA) one of eleven areas identified in the City of Brookfield 2035 Comprehensive Plan that foster community reinvestment by supporting new economic development and sustainable, mixed-use redevelopment with sensitivity to surrounding neighborhoods. The adopted node plan is the *Ruby Isle Civic Center Development Plan – 1987* and *Partial Ruby Isle/Civic Center Node Development Plan Update – 2001*. The recommended land use of the adopted node plan is Cluster Single-family Residential. The adopted land use of the City of Brookfield 2035 Comprehensive Plan is Housing Focused – Lower Density. The site is zoned “R-2” Residence District.

3. The applicant requests approval of a conditional use ordinance and new plan and method of operation replacing an existing single-family dwelling with three buildings dedicated to delivery of service to individuals with intellectual disabilities. Section 17.108.050 of the Municipal Code lists institutions for care of the insane or the feeble minded as conditional uses permitted in any zoning district unless specifically prohibited but subject to a public hearing process and upon approval of a conditional use ordinance by the Common Council.

4. Site Data:

Lot Area – Less Ultimate R/W:	117,810 sq. ft. (25,000 sq. ft. Min. in R-2)
Buildings:	Three (3) = 15,675 sq. ft.
Building Height:	26’ 1 ½” (35’-45’ Max. in R-2)
Bed Rooms:	24
Floor Area Ratio:	12% (25% Max. in R-2)

Landscape Surface Area:	69% (0% Min. in R-2)
Open Space:	88% (25% Min. in R-2)
Parking:	21 spaces (2 enclosed)

5. The site plan is designed in accordance with the ultimate right of way (R/W) along North Avenue. The building nearest North Avenue is setback 75' from the ultimate R/W rather than the 50' minimum of the base-zoning district. Like Petawa approved immediately to the west, the North Avenue landscape streetyard is occupied by a stormwater management feature in the interest of reducing stormwater discharge to the north. Building offsets are base-zoning district compliant. Pavement offset to the west is 10' and 15' to the east. There are no pavement offsets in the "R-2" zoning district. The pavement setback from North Avenue is 25' from the ultimate width, which is the same as that for retail base-zoning districts. Again, there is no pavement setback in the "R-2" zoning district. The standard for evaluation of conditional use per 17.108.050 B. of the municipal code is, "The plan commission may recommend and the council may impose such restrictions upon the use, height and bulk of any structure or land so approved for conditional use as may be reasonable under the circumstances, provided such restrictions shall not be more restrictive than the requirements established for the district in which such structure is proposed to be located."
6. The applicant's buildings are residential in architecture, scale and clustered to create a semi-circle around a courtyard. All buildings are one-story. The principal building material is fiber cement siding in vertical orientation, board and batten style. The secondary material is masonry approaching 50% application on vertical surfaces. Roofs have ridges and reversed gables all covered in asphalt shingles. The applicant undertook and provided the Plan Commission with an architectural assessment of the site's environs and patterned building style, materials, scale and colors to be thematically representative of the built environment.
7. A Landscape Plan with streetyard landscape located coincident with the North Avenue bio-retention basin is provided.
8. Preliminary grading and stormwater management plans have been submitted to the City Engineer.
9. A development agreement will secure installation of public infrastructure.
10. The applicant received preliminary comments from the City of Brookfield Fire and Emergency Medical Services Department dated May 6, 2019.
11. Wisconsin Statute Section 62.23(7)(i)(3) prohibits community and other living arrangements within 2,500 feet of each other. Another community living arrangement is within that distance. However, the City Attorney has opined that the provisions of the statute are preempted by the Federal Fair Housing Amendment Act and the Americans with Disabilities Act. Absent a showing of a substantial burden upon the City, the City would have no basis to deny the applicant's conditional use upon the statutory distance requirement. Since staff is unaware of any burden that would be placed on the City, the statutory provisions would not apply to the applicant's request.
12. A Neighborhood Information Meeting was conducted on August 21, 2019. No aldermen attended. Seven citizens signed the attendance sheet. Eight written comments were received and were included in the Plan Commission September 9, 2019 materials for this item.
13. A public hearing was conducted by the Plan Commission on September 9, 2019 (minutes attached). Citizen comments ranged from support to concern. See minutes for details.

Recommendation: With respect to conditional uses 2017 WISCONSIN ACT 67 states, "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit...; "Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence." and "The city's decision to approve or deny the permit must be supported by substantial evidence."

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Based upon the public hearing, staff recommends that the Plan Commission make the following Findings of Fact:

- The use is a conditional use as defined by 17.108.050 of the municipal code and permissible in the base-zoning district.
- The applicant is in compliance with the building location, height and area regulations of the base-zoning district.
- The use is consistent with the City's past application of the base-zoning district regulation as it pertains to conditional use delivered from multiple buildings on one lot when the conditional use is located in an R-1, R-2 or R-3 residential zoning district.
- The applicant has demonstrated that it will be able to comply with the "Public Infrastructure and Development Handbook".
- The applicant has demonstrated that it will be able to comply with the Fire Code requirements articulated in a missive dated May 6, 2019 by the City of Brookfield Fire and Emergency Medical Services Department.

Staff recommends the Plan Commission approve a conditional use ordinance permitting operation of a three building Community Based Residential Facility, new plan and method of operation and authorize the Mayor to execute a development agreement on behalf of the city subject to the following conditions:

1. Statement of operations dated April 29, 2019 by Kelly Homes, LLC.
2. Building Plans and material samples dated April 29, 2019. Wall mounted utility meters and boxes must be located on building walls that do not face North Avenue and painted to match the buildings. All building plans marked to read, "All vision glass is to remain vision glass and cannot be obstructed or modified with window film or other opaque techniques or substances except that operable window blinds, or shades are permitted."
3. Site Plan dated March 15, 2019 by Sigma Group with dumpster enclosure orientation so that doors do not face a public street.
4. Grading, Drainage and Storm Water Management Plans approved by the City Engineering Department. The developer of the project will be required to submit items a, b, and c before issuance of a building permit.
 - a. Copy of the Grading and Drainage plan as approved by the Engineering Department, including storm water calculations, following criteria established by the Storm Water Management Guide.
 - b. The bid from a contractor reflecting the cost of executing the work required on the Grading and Drainage Plan.
 - c. A letter-of-credit in compliance with the Inspection Services Department letter-of-credit format. The monetary amount of the letter-of-credit shall be equal to 110% of the bid submitted.
 - d. A recertification "as-built" survey must be performed by a licensed professional engineer or surveyor indicating that all elements of the approved Grading and Drainage Plan have been completed within tolerance as approved by staff per the approved plan. The recertification documents must be wet stamped and signed by said professional.
 - e. The letter-of-credit will be released after the recertification documents are submitted to and approved by the City of Brookfield. Approval of the grading, drainage, storm water, roadway and utility plans by the City of Brookfield Engineering Department.
5. Landscape Plan dated August 14, 2019 by New Eden Landscape Architecture subject to plan consultant review, technical corrections and

- A. The DEVELOPER shall post a letter of credit ("Street Yard Installation Letter of Credit") equal to \$11,028.75 or \$2,550 per 1,000 square feet of street yard (4,325 sq. ft. of Street Yard) using a form approved by the CITY (form available from the Department of Community Development) which shall remain on file and current with the CITY until a recertification affidavit by a Registered Landscape Architect is filed with the Inspection Services Department that indicates the street yard landscaping is completed per plan, at which time the Street Yard Installation Letter of Credit shall be released. In addition, the DEVELOPER shall post a three (3) year maintenance letter of credit equal to \$1,903.00 or \$440 per 1,000 square feet of street yard ("Street Yard Maintenance Letter of Credit") for a period of three (3) years from the date of this action using a form approved by the CITY (form available from the Department of Community Development). Such letters of credit shall be filed with the Department of Community Development prior to the issuance of a building permit. The DEVELOPER shall also grant to the CITY a temporary easement using a form approved by the CITY (form available from the Department of Community Development) for the purposes of placing the initial plantings or replacement of trees and shrubs if DEVELOPER defaults and fails to install said street yard landscaping. Such easement shall terminate at the end of the three (3) year maintenance period or longer in the event the CITY permits an extension of the PROJECT completion date, pursuant to City Ordinance No. 1552. Landscape maintenance of the PROJECT shall be performed in accordance with appropriate provisions of City Ordinance No. 1552.

Also:

- a. A landscape installation "as built" is required prior to release of the installation letters-of-credit.
6. Compliance with regulations articulated in a missive dated May 6, 2019 by Fire Chief Charlie Myers.
 7. Lighting in compliance with sections 15.16.080 and 17.120.070 of the City of Brookfield municipal code.
 8. Approval of the final draft of the development agreement by the City Attorney Office prior to execution and recording prior to site disturbance or building permit.
 9. Once a building permit is issued by Inspection Services, the owner shall receive an occupancy permit within 24 months or the owner of the property may be subject to the penalty provisions of the Zoning Code, Section 17.100.130 or the owner shall remove construction equipment and debris from the site, fine grade and seed the site, and stabilize surface water drainage leaving the site to City Engineering Department specifications within four (4) months or the owner of the property may be subject to the penalty provisions of the Zoning Code – Section 17.100.130. (Ordinance #2134-08).
 10. Signage to be approved separately by the Plan Review Board.
 11. Payment of applicable fees to the Community Development Department prior to issuance of a building permit:

\$To Be Determined	Engineering Review Fee
\$262.71	Wetland Fee (\$4.19/1K based upon FAR)
 12. Satisfaction of all taxes due, plan review fees, escrows, deposits, dedications and outstanding assessments.
 13. New plan and method of operation approval expires on October 1, 2021 unless the applicant obtains a building permit prior thereto.

Motion by Alderman Mahkorn, seconded by Commission Smith, to approve the staff recommendations to approve a conditional use ordinance permitting operation of a three building Community Based Residential Facility, new plan and method of operation and authorize the Mayor to execute a development agreement on behalf of the city subject to the following conditions. Motion carried unanimously 6-0.

Motion by Alderman Mahkorn, seconded by Alderman Owen, to adjourn. Motion carried unanimously. 8:23 pm

Record respectfully submitted by Kelly Michaels