

**WAUKESHA COUNTY
MINUTES OF THE PARK AND PLANNING COMMISSION
ADMINISTRATION CENTER, ROOM AC 255/259
THURSDAY, JANUARY 18, 2024 - 1:00 P.M.**

CALL TO ORDER

Mr. Siepman, Chairperson, called the meeting to order at 1:00 p.m.

Commission

Members Present: James Siepman Richard Morris William Groskopf
 Gary Szpara

Commission

Members Absent: Robert Peregrine

Staff

Members Present: Jason Fruth, Planning Manager
 Sandy Scherer, Senior Planner
 Ben Greenberg, Senior Planner
 Kathy Brady, Support Staff Supervisor

CORRESPONDENCE: None.

MEETING APPROVAL None.

MINUTES: Approval of the December 14, 2023, Minutes

After discussion, Mr. Morris moved, seconded by Mr. Szpara and carried unanimously for approval, of the December 14, 2023, Minutes, as presented.

PUBLIC COMMENT: None.

• **RZ136 (FAM 828, LLC) Town of Genesee, Section 34**

Mr. Fruth pointed out the location of the property, on the southwest corner of STH 83 and Fields Crossing Drive in the Town of Genesee on the aerial photograph. He indicated the request is to rezone the property from the A-2 Rural Home District to the A-3 Suburban Estate District.

Mr. Fruth indicated the rezone is subject to the Town of Genesee Zoning Code. The rezone is being requested for Outlot 5, which is located in the Fields Crossing subdivision, west of STH 83. The subdivision was originally platted in 2009 and was created before STH 83 was reconfigured with a roundabout at STH 59 and STH 83. Several outlots, specifically Outlots 4, 5 and 12 on the plat, contained notes that the developer would retain ownership, however, that they may be combined with abutting lands or reconfigured and become buildable lots at some point in the future. The existing zoning district (A-2) is a 3 acre minimum lot size whereas the A-3 District is a 2 acre minimum lot size. The outlot is approximately 2.6 acres in size. At the public hearing, a number of lot owners stated that they were given different information by the brokers who sold the lots in the subdivision. Mr. Fruth indicated the language on the plat is clear regarding the Outlot in question, which is not a part of the deeded fractional ownership. Once the information was explained to the lot owners with concerns, they understood. The Town of Genesee approved the rezoning request with conditions. Conditions of note include that Outlot 5 shall not be further divided, soil borings shall be conducted on Outlot 5 to ensure there is a suitable area available for an on-site septic system, Outlot 5 is to have an undivided fractional ownership in all of the other outlots of the Fields Crossing subdivision and the proposal shall comply with the subdivision Deed Restrictions.

Chairperson Siepmann questioned if the language in Condition No. 3 was in the Deed Restrictions (which states):

3. The owner of Outlot 5 shall have an undivided fractional ownership in all of the Outlots in Fields Crossing Subdivision, same as the other lot owners within the Fields Crossing Subdivision.

The attorney representing the petitioner, replied that Outlot 5 was always and has always been retained by the developer and was envisioned to be further improved. Chairperson Siepmann asked how can they just arbitrarily make it an undivided ownership interest for the developer and the other outlots, without it being in the Deed Restrictions? Mr. Fruth stated that when further division is anticipated, plats are often set up so there is expandability language for stormwater management for different phases of a development. Something more involved may have to be done in order to set this up and the other lot owners may have to participate. He thought they may be agreeable and it would be beneficial to add another lot owner to help pay for the stormwater management and maintenance activities. Chairperson Siepmann indicated he did not want the other lot owners to feel that they control the rezone. He wondered if Condition No. 3 could have language added, if possible? Mr. Fruth indicated that since the Town of Genesee has their own zoning ordinance and this is a Town rezone, the conditions were advanced by the Town and cannot be modified. He said he also had the same concerns and would have preferred to see clarifying language. He thought the rezone could be advanced, as is. He could follow up with the Town Planner to suggest that they look over the fine details and see if this is possible, and if not, they might need bring forth an amendment. Chairperson Siepmann agreed. The attorney representing the owner clarified that there might be some cleanup needed and they are willing to work with everyone to get the declaration re-recorded if necessary. Mr. Szpara asked if this could happen with the other Outlots 6, 9, 10 and 11? Mr. Fruth replied that everything else has already been merged and reconfigured and this is the last piece left.

After discussion, Mr. Morris moved, seconded by Mr. Groskopf and carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **RZ137 (Crown Development and Advisors, LLC Bandler) Town of Genesee, Section 27**

Mr. Fruth pointed out the location of the property on Commercial Drive in the Town of Genesee on the aerial photograph. He indicated the request is to rezone the property from the B-2 Local Business District to the B-3 General Business District.

Mr. Fruth indicated the property is located north of STH 59 and Commercial Drive. The area contains a number of business uses along Commercial Drive. He pointed out the area on the aerial photograph showing businesses located in the B-2 and B-3 zoning districts. Both the Town and County Land Use Plans call for commercial uses in this area. He said there are a variety of business uses in the area, some office, commercial, restaurant, etc. The rezone is being requested to allow an automotive sales and service repair business with limited sales. He presented a site plan submitted by the petitioner showing the location of the proposed building and parking areas on the property. At the public hearing, a property owner who lives across the highway expressed concerns of noise, etc. associated with the business. He explained that the use does not seem to be one which would disturb property owners and no conditions were added by the Town of Genesee relative to this concern.

Mr. Groskopf asked if the property was currently vacant, to which Mr. Fruth replied “Yes.” Mr. Morris asked if access to the business would only be from Commercial Drive, not STH 59? Mr. Fruth replied, “Yes.” Mr. Groskopf asked what the difference was between the B-2 and B-3 districts which would

precipitate the rezone request? Mr. Fruth responded, that the B-2 district is typically used for smaller retail businesses and the B-3 district is for slightly more intensive type businesses.

After discussion, Mr. Szpara moved, seconded by Mr. Morris and carried unanimously, for approval, in accordance with the “Staff Report and Recommendation”. The approval of this request will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

- **CU101 (Mike Brinkmann) Town of Ottawa, Section 2**

Mr. Fruth pointed out the location of the property at W359 S1614 STH 67 in the Town of Ottawa on the aerial photograph. He indicated the request is for Conditional Use approval for a contractor’s yard.

Ms. Scherer, Senior Planner indicated the parcel is owned by Lee Bleecker and contains a sand pit operation. Mr. Brinkmann, petitioner, currently operates a contractors yard in the Village of Summit. This will be a satellite location for the company and will replace an existing landscape and pool supply operation on the Bleecker property. The petitioner will lease an approximate $\frac{3}{4}$ of an acre portion of the site where the former landscape operation was located. She presented the site plan of the operation indicating the location of landscape bins with various materials, display areas, equipment and vehicles stored onsite. Customers can come to the site and pickup landscape materials or materials can be delivered.

Mr. Morris indicated there are no restroom facilities located at the operation. Ms. Scherer explained that historically, the Waukesha County Environmental Health division had allowed employees and customers of the existing business to utilize restrooms at the gas station, across the street owned by Mr. Bleecker. She said that since this is a new operator/operation, the petitioner would need a new Zoning Permit which may precipitate a Preliminary Site Evaluation from the Environmental Health division and they may continue to allow the use of the restrooms at the gas station.

After discussion, Mr. Morris moved, seconded by Mr. Groskopf and carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

- **SP217 (Mike Brinkmann) Town of Ottawa, Section 2**

Mr. Fruth indicated the Site Plan/Plan of Operation request is related to the previous Conditional Use (CU101) listed above.

After a brief discussion, Mr. Morris moved, seconded by Mr. Groskopf and carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

- **PPC24 001 (John and Marilyn Spitz Joint Trust) Town of Merton, Section 14**

Mr. Fruth pointed out the location of the property at N78 W29156 Flynn Road in the Town of Merton on the aerial photograph. He indicated the request is for a retaining wall within 5 ft. of the east property line.

Mr. Greenberg, Senior Planner, indicated the property has frontage on Lake Keesus. The petitioner purchased the property in 2021 and razed the existing residence and constructed a new single family residence. The property is under 10,000 sq. ft. in size with a 50 ft. lot width and the new residence was subject to a 10 ft. side yard offset.

Mr. Greenberg explained the history of the properties. The property and lot to the east were under common ownership by a prior owner who had planned to sell the properties together or separately but in order to address an encroachment condition, an easement was established. When the new residence was permitted, the petitioner was under the impression that he may have an opportunity to purchase the adjacent lot. This would allow him to execute a grading plan with more ease as he would be able to control both of the offset areas on either side of the lot line. Instead, the lot to the east was sold to a third party who decided to occupy the existing residence as-is.

Mr. Greenberg indicated, when the petitioner's residence was under construction a complaint was received from the adjacent property owner to the east who expressed concerns regarding frost protection being removed from the footings of his residence and a sanitary pipe being unearthed, all due to the excavation which was occurring on the Spitz property. The Planning and Zoning Division staff asked the neighbor to contact the Town Building Inspector as it was an "in construction" concern. The building inspector required the petitioner to address the issue of frost protection for the adjacent residence. A second complaint was received in late 2022 regarding retaining wall and land altering activities being constructed without the necessary permits. The Planning and Zoning Division staff inspected the property and discovered the retaining wall was being built on the lot line which deviated from the approved zoning permit issued for the construction of the residence. He presented photographs of the retaining wall constructed. He further explained what the petitioner did to address the frost protection. Instead of the grades ramping down, a retaining wall was constructed insulating and backfilling with clear stone. A drainage system was installed directing the runoff to the lakeside slope. The property line runs into the corner of the foundation. The Land Resources staff inspected the system installed and determined it would work as intended. The Planning and Zoning Division staff is recommending approval of the request with conditions.

Mr. Groskopf indicated the petitioner did not follow the approved plans for the construction of the new residence and retaining walls. Mr. Greenberg agreed and stated the grading was not done according to the approved plans.

Mr. Spitz, petitioner explained the chronology and challenges of the project. When he purchased the property, the seller was in the process of securing permits to raze the residence to the east and the easement would be vacated, which did not happen. The Town Building Inspector told him he needed to address the structural, frost protection and drainage issues. He noted the neighbors house basically sits on his property. He used larger block for the retaining wall to stabilize the area, put the insulation immediately behind the wall, installed drain tile at the lower grade and filled the entire area with clear stone. He indicated that did not purposely go against the original plans but needed to follow the directions of the Building Inspector and on a timely basis.

Mr. Groskopf said the grading and site plan work was not done according to the original plans. He felt the situation was unfortunate and it seems the drainage issues are being addressed. In reviewing the grading plan there should have been enough soil against the encroaching residence to protect it from frost. Mr. Fruth explained when the Planning and Zoning Division staff visited the property in the summer it was another situation where the retaining wall was visible to Mr. Spitz, not the neighboring property. When residences are a couple feet away from or even over the lot lines, it is difficult to come up with a perfect resolution. Mr. Groskopf said the walkway and stairs which were added were not on the original plans. Mr. Fruth said there was some type of conveyance needed to service the roadside of both of the homes' front yards. Chairperson Siepmann further explained that there are rules on the lakes. The petitioner had an issued building permit and a grading plan. The petitioner should have come in and had the Planning and Zoning Division staff review the changes to the project including the addition of a retaining wall vs. the grading plan.

After discussion, Mr. Groskopf moved, seconded by Mr. Morris and carried unanimously, for approval, as conditioned, in accordance with the “Staff Memorandum”. The approval of this request will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

ADJOURNMENT

With no further business to come before the Commission, Mr. Morris moved, seconded by Mr. Groskopf to adjourn the meeting at 1:46 p.m.

Respectfully submitted,

Robert Peregrine

Robert Peregrine
Secretary

RP:kb