



OFFICE OF ZONING AND PLANNING

MEMORANDUM

To: Village Board of Trustees
From: Thomas Harrigan, Zoning and Planning Administrator/Assistant to the Village Manager
Date: January 22, 2021
Re: Mandel Group Properties LLC Redevelopment Proposal – Review Processes

Petition Request:

The Village is in receipt of a proposal from Mandel Group Properties LLC (Mandel) to rezone and redevelop the property at 13105 Watertown Plank Road, commonly known as the School Sister of Notre Dame Campus (SSND), to a Residential Planned Development Overlay District to allow for 240 multi-family units and 26 single family lots. The proposed redevelopment application includes a petition for the following requests:

- Approval of a Certified Survey Map (CSM) to divide the SSND property into four lots.
- Amendment of the Village Comprehensive Plan to identify the future land use of the property as Multifamily Residential and Single Family Residential.
- Rezoning the property from I-1 *Institutional Zoning* to Rm-1 *Multi-Family Residential*, Rs-3 and Rs-4 *Single-Family Residential* with a *Planned Development Overlay District* (PDO). The existing cemetery would remain I-1 *Institutional Zoning*.
- Approval of the proposed redevelopment plans.

Process (to date):

In accordance with Village Ordinance, §335-30G *Planned Development Overlay procedural requirements*, the Village Plan Commission and Building Board both held conceptual plan reviews of the redevelopment proposal on September 14th, 2020 and October 6th, 2020 respectively. The purpose of the conceptual review is solely to allow for the exchange of informal observations about a possible project while facilitating orientation of the members of the Commission and Building Board regarding potential issues that may have to be addressed in the event that a petition is filed. All discussion held at the conceptual reviews is nonbinding.

On December 21, 2020 Mandel formally submitted their redevelopment petition to the Village, which has initiated the formal review process. Pursuant to §335-30G(3) *Referral to Plan Commission*:

“The petition for a Planned Development Overlay District shall be referred to the Village Plan Commission for its review and preliminary recommendation, including

any additional conditions or restrictions that it may deem reasonably necessary or appropriate.”

The zoning code requires that the Board of Trustees formally receive all requests for rezoning (and accompanying development proposal) and then if deemed appropriate by the board forward the request to the Plan Commission for review and initiate the process.

I have enclosed the document titled, *Village of Elm Grove Process for Rezoning and Development*. This document serves as a guideline for those requesting approval of rezoning and/or redevelopment within the Village. It is important to note, this guideline is not to be construed as an approved timeline for action, but merely a guide for establishing milestones in the process. The Village’s PDO procedural requirements for review is designed to allow for maximum flexibility for the Board of Trustees and the various standing committees while considering the redevelopment petition for approval.

Initial Engineering Plan Review:

Ruekert & Mielke has completed an initial engineering plan review of the proposed redevelopment. This is a general overview of the petition requests, a copy of which is enclosed for your reference.

Role of the Board on January 25th, 2021:

At this time, the Village Board of Trustees will be charged with taking action on the redevelopment proposal by either referring the petition to the Plan Commission and the various standing committees for review and consideration, or to deny the request. If referencing the *Village of Elm Grove Process for Rezoning and Development* document, the action required by the Board of Trustees correlates to step 5.

If the Board votes to refer the redevelopment petition to the Plan Commission, that action does not constitute overarching approval of the project. Rather, a referral initiates the formal review process at the various standing committees based on the determination it merits further consideration and refinement for possible approval.

Next Steps (If referred to Plan Commission):

Plan Commission Review - The Plan Commission reviews the request with respect to the rezoning, Comprehensive Plan amendment, proposed redevelopment and any future tax incremental financing requests. The Commission may request modifications or additional information requiring the developer to return to the Commission with the information requested. When a recommendation by the Plan Commission is put forward to the Village Board, a public hearing will be scheduled and noticed accordingly before the Village Board.

Building Board Review - The Building Board reviews the request and will provide a recommendation to the Village Board with respect to the architectural and landscaping components of the development. The Board may request modifications or additional information requiring the developer to return to the Building Board with the information requested.

Standing Committee Reviews – The Board of Trustees may decide to have one or more of the Villages standing committees (Public Works, Finance, Public Safety, etc.) review a specific element of the redevelopment petition.

Determination (Action):

The Plan Commission provides a recommendation on the redevelopment petition to the Village Board of Trustees and a public hearing is scheduled and posted with a Class II notice (notice posted for at least 14 days prior to the public hearing).

The public hearing is held by the Board of Trustees and the Board may take action based on the recommendation which has been forwarded by the Plan Commission. This action would be based on the petition for:

- Approval of a Certified Survey Map (CSM) to divide the SSND property into four lots.
- Amendment of the Village Comprehensive Plan to identify the future land use of the property as Multifamily Residential and Single Family Residential.
- Rezoning the property from I-1 *Institutional Zoning* to Rm-1 *Multi-Family Residential*, Rs-3 and Rs-4 *Single-Family Residential* with a *Planned Development Overlay District* (PDO). It should be noted, the existing cemetery would remain I-1 *Institutional Zoning*.
- Approval of the proposed redevelopment plans.

Pursuant to §335-30I (1) and (2) *Determination*

“(1) The Village Board, after due consideration, may deny the petition, approve the petition as submitted or approve the petition subject to additional conditions and restrictions. The approval of a PDO District shall be based upon, and shall include as conditions thereto, approval of the plan of operation for the project and execution by all necessary parties to the development agreement as provided for in § 335-30J.

“(2) Rezoning to the Planned Unit Development Overlay District shall not become effective until a development agreement has been approved by the Village Board, is fully executed by all parties and recorded with the Waukesha County Register of Deeds.”

ADDITIONAL ITEMS INCLUDED IN APPROVAL PROCESS

Development Agreement:

Any action made by the Board of Trustee to approve the proposed redevelopment petition will require execution and the recording of a Development Agreement at the Waukesha County Register of Deeds. Pursuant to §330-30J *Development agreement contents and demonstration of consent:*

“J. Development agreement contents and demonstration of consent.

(1) The Village Board's review and approval process shall be conditioned upon the execution by the Village Board and the applicant of the development agreement approved by the Village Board in conjunction with its approval under § 335-30I embodying all of the terms and conditions of the specific project plan and any additional terms of implementation.

(2) The development agreement shall be submitted to the Plan Commission for its recommendation prior to approval by the Village Board and shall include, without limitation by reason of enumeration:

- (a) Timetables for performance/completion of improvements;*
- (b) Performance requirements and standards and assurances for all improvements and/or modifications pertaining to the PDO District;*
- (c) Inspection requirements;*
- (d) Prohibitions on any division/combination of the real estate lots included within the PDO District except as otherwise provided, including an exception for residential condominium units;*
- (e) Provision for lapsing of specific plan approval and automatic reversion of the zoning status of the property to non-PDO District status upon specified changes of circumstances or upon failure of the project to materialize as agreed to in the development agreement;*
- (f) Agreements, bylaws, provisions and/or covenants or additional deed restrictions to be recorded against the lot(s) within the PDO District that will perpetually govern the organizational structure, use, maintenance and continued preservation and protection of the project and any of its common services, common open areas and/or other facilities; and*
- (g) Exhibits, drawings or other attachments that depict improvements, including but not limited to structures, fixtures and landscaping and their relative locations in the development area as well as design and engineering details as may be necessary to document to a reasonable degree of specificity the type, character and nature of the improvements to be made within the development area.*

(3) Execution of the development agreement shall constitute evidence of consent and subordination of the entire project area to the terms of the development agreement. The development agreement and all agreements, bylaws, provisions covenants and/or additional deed restrictions required here under shall be recorded, shall run with all of the land included within the approved PDO District and shall fully bind all parties to such agreement and those subsequently taking interest in the property or properties.

(4) No approval of a PDO District shall take effect and no rights shall vest in regard to any PDO District petition approved by the Elm Grove Village Board until the development agreement and all of its exhibits have been duly recorded with the Waukesha County Register of Deeds.”

Tax Incremental Financing (TIF):

At this time Mandel has not made a formal TIF District request but it is anticipated this request will be made if the project moves forward past the January 25th Village Board meeting. In order for the timing to align for any potential approval of a redevelopment project, which also includes a TIF request, the process for the creation of the TIF District must begin prior to the final execution and signing of the Development Agreement. This is because the terms of agreement for potential Tac Incremental Financing would be memorialized in the Development Agreement.

A TIF request and review of the financial feasibility of such a request may be conducted concurrently with the review of the overall redevelopment petition.

As identified on page 4 of the redevelopment submission by Mandel,

“The redevelopment of the Property provides an opportunity for the Village to burden this Property alone with the cost of a significant portion of the municipal water infrastructure. A portion of the incremental tax revenue would pay for this water infrastructure through the creation of a Tax Increment District.”

The TID request has a separate timeline and approval requirements with the following steps and legal requirements:

1. **Make request for creation of the new TIF District** - Letters and hearing notice to be sent by first class mail to administrator of all local government entities and school districts with authority to levy taxes on Tax Incremental District (TID) property.
2. **Joint Review Board (JRB) hearing notice** – date published, 5 days before the meeting (Class 1) (not required for Town TIDs created under sec. 60.85, Wis. Stats.)
3. **Letters to owners of property found blighted or in need of rehabilitation** – date notified, at least 15 days before the hearing (not required for industrial, mixed-use or environmental remediation districts).
4. **Planning Commission hearing notice** – dates published, 2 notices, 1 per week with second notice 7 days before hearing (Class 2).
5. **Planning Commission public hearing** – date of public hearing.
6. **Planning Commission resolution** – Submitted to Wisconsin Department of Revenue with copy of approved Planning Commission meeting minutes.
7. **Local Legislative Body resolution** – date adopted (must be at least 14 days after the public hearing and on or before September 30).
8. **JRB hearing notice (2nd)** – date published, 5 days before the meeting (Class 1).
9. **JRB resolution** – date adopted (within 45 days after receiving Local Legislative Body resolution). Submit copy of approved JRB resolution.

This process needs to be completed before the final redevelopment petition approvals and signing of the development agreement.

Please do not hesitate to contact me with any questions related to the redevelopment petition, or the review process as outlined above.