

PLANNING DIVISION STAFF REPORT

June 24, 2024



PREPARED FOR THE PLAN COMMISSION

Project Address: 2102-2202 Darwin Road (District 18, Alder Myadze)
Application Type: Certified Survey Map Referral
Legistar File ID #: [83674](#)
Prepared By: Lisa McNabola, AICP, Planning Division
Report Includes Comments from other City Agencies, as noted
Reviewed By: Kevin Firchow, AICP, Principal Planner

Summary

Applicants & Owner: Frederic Brouner (Trustee); B&G Real Estate, LLC and Optunities, LLC; 2 East Mifflin Street, Suite 600, Madison, WI 53703

Requested Action: Consideration of a Certified Survey Map to create two lots and two outlots.

Proposal Summary: The applicant is requesting approval to create two lots for future development, one outlot for an existing cell tower, and one outlot for future right-of-way.

Applicable Regulations & Standards: The process and standards of approval for Certified Survey Maps are found in MGO Section 16.23(5)(g).

Review Required By: Plan Commission and Common Council

Summary Recommendation: The Planning Division recommends that the Plan Commission finds the approval standards for Certified Survey Maps are met and forward the Certified Survey Map for 2102-2202 Darwin Road to the Common Council with a recommendation of **approval**, subject to input at the public hearing and the conditions recommended by the reviewing agencies. The recommendation is contingent on approval of an Official Map amendment to remove the mapped street reservation on 2202 Darwin Road.

Background Information

Parcel Location: The subject site includes two existing parcels totaling 309,871 square feet (7.1 acres) located at the northeast corner of Packers Avenue and Darwin Road. It is located within District 18 (Alder Myadze) and the Madison Metropolitan School District. It is also located in the Transit Oriented Development (TOD) Overlay District.

Existing Conditions and Land Use: The property at 2102 Darwin Road is zoned Suburban Employment (SE) District. Per data from the Assessor's Office, the property is occupied by a single-family building built in 1935 that was most recently used as an office and residence. The property at 2202 Darwin Road is zoned SE District and is used for agriculture. There is also a driveway and cell tower on the property.

Surrounding Land Use and Zoning:

North: Oak Park Terrace Mobile Home Park, zoned Planned Mobile Home Park (PMHP) District;

East: Warehouses, zoned Industrial Limited (IL) District, and Dane County Regional Airport, zoned Airport (AR) District;

South: Across Darwin Road, carwash, zoned Suburban Employment (SE) District, and warehouses, zoned IL District; and

West: Across Packers Drive, daycare center and North District Police Station, zoned Commercial Corridor – Transitional (CC-T) District, and multifamily residential, zoned SR-V2 (Suburban Residential–Varied 2) District.

Adopted Land Use Plan: The [Comprehensive Plan](#) (2023) recommends Employment (E) development for the subject properties. Surrounding properties are recommended for a mix of Employment (E), Neighborhood Mixed-Use (NMU) and Residential development. The [Northport Warner Park Sherman Neighborhood Plan](#) (2009) recommends Employment for the property at 2202 Darwin Road. The property at 2102 Darwin Road is not within the boundary of the Neighborhood Plan.

Zoning Summary: The property at 2102 Darwin Road is zoned Suburban Employment (SE) District.

Requirements	Required
Lot Area (sq. ft.)	20,000
Lot Width	75 ft
Front Yard Setback	5 ft
Side Yard Setback	None
Rear Yard Setback	30 ft
Maximum Lot Coverage	75%
Maximum Building Height	None

Site Design	Required
Number Parking Stalls	No minimum, 1 per employee max
Electric Vehicle Stalls	None
Accessible Stalls	1
Loading	No
Number Bike Parking Stalls	1 per 10 employees
Landscaping and Screening	Yes
Lighting	Yes
Building Form and Design	Yes

Table Prepared by Jenny Kirchgatter, Assistant Zoning Administrator

Environmental Corridor Status: The subject site is not located in a mapped environmental corridor.

Public Utilities and Services: This property is served by a full range of urban services.

Project History

In late 2022 an Official Map amendment was proposed to remove an east-west street reservation and north-south street reservation on 2202 Darwin Road (ID [74140](#)). Per the Planning Division Staff Report, staff supported the recommendations of the Transportation Policy and Planning Board and the Board of Public Works to remove the east-west street reservation and retain the north-south street reservation, acknowledging that this portion would be reserved to support longer term future redevelopment in the area, and that the street did not need to be constructed concurrent with the near-term development of the site. At that time Planning staff did not believe that the dedication of right-of-way for the future north-south street would unduly impact the imminent development of the subject site and noted that it is relatively important to maintain connectivity for any future redevelopment of the mobile home park property to the north. The Plan Commission recommended approval of the amendment with the condition to retain the north-south street reservation. The Council approved the Official Map amendment with the recommended condition.

In late 2023 the following applications were approved:

- ID [79327](#) – A demolition permit to demolish a single-family building at 2102 Darwin Road;
- ID [79525](#) – A zoning map amendment to change the zoning for 2202 Darwin Road from Planned Mobile Home Park (PMHP) District to Suburban Employment (SE) District;
- ID [79328](#) – A Certified Survey Map (CSM) to create two lots and one outlot, and dedicate land to the public for future right-of-way; and
- ID [79329](#) – A conditional use in the proposed SE District for an auto rental to allow construction of an auto rental business on proposed Lot 2 of the CSM.

There are two proposed developments on the subject site. Plan Commission approved a conditional use for an auto rental business on proposed Lot 2 of the approved CSM, and River Food Pantry plans to construct a facility on proposed Lot 1. The River Food Pantry facility is a permitted use in the SE District and therefore does not require Plan Commission approval.

The approved CSM would dedicate land to the public for the future north-south street as shown on the Official Map but did not require that it be constructed concurrently with the proposed developments. There is an existing driveway located in the future street, and there are recorded access easements over the driveway that provide access to the cell tower on 2202 Darwin Road and 2320 Darwin Road. The owner has been unable to negotiate the release of the easements and the City cannot accept the street dedication unless the easements are released. Until this issue is resolved the CSM cannot be recorded, and the proposed developments on Lot 1 and Lot 2 cannot move forward.

Project Description, Analysis, and Conclusion

Proposed Official Map Amendment

On June 24, the Plan Commission will consider an amendment to the Official Map, to be followed by Common Council consideration on July 2 (ID [83533](#)). The Official Map is a planning tool enabled by Wisconsin Statutes Section 62.23(6), which allows a municipality to map and reserve land for future streets. The City has utilized the Official Map since 1966. No building permits for construction of new buildings or additions may be issued within reserved areas, and when a property owner seeks to divide or combine property within or including an area reserved on the Official Map, the area must be dedicated to the public (MGO Section. 16.23(3)(a)2.)

The proposed Official Map amendment would remove the north-south street reservation on 2202 Darwin Road. City staff still believe that it is important to provide connectivity in this area for future development. However, staff note that it is possible to acquire the land for the future street even if it is removed from the Official Map. The property owner has submitted a revised CSM that would create an outlot in the location of the proposed street. That outlot would then be conveyed to the City. Although the City cannot accept a street dedication that is encumbered by easement, the City could accept an outlot that is encumbered by easements. This would allow for the neighboring property owners to continue to have access until such time that the City decides to construct a street in the outlot.

Consistent with recommendations from the Transportation Commission and the Board of Public Works, Planning Division staff recommend that the Plan Commission forward a recommendation to the Common Council that the reservation for the north-south future street be removed from the Official Map. See the Planning Division Staff Report for details.

Revised Certified Survey Map

The applicant has submitted a revised Certified Survey Map to create two lots for future development (Lots 1 and 2), one outlot for an existing cell tower (Outlot 1), and one outlot for future right-of-way (Outlot 2).

Proposed Outlot 2 corresponds with the north-south street reservation on the Official Map. The existing easements that provide access to proposed Outlot 1 and 2320 Darwin Road will remain. A new easement will be established to provide access to proposed Lot 1 and Lot 2. Per the recommended conditions of approval, the owners of Lot 1, Lot 2, and Outlot 1 will enter into an ingress/egress and storm water easement to Lots 1, Lot 2, and Outlot 1 over Outlot 2. The easement will create and address access rights and maintenance responsibilities over improvements on Outlot 2. Outlot 2 would be conveyed to the City after the CSM is recorded and the required easements and agreements are executed. The new easement shall be terminated when Common Council adopts a resolution to declare Outlot 2 as public right-of-way. The proposed outlot, in combination with the remaining street reservations on 2310 and 2320 Darwin Road and 3901 Packers Avenue, could allow the City to construct the street in the future.

The remaining lots are consistent with the previously approved CSM.

Conclusion

Staff believe that the applicable standards for land divisions can be found met, subject to the recommended conditions of approval, and approval of the proposed Official Map amendment to remove the north-south street reservation on 2202 Darwin Road.

Recommendation

Planning Division Recommendation (Contact Lisa McNabola, 243-0554)

The Planning Division recommends that the Plan Commission finds the approval standards for Certified Survey Maps are met and forward the Certified Survey Map for 2102-2202 Darwin Road to the Common Council with a recommendation of **approval**, subject to input at the public hearing and the conditions recommended by the reviewing agencies. The recommendation is contingent on approval of an Official Map amendment to remove the mapped street reservation on 2202 Darwin Road.

Recommended Conditions of Approval

Major/Non-Standard Conditions are Shaded

Engineering Division (Contact Brenda Stanley, 261-9127)

1. Enter into a City / Developer agreement for the required infrastructure improvements. Agreement to be executed prior to sign off. Allow 4-6 weeks to obtain agreement. Contact City Engineering to schedule the development and approval of the plans and the agreement. (MGO 16.23(9)c)
2. Construct sidewalk, terrace, curb and gutter and pavement to a plan as approved by City Engineer along Darwin Road and Packers Ave.
3. Construct The Developer shall sign a waiver for notice of public hearing for assessments for future roadway construction of proposed Outlot 2. Upon such time, the Common Council shall adopt a resolution to declare it as right of way for a future public street.

4. Madison Metropolitan Sewerage District (MMSD) charges are due and payable prior to Engineering sign-off, unless otherwise collected with a Developer's / Subdivision Contract. Contact Mark Moder (608-261-9250) to obtain the final MMSD billing a minimum of two (2) working days prior to requesting City Engineering signoff. (MGO 16.23(9)(d)(4))
5. A minimum of two (2) working days prior to requesting City Engineering signoff on the plat/csm contact either Tim Troester (West) at 261-1995 (ttroester@cityofmadison.com) or Brenda Stanley (East) at 608-261-9127 (bstanley@cityofmadison.com) to obtain the final stormwater utility charges that are due and payable prior to sub-division of the properties. The stormwater utility charges (as all utility charges) are due for the previous months of service and must be cleared prior to the land division (and subsequent obsolesces of the existing parcel). (POLICY)

Traffic Engineering Division (Contact Sean Malloy, 266-5987)

6. The applicant shall dedicate Right of Way or grant a Public Sidewalk Easement for and be responsible for the construction of a five (5)-foot wide sidewalk, eight (8)-foot terrace, and additional one (1) foot for maintenance along Darwin Road and Packers Avenue as needed.
7. The applicant shall construct public sidewalk along their Darwin Road and Packer Avenue frontages according to plan approved by City Engineer
8. Developer shall provide a recorded copy of any joint driveway ingress/egress and crossing easements and shall be noted on face of plan.
9. The applicant shall construct pedestrian crossing improvements at the Londonderry Drive/Packer Avenue intersection according to plan approved by City Engineer. Work will include markings, pedestrian ramp reconstruction and potential refuge island in Packers Avenue.

Metro Transit (Contact Timothy Sobota, 261-4289)

10. In coordination with any public works improvements, the applicant shall install and maintain public sidewalk and curb ramps from the northeast corner of Darwin Road and Packers Avenue east along the north side of Darwin Road and north along the east side of Packers Avenue.
11. In coordination with any public works improvements, the applicant shall install and maintain a concrete boarding and passenger amenity pad at the planned Metro bus stop on the east side of Packers Avenue, north of Darwin Road. Concrete pad must measure minimally 20' parallel to Packers Avenue (beginning at least 50' and ending no more than 100' north of crosswalk across Packers Avenue), and must span perpendicularly at least 8' between face of curb and sidewalk.
12. The applicant shall include the location of these transit amenities on the final documents filed with their permit application so that Metro Transit may review the design.

13. Metro Transit operates daily all-day transit service along Darwin Road and Packers Avenue adjacent this property - with trips at least every 60 minutes.

Engineering Division – Mapping Section (Contact Julius Smith, 264-9276)

14. Grant a Public Sanitary Sewer Easement along Packers ave. to the City on the face of this Certified Survey Map with the following conditions. Contact Jule Smith of Engineering Mapping (jsmith4@cityofmadison.com) for the final required language.
15. Grant a Public Sidewalk Easement along Packers Ave and Darwin Road to the City on the face of this Certified Survey Map or expand dedication area to include required expanded terrace areas required by Traffic Engineering. The final location and size of the easement to be approved by City Engineering and Traffic Engineering. Contact Jule Smith (jsmith4@cityofmadison.com) for the easement language to be included on the face of the map.
16. Any portion(s) of a public restriction that is intended to be released shall be released by separate document prepared by City Office of Real Estate Services. Contact Jule Smith of Engineering Mapping (jsmith4@cityofmadison.com, 608-264-9276) to coordinate the Real Estate project, and associated information and fees required. If any release is required prior to recording of the plat, acknowledgement of the release and document number shall be noted on the face of the plat.
17. Provide fee for Real estate project to release any all restrictions as listed on Certified Survey Map No. 12769 Recorded as Document no. 4594316 requiring any future road dedications. This release shall be drafted and recorded by the City Office of Real Estate Services Prior to recording the Certified Survey Map.
18. Following recording, Outlot 2 will be conveyed to and held by the City as an undeveloped parcel until such time as the Common Council adopts a resolution to declare it as right of way for a future public street. The conveyance will be subject to pre-existing easement rights.

Prior to recording the Certified Survey Map, the Applicant/Developer shall provide the City with a copy of the lease for the cell tower cite on Outlot 1, which lease is the subject of the Memorandum of Lease recorded as Document No. 5222369. This lease created a 30 foot ingress/egress and utility easement, and a 10 foot wide utility easement over Outlot 2. Following conveyance of Outlot 2 to the City, no further amendments to the lease that affect Outlot 2 or the two easements will be authorized without the City's consent.

Prior to recording the Certified Survey Map, Applicant/Developer shall provide, for City review and approval, a non-exclusive ingress/egress and storm water easement to Lots 1 and 2 and Outlot 1 over Outlot 2, which easement will create and address access rights and maintenance responsibilities over improvements on Outlot

No improvements to the easement area will be allowed without the consent of the City Engineer. The easement will expire, with no compensation, upon the City's declaration of Outlot 2 as a right of way. Under the easement, the owners of Lots 1 and 2 and Outlot 1 shall accept full responsibility for their use of Outlot 2, and will agree to release, defend, indemnify and hold harmless the City for any claims or liabilities associated with their use of the easement area, and agree to work with the beneficiaries of the other easements over Outlot 2 (the owner of Lot 2, CSM 10858, as reflected in Doc. 912144, and the tenant and subtenants of Outlot 1 as reflected in Doc. 5222369) on construction, maintenance and operational issues within the easement area. Once approved by the City, the easement will be recorded, for the benefit of Lots 1 and 2 and Outlot 1 prior to the conveyance of Outlot 2 to the City.

19. Add standard note for public utility easements: Public Utility Easements as herein set forth are for the use by Public Bodies and Private Public Utilities having to right to serve the area. And Remove the long language as used on Sheet 6 of 10
20. Provide for review, comprehensive reciprocal easements and agreements including, but not limited to, access, parking, utilities, common areas, storm management that are necessary to accomplish the land division or site development as proposed prior to final sign off. The document(s) shall be executed and recorded immediately subsequent to the CSM recording and prior to building permit issuance.
21. Correct all references of the Personal Representative's Deed Document No. 3717334 to read 3717334 from 5717334, within the title caption at the top of each sheet, and the caption of the legal description and wherever it may be shown in error.
22. Properly cite the easements for the cell tower on Outlot 1. These should be properly listed by the document that set them forth by way of Document No. 5222369. Document no. 5437612 was a re-assignment of the rights and not the original document that set forth the easements.
23. Wisconsin Administrative Code A-E 7.08 identifies when Public Land System (PLS) tie sheets must be filed with the Dane County Surveyor's office. The Developer's Surveyor and/or Applicant must submit copies of required tie sheets or monument condition reports (with current tie sheet attached) for all monuments, including center of sections of record, used in this survey, to Jule Smith, City Engineering (jsmith4@cityofmadison.com)
24. In accordance with Section s. 236.18(8), Wisconsin Statutes, the Applicant shall reference City of Madison WCCS Dane Zone, 1997 Coordinates on all PLS corners on the Plat or Certified Survey Map in areas where this control exists. The Surveyor shall identify any deviation from City Master Control with recorded and measured designations. Visit the Dane County Surveyor's Office (web address <https://www.countyofdane.com/PLANDEV/records/surveyor.aspx>) for current tie sheets and control data that has been provided by the City of Madison.
25. Prior to Engineering final sign-off by main office for Plats or Certified Survey Maps (CSM), the final Plat or CSM in pdf format must be submitted by email transmittal to Engineering Land Records Coordinator Jule Smith (jsmith4@cityofmadison.com) for final technical review and approval. This submittal must occur a minimum of two working days prior to final Engineering Division sign-off.
26. Verify the overall distance shown for the South line of the NE 1/4 2626.83' it seems short by 30 feet.
27. Section Quarter linetype appears the same as the a R/W line please differentiate this line as it appears to split the street and be confusing.
28. Remove the statement Public Right-of-Way Varies under Packers Ave. the statement is not true where labeled. The only section of Packers Ave. shown that varies is that in the Southwest corner where correctly labeled.
29. Correct the title caption at the top of each sheet and in the legal description to read a Consolidation and Redivision of Outlot 1
30. Show the overall length of the South line of Lot 2.

31. Revise or make adjustments to the North line of the CSM and/or the sub-distances of Lot 1, Outlot 1 and Outlot
32. The values shown currently do not sum to the overall of 482.68 feet
33. Remove the underlying parcel label for Parcel II Deed Doc No. 3717334 on sheet 10
34. Confirm the proposed Public Utility Easement being set forth this Certified Survey Map along the Sanitary Sewer Easement with any possible conflicts with the proposed development on Lot 2.
35. Consider making the Curve and line tables larger
36. For the area calls at the end of the legal description only list the overall lands as described for the 8.21 Acres.
37. The pending Certified Survey Map application for this property shall be completed and recorded with the Dane County Register of Deeds (ROD), the new parcel data created by the Assessor's Office and the parcel data available to zoning and building inspection staff prior to issuance of building permits and early start permits for new construction.
38. Submit to Jule Smith, prior to Engineering sign-off of the subject plat, one (1) digital CADD drawing in a format compatible with AutoCAD. The digital CADD file(s) shall be referenced to the Dane County Coordinate System and shall contain, at minimum, the list of items stated below, each on a separate layer/level name. The line work, preferably closed polylines for lot lines, shall be void of gaps and overlaps and match the final recorded plat:
 - a. Right-of-Way lines (public and private)
 - b. Lot lines
 - c. Lot numbers
 - d. Lot/Plat dimensions
 - e. Street names
 - f. Easement lines (i.e. all shown on the plat including wetland & floodplain boundaries.)

NOTE: This Transmittal is a separate requirement from the required Engineering Streets Section for design purposes. The Developer/Surveyor shall submit new updated final plat, electronic data for any changes subsequent to any submittal.

Real Estate Office (Contact Lance Vest, 245-5794)

39. OWNER'S CERTIFICATION

Prior to approval sign-off by the Office of Real Estate Services ("ORES"), the Owner's Certificate(s) on the CSM shall be executed by all parties of interest having the legal authority to do so, pursuant to Wis. Stats. 236.21(2)(a). Said parties shall provide documentation of legal signing authority to the notary or authentication attorney at the time of execution. The title of each certificate shall be consistent with the ownership interest(s) reported in the most recent title report.

When possible, the executed original hard stock recordable CSM shall be presented at the time of ORES approval sign-off. If not, the City and the Register of Deeds are now accepting electronic

signatures. A PDF of the CSM containing electronic signatures shall be provided to ORES to obtain approval sign-off.

40. MORTGAGEE/VENDOR CERTIFICATION

Prior to CSM approval sign-off, an executed and notarized or authenticated certificate of consent for all mortgagees/vendors shall be included following the Owner's Certificate(s).

41. REAL ESTATE TAXES

As of June 14, 2024, the 2023 real estate taxes are paid for the subject property.

Per 236.21(3) Wis. Stats. and 16.23(5)(g)(1) Madison General Ordinances, the property owner shall pay all real estate taxes that are accrued or delinquent for the subject property prior to CSM recording. This includes property tax bills for the prior year that are distributed at the beginning of the year. Receipts from the City of Madison Treasurer are to be provided before or at the time of sign-off. Payment is made to:

City of Madison Treasurer
210 Martin Luther King, Jr. Blvd.
Madison, WI 53701

42. SPECIAL ASSESSMENTS

As of June 14, 2024, there are no special assessments reported. All known special assessments are due and payable prior to CSM approval sign-off. If special assessments are levied against the property during the review period and prior to CSM approval sign-off, they shall be paid in full pursuant to Madison General Ordinance Section 16.23(5)(g)1.

43. TITLE REPORT UPDATE

Pursuant to Madison City Ordinance Section 16.23(5)(g)(4), the owner shall furnish an updated title report to ORES via email to Lance Vest (lvest@cityofmadison.com), as well as the survey firm preparing the proposed CSM. The report shall search the period subsequent to the date of the initial title report (July 21, 2023) submitted with the CSM application and include all associated documents that have been recorded since the initial title report.

A title commitment may be provided, but will be considered only as supplementary information to the title report update. Surveyor shall update the CSM with the most recent information reported in the title update. ORES reserves the right to impose additional conditions of approval in the event the title update contains changes that warrant revisions to the CSM.

44. ADDITIONAL REQUIREMENTS

- a. Revise Notes 8 & 9 to specify the entities that will retain ownership of the Outlots at the time of CSM recording, and subsequently convey the Outlots.
- b. Revise Note 2 on Sheet 6 to change "Easter" to "Eastern".

The following agencies reviewed the request and recommended no conditions of approval: Zoning, Parks Division, Forestry, Water Utility, Fire Department