

**BROWN DEER PLAN COMMISSION  
AUGUST 8, 2005 MEETING MINUTES  
HELD AT THE BROWN DEER VILLAGE HALL  
4800 WEST GREEN BROOK DRIVE**

The meeting was called to order by Village President Jaberg at 7:03 P.M.

**I. ROLL CALL**

Present: Village President Margaret Jaberg; Trustees: Jeff Baker, Tim Schilz; Commissioners: Rick Stone, John Raffensperger, Roy Williams, Susan Bellehumeur, David Hinman

Also Present: Russell Van Gompel, Village Manager; Jesse Thyges, Assistant Village Manager/Community Services Director; Nathaniel Piotrowski, Planning/Zoning Specialist; William Dineen, Village Attorney; Chief Steven Rinzel and Lieutenant Tom Halverson, Brown Deer Police Department; Trustees: Kundinger, Boschert, and Springman

Excused: Commissioner Alan Nees

**II. PERSONS DESIRING TO BE HEARD**

None.

**III. CONSIDERATION OF MINUTES: July 11, 2005 - Regular Meeting**

*It was moved by Trustee Schilz and seconded by Commissioner Williams to approve the regular meeting minutes of July 11, 2005. The motion carried unanimously.*

**IV. REPORT OF STAFF/COMMISSION MEMBERS**

Mr. Thyges provided updates on the status of the Hearthside redevelopment, the sign issue at Badger Fuel gas station, and other minor property maintenance complaints within the Village.

**V. UNFINISHED BUSINESS**

None.

**VI. NEW BUSINESS**

- A) Public Hearing for a Zoning Code Text Amendment to list "Beauty Salon" as a Permitted Use within the B4 Commercial Zoning District, requested by Nails by Alice, LLC.**

Mr. Thyges provided a summary of the proposal and the reasoning behind the request.

President Jaberg discussed the procedures for the public hearing.

The public hearing opened at 7:06 p.m.

Alice Hammond, the applicant, discussed the proposed Nail Salon operation.

Sharon Williams, 4475 West Dean Road, spoke in support of the proposal.

Scott Kuhn, 10291 North Elizabeth Court, the property owner discussed the parking arrangements on the site and spoke in favor of the proposal.

Oscar Johnson, 5113 West Joleno Lane, spoke in support of the proposal.

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Milwaukee City Alderman Willie Wade, 3763 North 53<sup>rd</sup> Street, spoke in favor of the proposal as well as the use of the “Nail Salon terminology.

The public hearing closed at 7:12 p.m.

Commissioner Hinman voiced concerns with the potential for a large scale operation.

Commissioner Raffensperger spoke favorably of Staff’s revision of the proposal to list “Nail Salons” instead of the original proposal of “Beauty Salons”

President Jaberg stated that the small parcel sizes of the lots that are currently zoned B4 would help to regulate the size of future proposals.

Trustee Schilz suggested using the term “specialty retail use” and a sub-header listing nail salons. Attorney Dineen stated that using the term “nail salon” is consistent with other portions of the Code.

Commissioner Hinman voiced concerns with the broad nature of a “specialty retail use” designation.

President Jaberg asked if this proposal would go before the Community Development Authority (CDA) for review. Mr. Thyes stated that since there are no exterior changes to the building being proposed as well as the small size of the business the CDA would not have to review the matter.

*It was moved by Commissioner Raffensperger and seconded by Commissioner Bellehumeur to recommend a Zoning Code Text Amendment to list “Nail Salon” as a Permitted Use within the B4 Commercial Zoning District to the Village Board for approval. The motion carried unanimously.*

President Jaberg asked the Plan Commission if there were any objections to taking up agenda item “C” out of order. The consensus of the Plan Commission was to allow item “C” out of order from the agenda.

**C) Relocation of a Driveway Access and Parking Lot Reconfiguration for Metavante, 4900 West Brown Deer Road.**

Mr. Thyes provided a summary of the proposal.

Steve Stroz, Metavante Corporation, reviewed the proposal and summarized the discussions with the Department of Transportation.

Commissioner Raffensperger asked for clarification of the driveway relocation. Rich Luce, Epstein Uhen Architects, stated that the new driveway location is intended to line up with the new front entrance of the building.

Trustee Baker asked for clarification of the location of the turn lane. Mr. Luce pointed out the location of the turn lane on the site plan and discussed the Department of Transportation’s (DOT’s) requirements.

Trustee Schilz inquired about the potential for left turn restrictions. Mr. Stroz stated that it was the DOT’s preference to maintain the open median, and discussed the employee traffic flow onto Arbon Drive.

Trustee Schilz voiced concerns over the safety of east-bound turns out of the site. Mr. Van Gompel stated that the DOT has jurisdiction over the driveway matter, and that the Village Police Department will have the responsibility of responding to accidents at the site.

Mr. Strozk pointed out that the amount of green space will remain the same and that the handicap accessible parking areas will be more efficient as a result of the projects.

Trustee Schilz asked if the landscaping changes would need to be reviewed by the Beautification Committee. Attorney Dineen stated that the proposal did not constitute a substantial change to the operation on the property, therefore review by the Beautification Committee may not be required.

Mr. Van Gompel stated that the matter was being presented as an informational item only.

*No action taken.*

**B) Public Hearing for Zoning Code Text Amendments to regulate “Adult Businesses”.**

Mr. Van Gompel provided a brief summary of the proposal and the reasoning behind the request.

Attorney Dineen presented the draft ordinance, and summarized the background studies for creating such an ordinance. Attorney Dineen also discussed first amendment rights and case law history in regards to adult business ordinances.

Mr. Thyges explained how the associated maps, showing buffer areas from residences schools and day care centers, were created.

Commissioner Bellehumeur asked if the gymnastics academy would fall under the classification of a school. Attorney Dineen stated that the academy does not meet the definition of a school as provided in the zoning code, but that the Plan Commission could require a buffer from the academy as a part of the adult business ordinance.

Attorney Dineen discussed the number of parcels that would be available under the proposed ordinance, and summarized the requirements of the proposed ordinance.

Chief Rinzel discussed the need for reviewing the background studies in preparing the draft ordinance.

Lieutenant Halverson discussed the background reports and the vulnerability of the community since there is not an adult business ordinance in effect. Lieutenant Halverson also discussed the zoning and licensing requirements of the proposed ordinance as well as a survey of local businesses that was conducted to determine the amount of sales of adult materials within the Village.

Chief Rinzel stated that the proposed ordinance would not affect any existing businesses within the Village.

Lieutenant Halverson discussed the secondary effects adult businesses have on nearby neighborhoods along with related study results from Indiana, Kansas City, and Denver.

The public hearing opened at 8:05 p.m.

Terry Boschert, 8587 North 42<sup>nd</sup> Street, asked about the use of a Conditional Use Permit (CUP) to regulate such businesses. Attorney Dineen stated that using a CUP is possible, however, much harder to defend against a lawsuit. Lieutenant Halverson added that all CUP regulations to date have failed in court.

Mr. Boschert also asked if other North Shore communities have adult business ordinances and who would be the licensing body under the proposed ordinance. Attorney Dineen stated that one other North Shore community has an adult business ordinance, and that the Village itself would be the licensing body.

Commissioner Bellehumeur asked how the ordinance would be monitored for case law updates. Mr. Van Gompel discussed the various way Village staff monitor case law updates.

Ron Kundinger, 8239 North 46<sup>th</sup> Street, asked for clarification of the proposed fee schedule for the ordinance. Attorney Dineen discussed the formation of the fee schedule and reasoning behind the amounts that were stated in the draft ordinance.

The public hearing closed at 8:23 p.m.

Commissioner Raffensperger questioned the dated figures used in the ordinance. Chief Rinzel stated that the general facts have not changed over time.

Trustee Schilz asked about past enforcement issues within the Village. Chief Rinzel stated that past actions fell under different laws or ordinances.

Trustee Baker inquired about the potential for establishing the buffer to include the Village Park and pond as well as the jurisdiction of the proposed ordinance over the "R" rated movies carried by the Library. Attorney Dineen stated that the Library's movies would not be subject to the ordinance, and that the buffer area can be amended as a part of the review process.

A discussion ensued pertaining to the dated background information sited in the studies.

Commissioner Williams asked if any ordinance was ever struck down due to the dated statistics. Attorney Dineen stated that there have not been any ordinances struck down for that reason.

President Jaberg asked about further differentiating between the types of adult businesses and how to regulate them. Lieutenant Halverson discussed first amendment requirements and past case law precedents. Attorney Dineen discussed potential issues with differentiating between adult uses.

Commissioner Raffensperger voiced concerns with the amount of opinions in the background studies that were attached to the staff report. Attorney Dineen explained that the studies do not have to meet evidentiary standards, but are meant as a reference.

Mr. Van Gompel stated that the ordinance should be moved forward as soon as the Plan Commission is comfortable with the proposal.

Attorney Dineen asked for clarification on the issues to be addressed for the September Plan Commission meeting.

*It was the consensus of the Plan Commission to hold the matter over for one month to allow for more time to review the proposed ordinance.*

## **VII. ADJOURNMENT**

*It was moved by Commissioner Raffensperger and seconded by Commissioner Williams to adjourn at 9:08 P.M. The motion carried unanimously.*

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Jesse Thyes  
Assistant Village Manager/Community Services Director