



Agenda
Zoning Board of Appeals
Municipal Building, 625 52nd Street – Room 204, Kenosha, WI
Tuesday, May 14, 2024
5:00 pm

Amy Lonergan, Chairperson
Brandon Gray, Vice-Chairperson
Mitch Ferraro

Mathew Loewen
Aishia Nunez
Shane Hollerich - Alternate
Andrew Schmidt - Alternate

Call to Order
Roll Call
Citizen Comments

Approval of the Minutes from the Meeting held December 5, 2023

1. Request for Administrative Appeal from SPV3, LLC for forfeiture of a Temporary Occupancy Cash Performance Deposit [Section 8.04 D.4.] for a property at 2812 21st Street; Zoning– Rm-2-Multiple-Family Residential District; (District 5). PUBLIC HEARING

Commissioners' Comments

*IF YOU ARE DISABLED AND NEED ASSISTANCE, PLEASE CALL 653-4030 BY NOON
OF THIS MEETING DATE TO MAKE ARRANGEMENTS FOR REASONABLE ON-SITE ACCOMMODATIONS.*

ZONING BOARD OF APPEALS
Minutes
December 5, 2023

MEMBERS PRESENT: Amy Lonergan, Mitch Ferraro, Brandon Gray, Mathew Loewen, and Aishia Nunez

MEMBERS EXCUSED:

STAFF PRESENT: Brian Wilke, Development Coordinator, Gary Roberts, Director of City Inspections.

The meeting was called to order at 5:00pm by Amy Lonergan, roll call was taken and a quorum was present.

Opening Remarks by Ms. Lonergan - welcome Andrew Schmidt as our new alternate board member.

Citizens Comments - None

A motion was made by Mr. Ferraro, seconded by Mr. Gray to approve the minutes of October 24, 2023. The motion passed. (Ayes 5, Noes 0)

1. Request for Administrative Appeal from Greg Stock for orders to remove a gravel parking pad [Section 6.01 A.2.] for a property at 7843 19th Avenue; Zoning – Rs-3- Single-Family Residential District; District 13. PUBLIC HEARING

Mr. Wilke introduced Gary Roberts, Director of City Inspections and went over the Staff report. He went over the difference between a Zoning Variance and a Zoning Appeal as there are different requirements. Staff recommendation is to deny the Administrative Appeal.

Mr. Wilke noted the following facts must apply:

- a) **That there is a reasonable difference of interpretation as to the specific intent of the word, term, rule, regulation, provision and restrictions of the Ordinance.**

□ Staff Comment: *The rules of a driveway apron width are clear in the Zoning Ordinance. The applicant's parking pad is clearly wider on the private property side than the driveway approach in the public right-of-way.*

Staff believes there is no other interpretation of the rules governing parking on a residential property..

- b) **That the resulting interpretation will not grant a special privilege to one (1) property inconsistent with other properties or uses similarly situated.**

- Staff Comment: *Staff has not permitted any similar type of parking pads on other residential properties within the City.*

Granting of the appeal would grant a special privilege to this property and set a precedent for future properties to construct the same gravel pad adjacent to the driveway apron in front of a residence.

- c) **That the resulting interpretation is in the best interest of the City of Kenosha and consistent with the spirit and intent of this Ordinance.**

- Staff Comment: *The spirit and intent of the Zoning Ordinance is to limit off-street parking to a paved driveway, a garage, and/or the rear yard of the property.*

Granting of the appeal would not meet the spirit or intent of the Zoning Ordinance.

Public Hearing opened.

Gregory Stock, 7843 19th Avenue, applicant, found that other properties in the City also had issues with parking on their properties. He put this gravel pad in professionally because he is handicap and has four vehicles to park. His neighbor put up a fence which makes it difficult to open car doors in his driveway. This spot is needed with alternate side parking during the winter months and there is nowhere to park. He is asking for some leeway.

Mr. Ferraro asked Staff to repeat the three criteria.

Mr. Wilke read over the criteria.

Mr. Ferraro asked if there should be grass and no parking is allowed in the front yard?

Mr. Wilke replied yes.

Mr. Ferraro asked if he could park in the back of the house with a gravel pad?

Mr. Wilke replied yes, the ordinance states parking is limited to the property's backyard or driveway apron.

Mr. Ferraro asked about the wrap around driveway mentioned by the applicant.

Mr. Wilke said he is not sure without knowing all the details.

Mr. Ferraro asked the applicant if he could park in his backyard?

Mr. Stock replied no because of the neighbor's fence.

Mr. Ferraro asked if he knew if the neighbor's fence was on his property line?

Mr. Stock stated he did not know as there was no survey done due to cost. He said he has handicap signs in front of his house but he can't use the spot due to alternate side parking in the winter months. Street parking is limited with all the neighbors vehicles.

Mr. Ferraro asked Staff because of the alternate parking season can the orders be moved out to a later date until alternate parking is over? Is there any leniency we could have for the orders?

Mr. Wilke replied no, the ordinance is the ordinance.

Mr. Roberts replied no I don't see any.

Ms. Nunez asked if there is any permission or permit he can get due to his handicap status from the City to do this?

Mr. Roberts stated the City allowed handicap parking signs for him in front of his house so he could handicap park there.

Mr. Stock stated in other cities he can park at any time in a handicap spot either side of the street.

Ms. Lonergan replied the alternate side parking is because of the plows. There are no exemptions to the ordinance because of alternate parking. If we would allow this for one person we would then have to do it for all and went over the criteria.

Mr. Stock said he will never put the parking pad back to grass.

Mr. Loewen asked if there was a way to find out if the fence was legally placed without having to pay for a survey? He asked the applicant if there are property stakes?

Mr. Stock stated he cannot find them.

Mr. Wilke replied a surveyor is required to determine lot lines.

Mr. Roberts stated that a property owner can put up a fence right on the property line.

Mr. Stock said it should have been stopped at the back of the house.

Mr. Roberts stated the code allows it.

Mr. Stock argued the point.

Mr. Gray stated this was all triggered by a neighbor who did not follow the proper channels. Also, the contractor did not pull a fence permit. In regards to the ordinance is the issue that it is wider than the apron - paved, unpaved or gravel?

Mr. Roberts replied yes, this is his interpretation.

Mr. Wilke also replied yes.

Mr. Gray stated that with these older neighborhoods the homes are smaller and the Zoning Ordinance butt up against modern needs. This situation was triggered by a neighbor that did not do their homework. We don't change laws, we enforce them as they are interpreted. He asked Staff because this was caused by a neighbor's inaction to follow City regulations as well as the contractor, is there any recourse that can be done?

Mr. Roberts clarified that a fence permit was pulled by the neighbor. The issue was she did

not finish the fence before a previous permit expired.

Mr. Gray asked if there was any remedial course of action that can be done without setting a precedence?

Mr. Wilke stated it is not the City's obligation to provide off street parking for four vehicles. It is the City's interpretation that we cannot bend the rules for this situation.

Shane Hollerich, 12812 71st Street, asked if there are any ADA exceptional circumstances given that he has ADA in front of his house and does this violate any ADA laws?

Mr. Gray stated that falls outside the scope of this board.

Ms. Lonergan stated that by providing the handicap parking in front of the house the City has fully addressed the ADA. Maybe another solution would be to put up handicap parking signs on the other side of the street due to the winter season of alternate side parking.

Andrew Schmidt, 902 46th Street, with alternate side parking you can park in the handicap parking and don't have to move to the other side of the street.

Ms. Lonergan stated that is correct unless it is a snow emergency and you cannot park in the street at all.

Mr. Roberts stated you can park in your front yard during a snow emergency.

Ms. Nunez confirmed he is allowed a certain amount of space in the front yard to park to start with and go to the back of his house. She asked because of his disability he is not allowed to pave the front area and park there?

Ms. Lonergan replied correct that is why we are here. The front area of the yard is not allowed for parking and cannot be wider than what the driveway is. If he moves it to the back he can park, but with the neighbors fence he is not able to do that.

Mr. Gray asked if this is because it is next to the principle structure going back. He has a parking space in back of his house that is wider than the apron.

Mr. Wilke stated it is where the driveway apron meets the sidewalk, it cannot be wider than the approach in the right-of-way and it cannot be in front of the house.

Mr. Gray feels this falls under ADA.

Ms. Lonergan stated that most cars are wider today than they used to be. She verified with the applicant that he has 90 inches in width on his driveway. The average car width is 72 inches, so you should still be able to get to the backyard.

Mr. Stock stated it is very tight and he has a side entry to his house.

Ms. Lonergan went through the three criteria. She asked if the applicant has applied for a variance?

Mr. Stock replied he did not know he could.

Ms. Lonergan asked if he would be willing to apply for a variance?

Mr. Stock replied yes.

Public Hearing closed.

Ms. Lonergan asked Staff if this could be tabled and convert this from an appeal to a variance request?

Mr. Wilke stated the recommendation would be to rule on this appeal and depending on the outcome go from there. The board understands the rules and the criteria that also must be met with the variance request.

Ms. Lonergan stated she is not sure he would meet the criteria for a variance either.

Mr. Gray asked how does ADA play into this?

Ms. Lonergan stated it doesn't. This is something we are not even allowed to be considered. The rule is we are not to grant special privilege to one property.

Mr. Loewen said looking at the picture provided in the packet if the applicant parks his truck in the spot in question the other cars can fit in the driveway. Is the parking about all year round or during the snow season?

Mr. Stock replied usually during the snow season.

Mr. Loewen confirmed the alternate side parking spot and using it during the snow season. If this is just about parking when it is snowing there should not be a problem. You can park on your property during a snow emergency.

Mr. Gray stated it is a separate issue with neighbors watching and complaining about parking.

Mr. Ferraro confirmed that three cars can park in the driveway if they need to be parked off the street.

Mr. Gray stated the challenge is getting out of the cars.

Mr. Ferraro confirmed there is a handicap parking spot in front of their house.

Ms. Lonergan stated you can park in the handicap spot in front of your house even during alternate side parking.

Mr. Ferraro asked staff if he denies the appeal what are the next steps the applicant needs to take?

Ms. Lonergan stated he could apply for a variance. It would need to be taken out and put grass in, but he could still park there during a snow emergency.

Mr. Loewen feels it does not meet the three criteria with the solution that the applicant can park on his front lawn when there is a snow emergency and be able to use his handicap spot in front of his house during alternate side parking. I do not see that there is a problem.

A motion was made by Mr. Loewen, seconded by Ms. Nunez to deny the requested administrative appeal. On a roll call vote the motion passed to deny. (Ayes 4, Noes 1- Brandon Gray)

Ms. Lonergan explained to the applicant that his next step is to apply for a variance and to

contact Mr. Wilke.

Mr. Wilke stated the cost for a variance is \$350.

2. Discussion on dates and times for regular scheduled monthly meetings.

Mr. Wilke went over the Staff report. Staff recommends establishing a set meeting schedule for the benefit of the Board, Staff and applicants.

Ms. Lonergan had concerns on the amount of time from the file date to the meeting date. She would like to see it more flexible.

Mr. Wilke stated the recommendation is 30 days because of meeting preparation and public notices that have to go out.

Mr. Gray asked if this meeting schedule is set in stone?

Mr. Wilke replied as much as it can be, but we can possibly make adjustments if needed. This schedule will also be used for the Board of Housing Appeals.

Mr. Ferraro asked what the time frame would be for notifying them if they will not be having a meeting?

Mr. Wilke replied possibly the week after the filing date.

A motion to receive and file was made by Mr. Gray, seconded by Ms. Nunez. The motion passed. (Ayes 5, Noes 0)

Board Member Comments –

Mr. Gray stated he did not mean to disagree with Staff on Item #1. He asked if there is any way or anything that can help him?

Ms. Lonergan stated that he could have paid to get a survey done. She thanked the alternates for attending the meeting and feels the meeting schedule will help.

A motion to adjourn was made by Mr. Ferraro, seconded by Mr. Loewen. The motion passed. (Ayes 5, Noes 0) The meeting adjourned at 5:51 pm.

Certification that the minutes have been approved by the Zoning Board of Appeals.

Rich Schroeder, Deputy Director of City Development

Meeting Minutes Prepared by: Laurie Bauman, City Development



**ZONING BOARD OF APPEALS
Staff Report – Item #1**

**Tuesday, May 14, 2024 at 5:00 pm
Municipal Building
652 52nd Street - Room 204, Kenosha, WI**

Request for Administrative Appeal from SPV3, LLC for forfeiture of a Temporary Occupancy Cash Performance Deposit [Section 8.04 D.4.] for a property at 2812 21st Street; Zoning– Rm-2-Multiple-Family Residential District; (District 5). PUBLIC HEARING

NOTIFICATIONS AND APPROVAL REQUIREMENTS:

Aldersperson LaMacchia, District 5, has been notified. The Zoning Board of Appeals is the final review authority.

LOCATION AND ANALYSIS:

Site: 2812 21st Street (Parcel Numbers: 07-222-24-126-301 thru 07-222-24-126-312)

Zoning: Rm-2 Multiple-Family Residential District

1. The applicant received a Conditional Use Permit from the City Plan Commission on September 22, 2022 to construct twelve two-unit buildings for a total of twenty-four units. This project is a continuation of the Sun Pointe Village project which dates back several years.
2. Section 8.04 D.4. allows an applicant to receive a Temporary Occupancy Permit if certain improvements are complete while others are incomplete. The Temporary Occupancy Permit allows the newly constructed buildings to be used by the public or residents for their intended use. The Temporary Occupancy Permit then allows the applicant twelve months to complete the outstanding items and obtain a Final Occupancy Permit. The Zoning Ordinance allows up to four buildings in a multiple-family development to be included in a phase. A phasing plan was submitted with the Conditional Use Permit application.
3. Phase one of this development, which was provided by the applicant on the phasing plan and approved by the City Plan Commission, included buildings 8, 9, 11 and 12. Building 8 was the last building of the phase to receive a Temporary Occupancy Permit on March 14, 2023, which meant that all improvements within the phase must be completed no later than March 14, 2024, or the Temporary Occupancy Permit would be void. The improvements were not completed by that date, therefore a letter was sent to the applicant notifying them that the Temporary Occupancy Permit for the phase has expired. The applicant's own Phasing Plan included a note that the paving work was to be completed after four buildings, but that work was not done before the winter season.
4. Also included in Section 8.04 D.4. is a requirement that the applicant post a cash assurance amount with the City in an amount equal to forty percent (40%) of the remaining amount of work, but no less than \$2,000. In this case, the applicant posted a \$16,000 cash assurance based on the amount of remaining work. This work included paving, landscaping and several punch list items relating to site drainage and utilities. When the Temporary Occupancy Permit expired, the applicant forfeited the cash assurance amount. Per the Zoning Ordinance, the applicant has ten (10) days to appeal this forfeiture to the Zoning Board of Appeals. The applicant has requested this appeal of the forfeiture.
5. The applicant's appeal of the forfeiture states this was simply an organizational oversight and was unfortunately missed. And since the paving work, landscape work and certain other punch list items can not be done in winter conditions, they were unable to complete the work even when notice of the expiration was sent to them on January 4, 2024. It should be noted that the applicant's narrative is

incorrect when it states the City does not allow for concrete sidewalk / curb inspections prior to April 15th. That prohibition only applies to work within the public right-of-way. Work on private property can commence whenever the owner desires to do the work.

6. The Zoning Ordinance is set specifically at a twelve month expiration period to allow for a full construction season to complete the outstanding items with good weather conditions and obtain a Final Occupancy Permit. This project expired on March 14, 2024, and as of the date of this Staff Report, the work still has not been completed. Based on this, Staff is recommending denial of the return of the cash assurance funds.
7. Unlike a request for a Zoning Variance which has specific standards to be met to issue a Variance, the Zoning Ordinance does not include standards for granting or denying the Appeal.

RECOMMENDATION:

A recommendation is made to deny the Administrative Appeal.

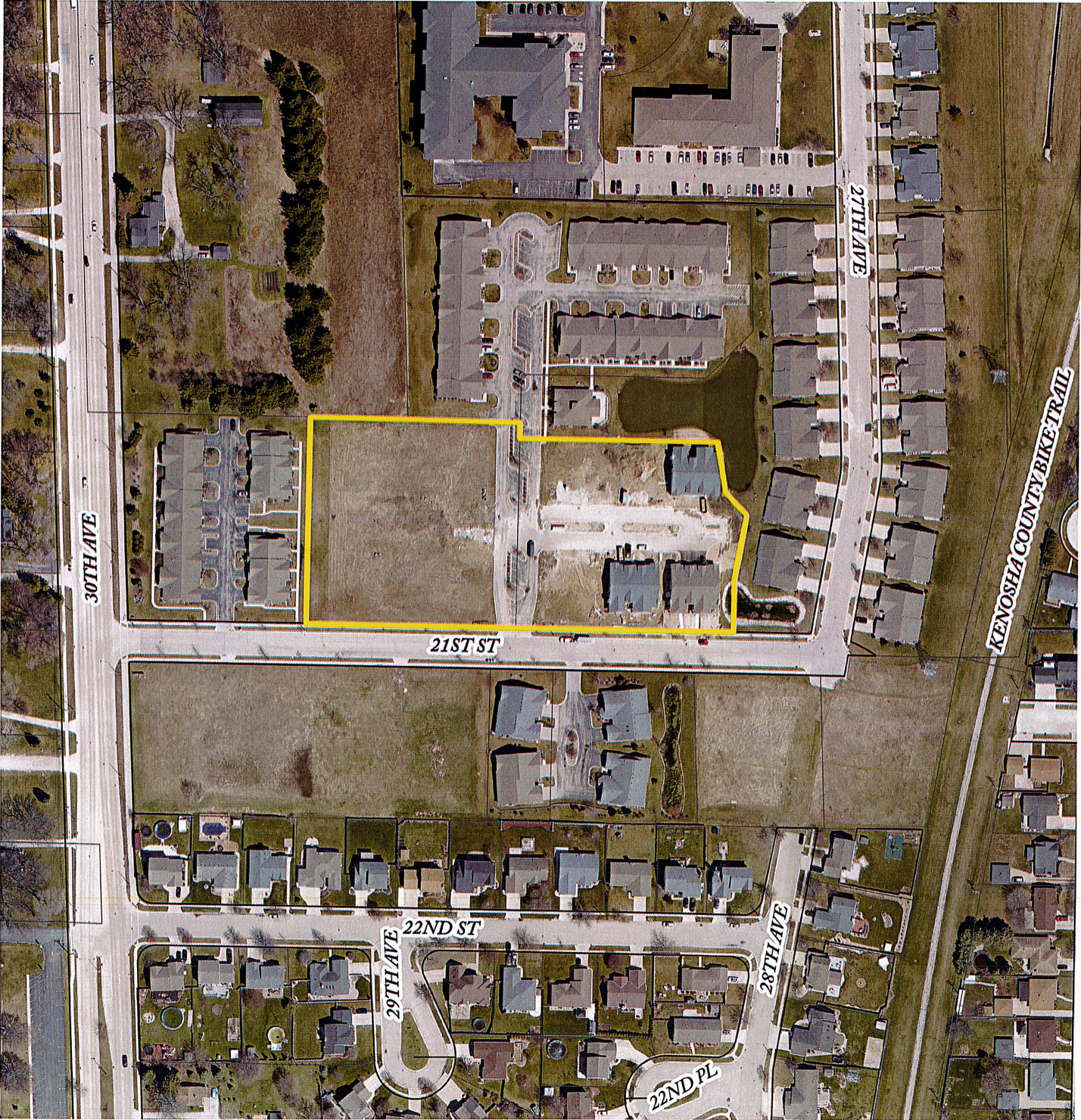


Brian Wilke, AICP, Development Coordinator

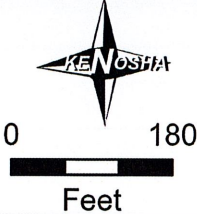


Richard Schroeder, Deputy Director

City of Kenosha
Vicinity Map
Sun Pointe Village - Phase III
Request for Administrative Appeal



 Subject Property





FOR OFFICE USE ONLY	
Date Filed	_____
Receipt Number	_____
Meeting Date	_____

APPLICATION FOR ADMINISTRATIVE APPEAL
Form #CD171 (rev. 11/23)

Property Owner SPV3, LLC Phone Number 262-818-8114

Owner's Address 4015 80th Street, Kenosha, WI 53142

If the applicant is other than the property owner, a notarized signature of the property owner authorizing the applicant to act on his/her behalf is required

Applicant Jonah Hetland Phone Number 262-818-8114

Applicant's Address 4015 80th Street, Kenosha, WI 53142

Address of Appeal 2812 21st Street (SPV)
 (if the property is undeveloped, a parcel number is required)

Specific Appeal Being Requested Forfeiture of \$16,000 cash escrow for above referenced project (Sun Pointe Village)

Attach the necessary supplemental forms as defined in the
 "ADMINISTRATIVE APPEAL APPLICATION INSTRUCTIONS"

Documentation: On a separate sheet(s) of paper, provide justification of your request.

I hereby authorize the staff of the Department of City Development to inspect the premises of the above-described property. I hereby affirm that all statements herein and attached hereto are true and correct to the best of my knowledge and belief.

Signature (Owner or Agent for Owner)

March 25th, 2024
 Date

SPV Appeal Summary 3.26.24:

We had certain site improvements that were supposed to be complete by March 14, 2024.

Unfortunately we had a project manager here at Bear that had left last year and it was unknown to us that this deadline existed, as this PM never communicated this to us before he left.

We are currently completing the last building of this phase and our plan had been to finish all remaining items this spring as we completed that last building.

It was brought to my attention around Feb 1 of this year that this work was outstanding and the deadline to complete was March 14th.

The work that is needed to be completed (asphalt, concrete, landscaping, grading) is weather dependent and cannot be done in the middle of winter. I immediately hired contractors and are on their schedules for when the asphalt plants and nurseries open for the year.

The city does not allow for concrete sidewalk/curb inspections prior to 4/15 so that work will commence at that time.

We have been a long time builder within the city of Kenosha and we always abide by the rules, this one just slipped past me and it was an honest mistake.

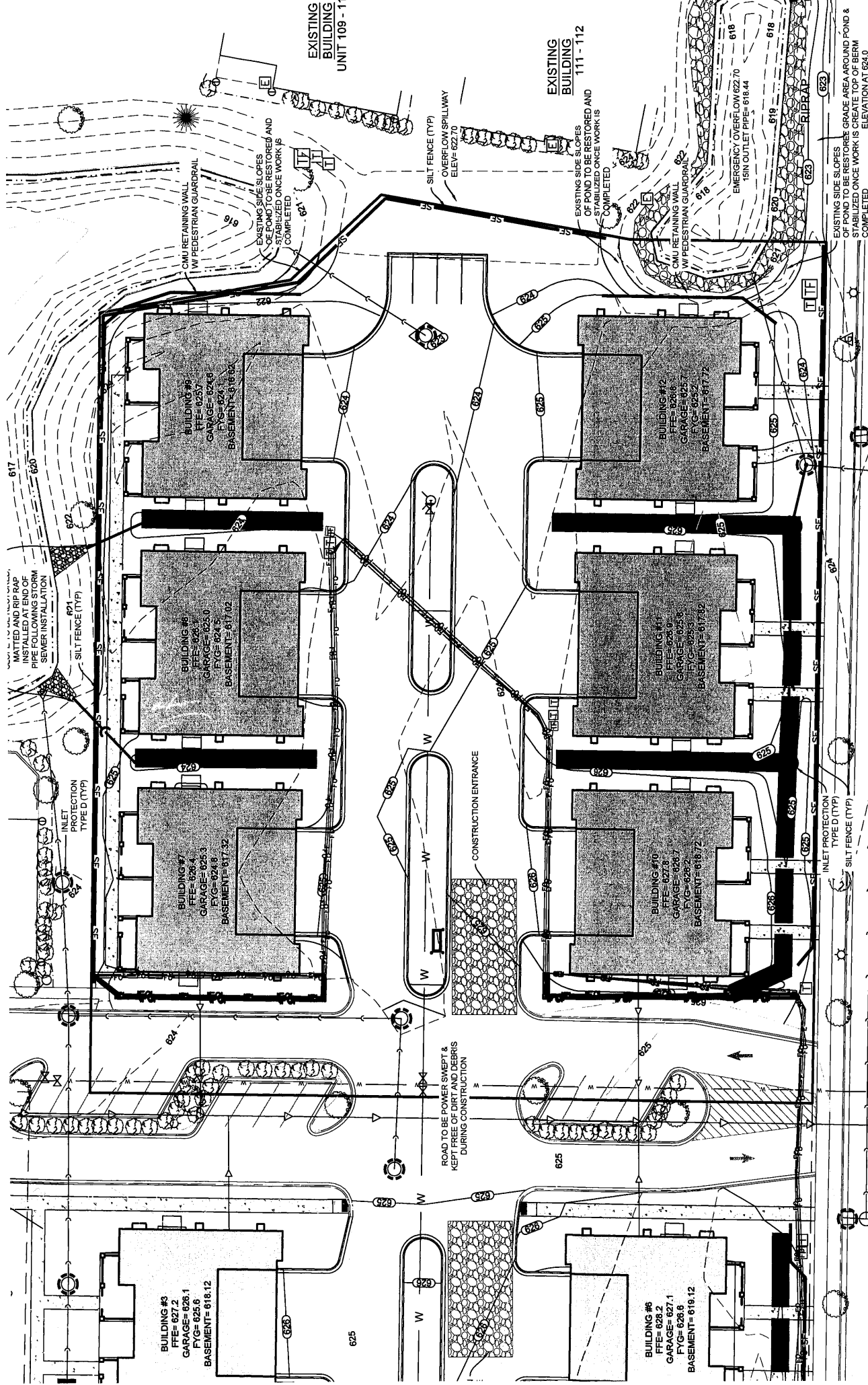
I am respectfully asking that you refund the \$16,000 cash escrow as soon the work is complete this spring.



Jonah Hetland

Bear Real Estate Group

262-818-8114





January 4, 2024

Craig Bartsch
Bear Development
4015 80th Street
Kenosha, WI 53142

Dear Mr. Bartsch:

**RE: Notice of Temporary Occupancy Permit Pending Expiration and Deposit Forfeiture at:
Address: 2800-2808 21st Street Permit #185996, 189004, 190445, 190540
Project Name: Sun Pointe village**

Please be advised that the Temporary Occupancy Permit issued for subject property is due to expire on March 8, 2024, with no extension available. Additionally, the performance deposit made to the City of Kenosha to secure the temporary occupancy permit is at risk of being forfeited in accordance with Section 8.04 (D) (4) of the City of Kenosha Zoning Ordinance.

To qualify for a Certificate of Occupancy along with the return of escrow monies in the amount of \$16,000, outstanding site and building work shall be completed in accordance with previously approved plans. This work must be verified by the respective City department representatives, prior to the noted expiration date.

A list of the City department representatives who have not satisfactorily approved your project is provided below. Please contact them immediately:

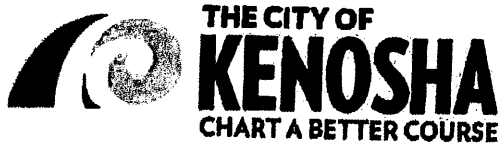
City Development	Brian Wilke	653-4030
City Forester	Dirk Nelson	653-4080
Erosion Control	Kile Kuhlmeier	653-4247
Public Works	Greg Holverson	653-4152
Storm Water Utility	Greg Holverson	653-4152
Water Utility	Marco Giese	653-4317

If you have any questions, please contact me at 262.653.4049 or via email at bwilke@kenosha.org. We appreciate your prompt attention.

Sincerely,

Brian R. Wilke, AICP
Development Coordinator

BRW:llb



CITY DEVELOPMENT

March 18, 2024

Bear Homes
4039 80th Street - Suite E
Kenosha, WI 53143

To Whom It May Concern:

RE: Sun Pointe Village Commercial Occupancy Permit - 2800 - 2812 21st Street

On March 14, 2023 you received a Temporary Occupancy Permit that provided you one year to complete certain items related to your project at 2800 - 2812 21st Street and obtain a Final Occupancy Permit and receive a refund of your cash escrow in the amount of \$16,000. The required items were not completed by March 14, 2024, therefore the Temporary Occupancy Permit expired and you have therefore forfeited the posted \$16,000 cash escrow.

Per Section 8.04 D.4. of the Zoning Ordinance, within ten (10) days of receipt of this notice, you may appeal this forfeiture by filing notice of appeal with the Department of City Development. The Board of Zoning Appeals is the designated authority to hear the appeal.

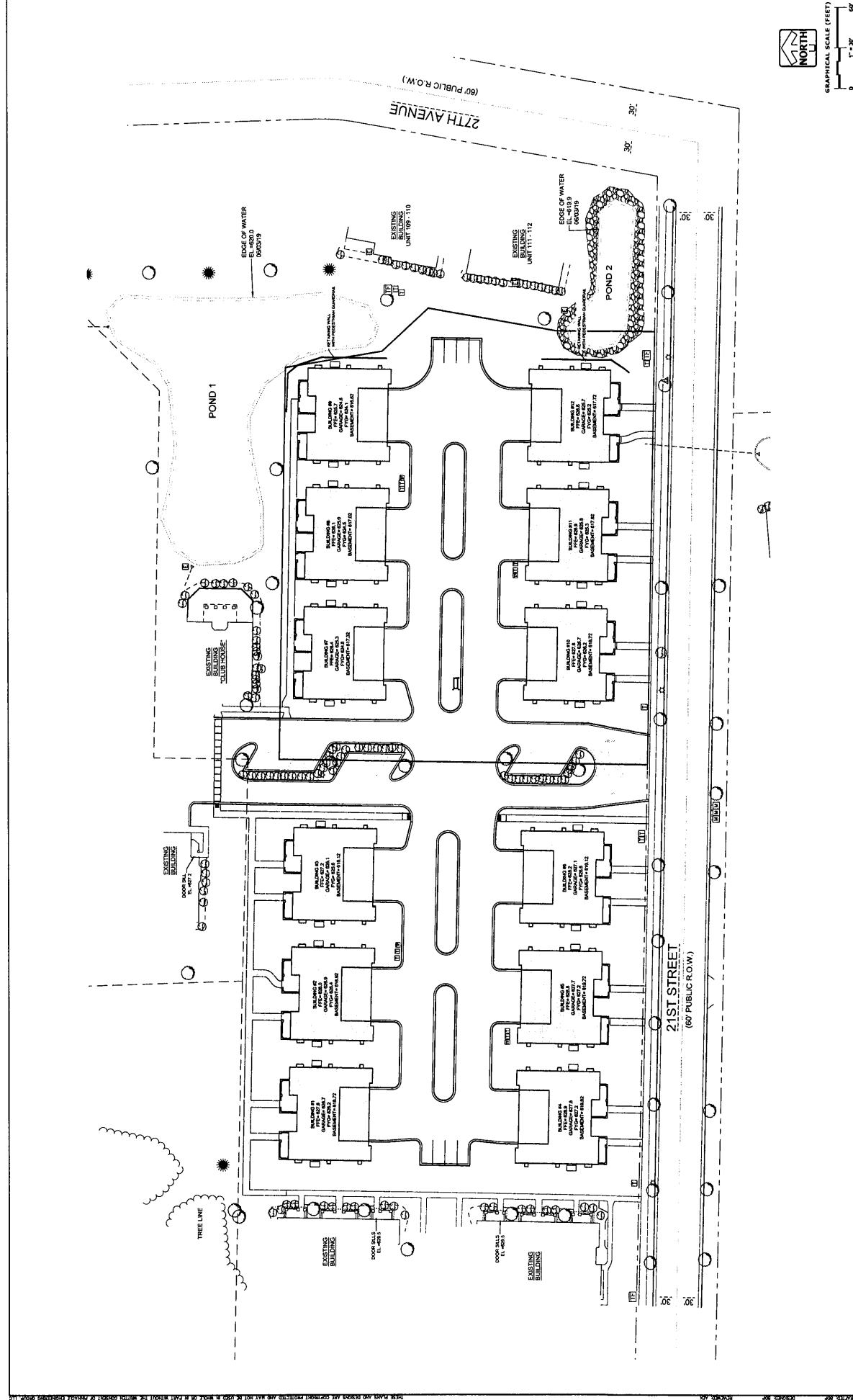
The project now has an expired Occupancy Permit. You are still responsible for completing the outstanding items and obtaining a Final Occupancy Permit for all four buildings in the phase. Failure to do so within thirty days of receipt of this notice will result in the matter being referred to the City Attorney's Office to issue municipal citations for an illegal occupancy.

If you have any questions, please contact me at 262.653.4049 or via email at bwilke@kenosha.org.

Sincerely,

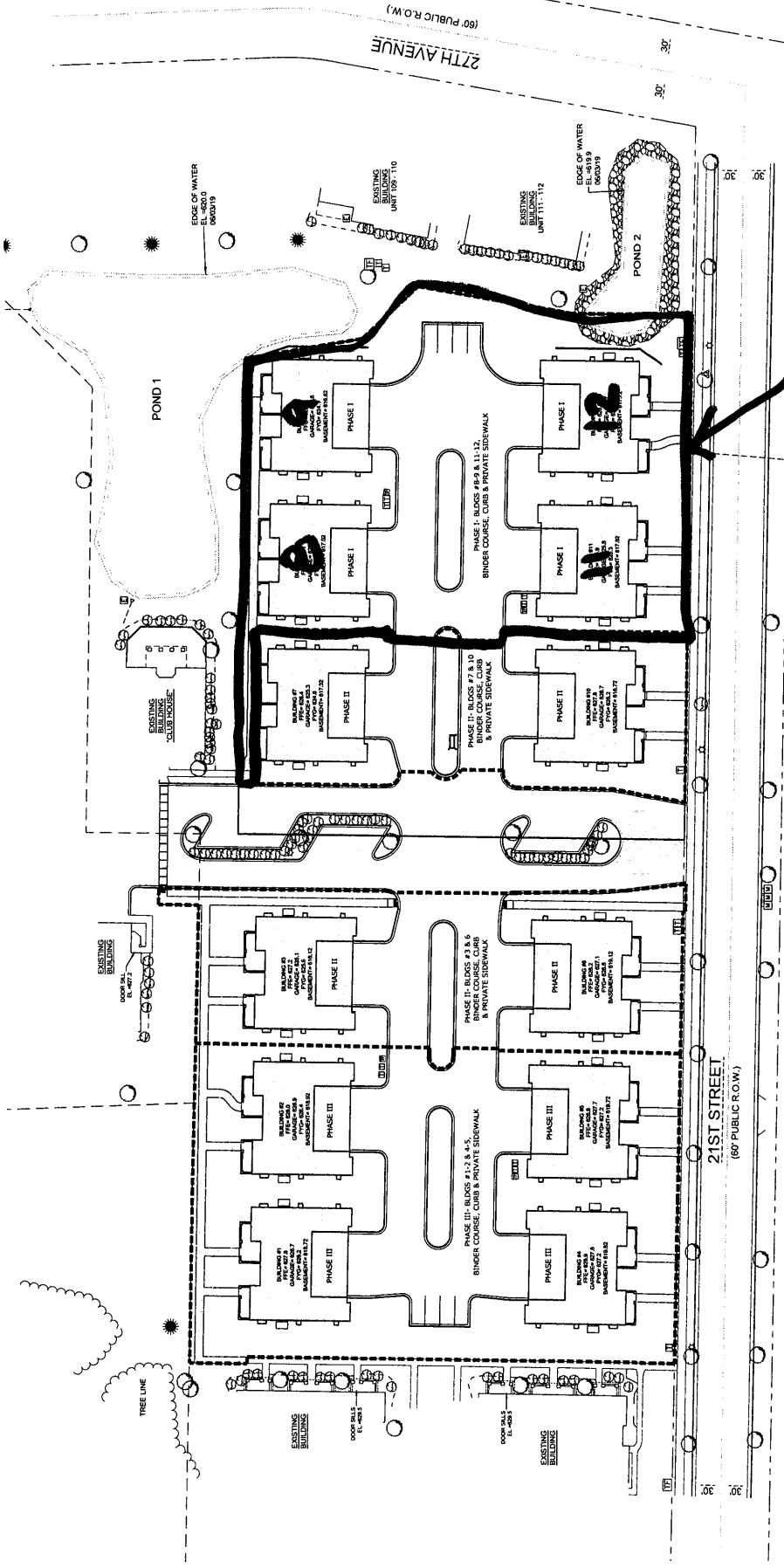
Brian R. Wilke, AICP
Development Coordinator

BRW:llb



<p>PINNACLE ENGINEERING GROUP ENGINEERING, PLANNING, ARCHITECTURE, INTERIOR DESIGN, AND CONSTRUCTION MANAGEMENT</p> <p>2100 COLLEGE AVENUE, SUITE 200, WISCONSIN, WI 53190 TEL: 414.224.1111 FAX: 414.224.1112 WWW.PINNACLE-ENGR.COM</p>	<p>PLAN DESIGN DELIVER</p>	<p>SUN POINTE VILLAGE PHASE III</p> <p>CITY OF KENOSHA, WISCONSIN</p>	<p>SITE PLAN</p>	<p>REVISIONS</p> <table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td>1</td> <td>06/11/19</td> <td>CONSTRUCTION SUBMITTALS</td> </tr> <tr> <td>2</td> <td>06/11/19</td> <td>REVISIONS</td> </tr> <tr> <td>3</td> <td>06/11/19</td> <td>REVISIONS</td> </tr> </table>	NO.	DATE	DESCRIPTION	1	06/11/19	CONSTRUCTION SUBMITTALS	2	06/11/19	REVISIONS	3	06/11/19	REVISIONS	<p>GRAPHICAL SCALE (FEET)</p> <p>0 10 20 30 40 50 60</p> <p>1" = 30'</p>
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1	06/11/19	CONSTRUCTION SUBMITTALS															
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BINDER COURSE TO REMAIN UNTIL (4) BUILDINGS ARE COMPLETELY BUILT ON EACH SIDE. ONCE (4) BUILDINGS ARE BUILT SURFACE COURSE WILL BE LAID IN FRONT OF COMPLETED BUILDINGS



PHASE ONE



GRAPHICAL SCALE (FEET)
 0 10 20 30 40 50 60
 1" = 30'

DATE: 08/27/18
 SHEET: 4
 OF: 13

REVISIONS	
1. REV. CITY COMMENTS	CONSTRUCTION BULLETIN 07.06.2020
2. REV. CITY COMMENTS	BUILDING
3. REV. CITY COMMENTS	PAVING
4. REV. CITY COMMENTS	LANDSCAPE

PHASING PLAN

SUN POINTE VILLAGE PHASE III

CITY OF KENOSHA, WISCONSIN

PLANNING DESIGN | DELIVER

PINNACLE ENGINEERING GROUP
 ENGINEERING | NATURAL RESOURCES | PLANNING

WWW.PINNACLE-ENGR.COM

- A. Certificate of Occupancy Required.** A Certificate of Occupancy from the Director of Department of City Inspections shall be required as a condition of any person occupying:
1. A building which has been the subject of new construction or erection.
 2. A building which has been moved to another foundation on the same or any other parcel of property.
 3. A building which has been the subject of an expansion, addition, alteration or reconstruction, except a single-family or two-family residential building which has been the subject of an alteration.
 4. A building, or portion thereof located in the B-1, B-2, B-3, B-4, B-5 or B-6 Business District, or in the M-1 or M-2 Manufacturing District, or IP Institutional Park District, which is not used for residential purposes and is subject to a new occupancy, whether owner or tenant.
 5. A parcel of land, unimproved by a building, which is used for a business or manufacturing purpose.
 6. A residential building used for a Home Occupation under Subsection 3.03.E. of the Zoning Ordinance.
 7. A building which has been vacant for more than ninety (90) days and which has an open Order to Repair.
 8. A building subject to a business license under Chapters X, XII, or XIII of the Code of General Ordinances.

B. Prohibitions.

1. It shall be unlawful for any person to occupy a building, parcel of land, or portion thereof:
 - a. Without having first obtained a Certificate of Occupancy where required, except where having obtained a Temporary Certificate of Occupancy which has not expired or been terminated.
 - b. Following the expiration or revocation of a Certificate of Occupancy.
 - c. Following the expiration of a Temporary Certificate of Occupancy.
 - d. Contrary to the terms, conditions and limitations of a Certificate of Occupancy.
 - e. Contrary to the terms, conditions and limitations of a Temporary Certificate of Occupancy.
2. It shall be unlawful for the owner of any building, parcel of land, or portion thereof for which a Certificate of Occupancy is required to permit any person to occupy said building, parcel of land, or portion thereof without having first required that the person obtain a Certificate of Occupancy as required herein.

C. Certificate of Occupancy.

1. **Application.** The owner or tenant of a building or parcel of land subject to the requirement of a Certificate of Occupancy shall apply to the Director of Department of City Inspections for a Certificate of Occupancy:
 - a. Concurrent with an application for a Building Permit, where applicable.
 - b. Prior to a change in occupancy of a building or parcel of land, under circumstances where a Building Permit application was not required.
 - c. Prior to occupancy of a residential building for the purpose of engaging in a home occupation.
 - d. Prior to occupancy of a building which had been vacant and unoccupied for more than ninety (90) days and has an open Order to Repair.
 - e.

- concurrent with an application for a business license under Chapters 7, 7A and 7B of the Code of General Ordinances.
2. **Conditions and Standard for Issuance of Certificate of Occupancy.** A Certificate of Occupancy shall be issued by the Director of Department of City Inspections within ten (10) working days of the final inspection of the building or parcel of land subject thereto, provided that such building or parcel of land is in compliance with all applicable provisions of the Code of General Ordinances and Zoning Ordinances, applicable State laws, rules and regulation, and Land Use Agreements and permits required by the City.
 3. **Form of Certificate of Occupancy.** The Certificate of Occupancy, where issued, shall certify compliance with the applicable conditions and standards and state the use of the building or parcel of land which is approved, whether conforming or lawfully nonconforming with the Zoning Ordinance. The Certificate of Occupancy, however, shall in no event certify compliance with any environmental law, rule or regulation.

D. Temporary Certificate of Occupancy.

1. **Eligibility and Application.** The owner or tenant of a building or parcel of land which is not eligible for a Certificate of Occupancy, but will meet the eligibility requirements of the Zoning Ordinance within the time period specified under this Section, may apply to the Director of Department of City Inspections for and obtain a Temporary Certificate of Occupancy as hereinafter provided. The application must be made and Temporary Certificate of Occupancy obtained prior to occupancy.
2. **Term.** The term of a Temporary Certificate of Occupancy shall not exceed the following:
 - a. **Temporary Occupancy Permit.** An applicant may obtain a Temporary Occupancy Permit subject to the conditions in subparagraph 3. The Temporary Occupancy Permit may be obtained upon payment of a five hundred dollar (\$500.00) application fee, posting of cash performance deposit and compliance with this Section. All Temporary Occupancy Permits shall expire one (1) year from the date of grant.
3. **Conditions and Standards for Issuance of Temporary Certificate of Occupancy.** A Temporary Certificate of Occupancy shall be issued by the Director of Department of City Inspections within five (5) working days of an inspection of a building or parcel of land subject thereto, provided such building or parcel of land is in compliance with the following standards for issuance:
 - a. With respect to Multi-Unit Residential Developments, prior to occupying an individual unit, the exterior of the building shall be one hundred (100) percent complete. With respect to Commercial, Industrial and/or Institutional Developments, prior to occupying the building or any individual unit or tenant space, the exterior of the building shall be one hundred (100) percent complete.
 - b. The building or parcel of land shall be capable of being occupied without unduly endangering the public health, safety or welfare.
 - c. A completed Temporary Occupancy Permit application has been submitted and permit fee paid.
 - d. All exterior lighting is installed and operational.
 - e. All concrete streets, drives, sidewalks, and parking areas are completed. All parking areas to be paved in asphalt must have the first lift binder course of asphalt installed. All parking areas are striped in accordance with the approved plans on file with the Department of City Development.
 - f.

g. There is compliance with any conditions of approval within an approved Conditional Use Permit, Site Plan Review or Development Agreement and Subdivider's Agreement, where applicable.



4. **Temporary Occupancy Cash Performance Deposit.** In addition to the permit fee, an applicant shall post a cash performance deposit in the amount of forty (40) percent of the uncompleted work or two thousand dollars (\$2,000.00), whichever is greater. The deposit shall be forfeited if all required work has not been completed prior to the expiration of the Temporary Occupancy Permit. A notice of the forfeiture shall be sent to permit holder with notice of appeal rights. Within ten (10) days of receipt of notice, the forfeiture may be appealed by filing notice of appeal with the Department of City Development. The Board of Zoning Appeals shall hear the appeal. If such work has been timely completed, the cash performance deposit shall be refunded. In the case of a phased multi-family development which consists of two (2) or more buildings on the same lot, the cash performance deposit shall be posted upon application for an Occupancy Permit for the last building of each phase. All phasing plans must be approved by the Review Authority. There shall be no more than four (4) buildings per each phase of development.
5. **Temporary Occupancy Permit Administration.** The administration and issuance of Occupancy Permits shall be in accordance with Section 8 of the Zoning Ordinance and with the policies for Occupancy Permits on file with the Department of City Inspections.
- E. **Existing Occupancies.** Businesses which have been operating since May 1, 1993, may be granted a Certificate of Occupancy, although exempt from the requirements of this Section of the Zoning Ordinance. Owners and tenants of said businesses shall provide supporting documentation and make application to the Department of City Inspections for an Occupancy Permit. There shall be no charge for a Certificate of Occupancy for such existing occupancy.
- F. **Permit Fees.** Should an application be made for a Certificate of Occupancy or a Temporary Certificate of Occupancy for a building following occupancy of such building without any such certificate, then the permit fee shall be five (5) times the standard permit fee. Notwithstanding the above, only a two (2) times fee shall apply to a request for a Certificate of Occupancy submitted for compliance with Subsection 8.04.A.4. of this Ordinance where said change in owner or tenant results in a substantially similar use as the previous owner or tenant. "Substantially similar use as the previous owner or tenant" for purposes of this subsection means a use that has the same use classification as the use of the previous owner or tenant. "Use classification" for purposes of this subsection means one (1) of the separate, itemized classifications of use listed as a permitted use, permitted accessory use, or conditional use in a particular zoning district.
- G. **Penalties.** Any person, party, firm or corporation who violates any of the provisions of this Section shall upon conviction be subject to a forfeiture of not less than one hundred fifty dollars (\$150.00), nor more than five thousand dollars (\$5,000.00) for each offense, plus the cost of prosecution. In default of payment thereof, the violator may be imprisoned in the Kenosha County Jail for a term not to exceed ninety (90) days or until such forfeiture and costs have been paid. Each day that a violation continues to exist shall constitute a separate offense. In cases where the above penalty conflicts with any other penalty established by this Ordinance, the most severe penalty shall apply.