

MINUTES OF THE SPECIAL COMMON COUNCIL MEETING HELD AT THE GREENFIELD CITY HALL ON TUESDAY, SEPTEMBER 3, 2019

The meeting was called to order by Mayor Neitzke at 6:30 p.m.

A. ROLL CALL:	Aldersperson Lubotsky	Excused
	Aldersperson Bailey	Present
	Aldersperson Akers	Present
	Aldersperson Saryan	Present
	Aldersperson Kastner	Present

ALSO PRESENT:	Brian Sajdak	City Attorney
	Jeff Katz	Director of Neighborhood Services
	Kristi Johnson	Community Development Manager
	Jennifer Goergen	City Clerk

A prayer was given by Chaplain Leggett.

B. Public Hearings

1. Public hearing on a Special Use Permit for a proposed Starbucks coffee shop to be located at 4306 W. Layton Avenue, submitted by Tim Knepprath, d/b/a Wellspring Construction, LLC and Jimmy Rosen, d/b/a Somerstone, LLC. (Tax Key No. 601-9852-001)

Community Development Manager Kristi Johnson said Starbucks wants to acquire a half-acre site which is currently a Citgo gas station and car wash on the northeast corner of W. Loomis Road and W. Layton Avenue. The site is zoned C-3, Highway and Commercial Service Business District, which permits limited service restaurants as a special use. There will be a drive through. Hours would be 5:00 a.m. to 10:00 p.m. daily. Outdoor music is limited from 8:00 a.m. to 6:00 p.m. The developer expects 10 – 20 employees to work daily, with an average of four per shift. Ms. Johnson showed pictures of the site, a site plan, and views of the proposed building. The car wash portion would be demolished. The 2,500 square foot convenience store would be retrofitted as a Starbucks. Twenty six parking spaces are on-site, with eight stacking/queuing spaces. They propose to close an existing W. Layton Avenue driveway. The municipal code requires 26 spaces and 7 stacking spaces.

The developer hired a consultant to do a traffic study, as this is a very busy intersection. There was concern about the intersection of S. 43rd Street (a city street) and W. Layton Avenue (a county road). The study recommended traffic on W. Layton Avenue could turn onto S. 43rd Street, but S. 43rd Street traffic could not cross W. Layton Avenue. Additionally, southbound motorists on S. 43rd Street could no longer turn left to go eastbound on W. Layton Ave. Northbound motorists on S 43rd St. could no longer turn left to go west on W. Layton Avenue. The study also recommended: an extended turn lane at the first median cut to the east of the S. 43rd St/W. Layton Ave. intersection to leave more room for vehicles to queue to make a U-turn on W. Layton Avenue to go east; to remove all cable guards; and to provide curbs. These improvements would be at the expense of the developer. The developer also would need to meet county specifications for any road improvements.

Mayor Neitzke said Milwaukee County said this stretch of W. Layton Avenue (from W. Loomis Avenue and S. 27th Street) is slated for full reconstruction in 2021. The developer's improvements probably would be integrated into the reconstruction.

Staff concerns were: insufficient stacking and the potential for vehicles to spill over into S. 43rd Street. This is expected to be a successful business. The Plan Commission required a condition: "In the event vehicular traffic entering the subject parcel at the S. 43rd Street entrance regularly creates a hazard to health and safety by queuing onto the S. 43rd Street or W. Layton Avenue rights-of-way, the City of Greenfield may, at the owner's sole expense, require said entrance to be closed and the area improved with grass landscaping, curb and gutter, to match the remaining site perimeter."

The Plan Commission recommended approval. One letter of support for the project was received; no objections to date.

Mayor Neitzke said it's a fantastic project. The only concern is the amount of traffic in the mornings going north on W. Loomis Road and west on W. Layton Avenue to get onto the freeway. Starbucks developers and the traffic engineer said there will not be traffic queuing on S. 43rd Street or W. Layton Avenue. If they are wrong, there would need to be remedial action to close the median. There are also quite a few accidents with southbound traffic from W. Loomis Road and eastbound W. Layton Avenue traffic making left turns onto W. Loomis Road. That conflict would not be addressed by this site plan.

Speaking against the project was:

Christine Hallen, 4676 S. 43rd St. She said this area is extremely dangerous. She has safety concerns, including children who wait on the corner of S. 43rd Street for their school buses. Starbucks would add 1,000 new trips to this area beyond the existing traffic flow. She knew of severe car accidents in this area on August 9, August 29, and September 1. She is concerned about potential traffic backups on S. 43rd Street. She can hear the traffic accidents from her home and fire and rescue personnel are always in that area. While the project would improve the intersection, it would add more vehicles to an already very dangerous stretch of road. Her neighbors share her concerns.

Speaking in favor of the project was:

Judy Koss, 4664 S. 45th St. She and three of her neighbors support the project. She said the new project will be an improvement; the existing gas station is an eyesore. She said Citgo's gas is priced higher than a neighboring gas station owned by the same person, because he doesn't want the Citgo to be open.

Mayor Neitzke noted he received correspondence from Ted Larsen, R & B Development, supporting the project. They own property to the east.

Tim Knepprath, Wellspring Construction LLC, the applicant, said the enhancements they are making will make the intersection safer. These included: closing off the access onto W. Layton

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Avenue; putting in an island to stop traffic traveling north on S. 43rd Street from turning west; and installing deceleration lanes at the next intersection to the east.

Alderson Akers asked how motorists would be prevented from turning left (west) from S. 43rd Street onto W. Layton Avenue.

Mr. Knepprath said there will be a curved island in the boulevard that will prevent people from doing so. Likewise, people will not be able to travel south on S. 43rd Street and make a left turn to go east on W. Layton Avenue.

Alderson Bailey said people on S. 43rd Street will not be able to easily access W. Loomis Road.

Mayor Neitzke said they might have to go to S. 39th Street.

Alderson Akers asked how visibility is in the area where there would be U-turns.

Mayor Neitzke said there is no hill in that area, and visibility would be good.

Alderson Akers said if there is stacking and the S. 43rd Street entrance to Starbucks is closed, she would be worried about having the sole entrance/exit into Starbucks from W. Loomis Road due to northbound traffic on W. Loomis Road that is merging into the right lane in the mornings to access the freeway ramp north of the proposed Starbucks on W. Loomis Road. She already sees a problem with southbound W. Loomis Road traffic making illegal U-turns at W. Layton Avenue having near-misses with westbound W. Layton Avenue traffic that is turning north onto W. Loomis Road.

City Attorney Brian Sajdak said he has contact from the counsel for the developer. They don't want that condition on there. They say the city has the authority under the municipal code to close that access at any point, so the condition doesn't need to be a part of the approval, and it is a hurdle for some property owner down the road to have to deal with in a transaction.

Attorney Sajdak said the value is that it puts the property owner or tenant on notice that issues might be created that they would need to address or face the potential that the city could close off the entrance on S. 43rd St. The traffic engineer has indicated there will not be a problem. Nevertheless, it is an appropriate restriction since it highlights for the current and potential future owners that this is a concern the city has, Attorney Sajdak said.

The restriction is redundant, a Starbucks representative said.

Mayor Neitzke said the restriction protects the city from complaints down the road, if the S. 43rd Street entrance is closed, that due process rights were taken away. He likes Starbucks but is in favor of the restriction.

Judy Koss said she doesn't see a problem as there is traffic everywhere. She has traveled W. Layton Avenue and W. Loomis Road for 32 years and never had an issue. She said several proposed projects have not happened because of obstacles put up by city regulations. She has not seen enhancements to the area east of S. 60th Street.

Mayor Neitzke said the only restriction pertains to if traffic stacks up on S. 43rd Street or W. Layton Avenue. If that happens, alderpersons will receive calls from people complaining about the danger.

Attorney Sajdak said the special use resolution reiterates various code requirements to make certain applicants are aware of them.

Christine Hallen said she and her neighbors don't want a vacant gas station on their corner. They would welcome a decent development, but there are safety concerns.

It was moved by Alderperson Kastner, seconded by Alderperson Akers, to close the public hearing at 7:20 p.m. Motion carried unanimously.

- a. It was moved by Alderperson Kastner, seconded by Alderperson Bailey, to approve the following:

Approve the Special Use Permit and Site, Landscaping & Architectural plans for a proposed Starbucks coffee shop to be located at 4306 W. Layton Avenue, subject to Plan Commission and staff comments. At Mayor Neitzke's suggestion, Alderperson Kastner agreed to include in his motion "the extra language" [the restriction language to require the owner to close the S. 43rd St. entrance at his expense if traffic backed up onto S. 43rd St. or W. Layton Ave.] (Tax Key No. 601-9852-001)

Alderperson Bailey asked for clarification.

Mayor Neitzke said Starbucks doesn't want the restriction language, but it provides additional reassurance to the city of a way to address traffic backups if needed.

Alderperson Akers said if the city decides the S. 43rd Street entrance needs to be closed, she hopes they would do so on a temporary basis first to see how it works out.

Mayor Neitzke said if there are traffic backups, the city likely would issue warnings initially and send law enforcement to help resolve traffic backups. If the problem continued, written warnings would be issued due to it creating a hazard to health and safety. It wouldn't be a sudden order to close the S. 43rd Street entrance.

Attorney Sajdak said it is good to include the restriction in the approval because once the developers sell or lease the Starbucks property, the city would be dealing with different people. It also highlights the safety issue the city is concerned with.

Alderperson Bailey said he didn't like "no left turn" restriction for northbound S. 43rd Street.

Attorney Sajdak said he thinks that will come to pass either as part of this project or as part of the 2021 W. Layton Avenue reconstruction.

Mayor Neitzke reviewed the motion and received no objections to giving the City Attorney discretion with the restriction language so that closing the S. 43rd St. entrance is “not the first choice” if there are problems with traffic backups.

On a roll call vote, motion carried unanimously.

- b. It was moved by Alderperson Kastner, seconded by Alderperson Bailey, to adopt Resolution No. 3705:

RESOLUTION NO. 3705

**SPECIAL USE PERMIT FOR STARBUCKS, A PROPOSED COFFEE SHOP, TO BE LOCATED AT 4306 W. LAYTON AVE., SUBMITTED BY TIM KNEPPRATH, D/B/A WELLSPRING CONSTRUCTION, LLC AND JIMMY ROSEN, D/B/A SOMERSTONE, LLC.
(TAX KEY NO. 601-9852-001)**

WHEREAS, Tim Knepprath, d/b/a Wellspring Construction, LLC and Jimmy Rosen, d/b/a Somerstone, LLC, duly filed with the City Clerk an application for a Special Use Permit, pursuant to Sec. 21.04.0603, Sec. 21.04.0700 and Sec. 21.08.0103 of the Municipal Code, to establish a coffee shop at 4306 W. Layton Ave.; and,

WHEREAS, after due notice, a public hearing was held by the Common Council on September 3, 2019, at 7:00 p.m. or soon thereafter, in the Common Council Chambers to consider the application; and,

WHEREAS, the Common Council, having carefully considered the evidence presented at the public hearing and the following pertinent facts noted:

1. The applicant, Jimmy Rosen, d/b/a Somerstone, LLC, has an accepted offer to purchase the property located at 4306 W. Layton Ave., Greenfield, WI 53220.
2. A new Starbucks restaurant will occupy, after retrofitting the existing commercial building, approximately 2,578 sq. ft. in area, and will be located at 4306 W. Layton Ave., Greenfield, Milwaukee County, Wisconsin, more particularly described as follows:

That part of the Southeast ¼ of Section 23, Township 6 North, Range 21 East in the City of Greenfield, Milwaukee Count, State of Wisconsin, which is bounded and described as follows:

Commencing at the Southeast corner of said ¼ Section; thence West along the South line of said ¼ Section 323 feet to a point; thence Northeast 199.11 feet to a point; thence East 277 feet to a point; thence South along the east line of said ¼ Section 190 feet to the point of beginning. Excepting those parts taken for public street purposes.

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Said land being located at 4306 W. Layton Ave.

4. The applicant is proposing to establish a limited-service restaurant with dine-in, carry-out, and drive-through options.

5. The aforesaid premise is zoned C-3 Highway and Commercial Service District under the Zoning Ordinance of the City of Greenfield, which permits Limited-Service Restaurants as a Special Use, pursuant to Sec. 21.04.0603, Sec. 21.04.0700 and Sec. 21.08.0103 of the Municipal Code.

6. The subject property is part of an area along the W. Layton Ave. corridor that is developed for commercial uses. Properties to the north, south, and west are developed as commercial. Properties to the east are developed as commercial and residential.

7. The proposed development may adversely contribute to traffic volumes and traffic flow in the area.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Greenfield that the application of Tim Knepprath, d/b/a Wellspring Construction, LLC and Jimmy Rosen, d/b/a Somerstone, LLC, to establish a coffee shop, to be located at 4306 W. Layton Ave., be, and is hereby granted on the following grounds:

That the establishment, maintenance and operation of the proposed use, with the imposition of certain conditions hereinafter set forth, reasonably satisfies the standards set forth in Sec. 21.04.0603 and Sec. 21.08.0103 of the Municipal Code, so as to permit the issuance of a special use permit as therein provided.

BE IT FURTHER RESOLVED that said Special Use Permit is granted subject to the following conditions:

1. Site and Landscaping Plans. The grant of this Special Use Permit is subject to and conditioned upon the Site Plan and all other applicable conditions approved by the Plan Commission on July 9, 2019 and by the Common Council on September 3, 2019. No alteration or modification of the approved plan shall be permitted without approval by the Common Council.
2. Building Plans and Fire Codes. The grant of this Special Use is subject to building plans being submitted to and approved by the Inspection Services Division and by the Fire Department.
3. Health and Safety. In the event that vehicular traffic entering the subject parcel at the S. 43 St. entrance regularly creates a hazard to health and safety by queueing onto the S. 43 St. and/or W. Layton Ave. rights-of-way, the City of Greenfield may, at the property owner's sole expense, require said entrance to be closed and the area improved with grass landscaping, curb and gutter to match the remaining site perimeter.
4. Hours of Operation. The allowable hours of operation for Starbucks will be 5:00am – 10:00pm, seven (7) days/week.
5. Off-Street Parking. The entire building, under the category of "Restaurant (with Drive-in/Drive-thru Facility)," requires twenty-six (26) off-street parking stalls and seven (7) on-site queuing spaces. Twenty-six (26) off-street parking stalls and eight (8) on-site queuing spaces are to be provided on site.
6. Signage. Signage shall be in compliance with the City's Signage Ordinance. Any building window signage shall not exceed twenty-five (25) percent of the net glazed front window area per business premises. Rope/LED trim lighting shall not be allowed.

7. Public Nuisance. In accordance with Chapter 11 of the Municipal Code, Public Nuisances are prohibited. Public Nuisances include blighted properties due to an accumulation thereon of junk or other unsightly debris. Enforcement and abatement of public nuisances, including revocation of the Special Use Permit, may take place after three (3) or more nuisance activities have occurred at a premise on separate days during a one hundred and eighty (180) day period.
8. Marketing Displays. The use of pennants, special lighting, flags, streamers or other signage typically temporary in nature, hanging, floating or attached to a structure or vehicle shall not be permitted.
9. Outdoor Lighting. All outdoor lighting fixtures shall be shielded in such a manner that no light spills from the property boundaries. Full-cut off fixtures and or house side shields utilized to minimize light spill. Rope/LED trim lighting is not permitted.
10. Litter. Employees shall inspect the area and the immediate vicinity and pick up litter on a daily basis.
11. Refuse Collection. All refuse to be provided by a commercial hauler. All refuse, recyclables and other waste material shall be screened from view by the existing fence/enclosure provided on site.
12. Pest Control. Exterior pest control shall be maintained at all times and pest control problems shall be addressed immediately.
13. Pagers, Intercoms. The use of outdoor pagers, intercoms, or speakers shall not be permitted on site as surrounding land use consists of residential uses. Outdoor music shall be limited between the hours of 8:00am and 6:00pm.
14. Noxious Odors, Etc. The use shall not emit foul, offensive, noxious or disagreeable odors, gases, or effluvia into the air. Mechanical systems shall be maintained to efficiently remove noxious odors.
15. Pollution. The use shall not cause any noxious or unwholesome liquid or substance or any dirt, mud, sand, gravel, or stone refuse or other materials to be deposited upon any public right of way or flow into any sanitary sewer, storm sewer, or water supply system, or onto adjacent properties.
16. Deliveries and Refuse Pickup. The property will be required to abide by the City of Greenfield health/public nuisance rules per Chapter 12 of the Municipal Code. Because there is a residential neighborhood adjacent to the site, delivery operations and refuse pick up shall only be permitted during daytime hours. These functions shall not be permitted between the hours of 9:00 p.m. and 7:00 a.m.
17. Expiration of Special Use Permit. Any special use approved by the Common Council shall lapse and become null and void one (1) year from and after that approval if the use has not commenced, construction is not underway, or the owner has not obtained a valid building permit. An extension of these time limitations may be granted without a public hearing by the Common Council by resolution reauthorizing the special use in accordance with the following criteria:
 - A. The applicant requesting the extension shall complete a planning application available from the Community Development Division and shall submit a \$350.00 special use permit review/amendment fee.

B. A written explanation for the extension of time shall accompany the planning application along with a timeline/schedule for obtaining necessary permits, zoning, state and municipal approvals and a target date for construction start;

C. The request for extension shall be submitted within sixty (60) days of the expiration of the special use permit;

D. The extension, if granted, shall be valid for a period of six (6) months. If no building permit has been issued and construction has not commenced within six (6) months from and after the extension has been granted, the special use shall become null and void.

18. Miscellaneous.

A. Applicants are advised that the foregoing conditions are reasonably necessary to protect the public interest and to secure compliance with the standards and requirements specified in Sec. 21.04.0603 and Sec. 21.08.0103 of the Municipal Code; that the issuance of the special use is expressly subject to compliance with said conditions.

B. The use, as granted herein, is subject to applicants' compliance with all other state and local laws and regulations which may be applicable to the proposed use of the real estate in question.

C. The special use, as granted herein, shall run with the land and benefit and restrict all future owners and occupants of the property, unless the use shall lapse or be terminated and the use will not be altered or extended (including structural alterations and/or additions) without the approval of the Common Council, following public hearing, all as provided in Sec. 21.04.0603 and Sec. 21.08.0103 of the Municipal Code.

19. Lapse. If the applicant does not meet all of the terms and conditions set forth in this grant of a special use within one year of the granting thereof, then the Special Use Permit shall lapse and become null and void and the applicant shall forfeit any right to use the property as conferred by the Special Use Permit. The failure of the applicant to meet the terms and conditions of the Special Use Permit shall subject the permit to being declared void by the Common Council after notice to the applicant and a hearing before the Common Council. Upon a finding by the Common Council on the matter, the applicant and/or any interested person may make comments regarding the matter to the Common Council prior to the Common Council's next regular meeting following the hearing recommendation. Upon the Common Council's finding that the Special Use Permit has lapsed and become void, the applicant shall cease all operations at the property.

20. Termination of Special Use. If the person or entity granted the special use violates, allows or suffers the violation of the ordinances of the City of Greenfield, the State of Wisconsin or the United States on the premises covered by the special use, then the special use may be terminated.

21. Acknowledgement. That the applicants sign an acknowledgment that he/she/they has/have received these terms and conditions and will abide by them.

The undersigned applicant agrees to the terms and conditions and has agreed that the grant of the Special Use Permit is conditioned on meeting the terms and conditions of this resolution.

Jimmy Rosen, d/b/a Somerstone, LLC

Provided to applicant on the
_____ day of _____, 2019

Community Development Manager

PASSED AND ADOPTED by the Common Council of the City of Greenfield on the 3rd day of September, 2019.

APPROVED:

Michael J. Neitzke, Mayor

ATTEST:

Jennifer Goergen, City Clerk

On a roll call vote, motion carried unanimously.

C. Mayor Neitzke and Alderperson Akers both thanked the police, fire and emergency workers who responded to the recent murder in Greenfield. They encouraged residents to sign up to receive emergency phone notifications.

It was moved by Alderperson Kastner, seconded by Alderperson Bailey, to adjourn the meeting at 7:38 p.m. Motion carried unanimously.

Jennifer Goergen, City Clerk

Minutes transcribed by Sheryl Hartman, Deputy Clerk
Distributed: September 4, 2019