

**CITY OF CEDARBURG  
PLAN COMMISSION**

**PLN20100503-1  
UNAPPROVED MINUTES**

**May 3, 2010**

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, May 3, 2010 at Cedarburg City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. The meeting was called to order at 7:08 p.m. by Mayor Greg Myers.

Roll Call: Present - Mayor Gregory Myers, Mark Burgoyne, Brook Brown, Joe Emmerich, Keith Kaiman, Park & Forestry Chairperson James Schara

Excused - Council Member Chris Reimer

Also Present - City Planner Jon Censky, Administrative Secretary Darla Drumel

**STATEMENT OF PUBLIC NOTICE**

Administrative Secretary Drumel confirmed that the agenda for the meeting had been posted and distributed in compliance with the Wisconsin Open Meetings Law.

**APPROVAL OF MINUTES**

A motion was made by Vice Chairperson Burgoyne, seconded by Commissioner Emmerich, to approve the minutes of April 5, 2010 as presented. The motion carried without a negative vote, with Council Member Chris Reimer excused.

**COMMENTS AND SUGGESTIONS FROM CITIZENS**

JoAnne Hinrichs of N28 W6354 Alyce Street expressed concern with the 24-hour availability of the proposed Anytime Fitness facility. She was not comfortable with the idea of individuals roaming the nearby residential areas during the night. Ms. Hinrichs was interested in how this issue would be addressed by the Plan Commission.

**PUBLIC HEARING TO HEAR CONDITIONAL USE REQUEST FOR A 24-HOUR HEALTH CLUB FACILITY AT W61 N297 WASHINGTON AVENUE – ANYTIME FITNESS**

Mayor Myers declared the public hearing open at 7:10 p.m. Administrative Secretary Drumel confirmed that proper legal notice had been given.

Planner Censky noted that Anytime Fitness is a national reciprocal-membership health club franchise that offers twenty-four hour fitness and tanning services. They are proposing to occupy the vacant first floor space that is not occupied by Commerce Bank in the new Bloch Appliance building at the southwest corner of Lincoln Boulevard and Washington Avenue. According to the B-2 Community Business District, health clubs are classified as conditional uses and require a public hearing before deliberation and action by the Plan Commission.

Planner Censky advised that the information submitted for the request indicates that they will staff this facility on weekdays from 10:00 a.m. to 7:00 p.m. with a full-time club manager and a

personal trainer, and weekend staffing will be by appointment only. The unique feature about this facility is that each member will have access by a key card on a 24-hour basis. This access system is integrated with a member check-in software and onsite security system, which includes closed-circuit television and tailgate detection for entry doors. Each member will also be equipped with a personal security device (PSD) for instant emergency notification. With this system, only one person is allowed to enter at a time. Any attempt by others to violate that entryway system triggers an alarm that notifies the member who legitimately entered, and that member can then activate the PSD, which will in turn notify a security monitoring company who will then notify local authorities.

The Bloch Appliance site was approved with a total of 44 parking stalls and the applicant advises that at their busiest time they do not anticipate needing more than 20 stalls. While this property was approved using street parking to meet Code parking requirements, there appears to be sufficient onsite parking to support the needs of this tenant and the others within this multi-tenant building.

While this facility will be available on a 24-hour basis, their information indicates that attendance is very low during the overnight hours, and consequently little impact on neighbors is expected. In fact, many of those who use their other facilities after hours are law enforcement officers who serve as benefit to the area from a security standpoint.

Karmen Smith explained that she owns eleven Anytime Fitness facilities in the State of Wisconsin with a total membership of about 8,300. All locations have the same staffing levels, and there have been no issues with security or personal safety during the four years they have been operating. She added that there are seventy-five facilities that are similar in nature in Wisconsin and thirty or more are now being developed. In response to Commissioner questions, Ms. Smith advised the interior lights will remain on continuously and Randy Bloch, the property owner, advised that the parking lot lights will be on throughout the night hours.

No comments were offered by the public at this time.

**Action to Close Public Hearing:**

Commissioner Brown moved to close the public hearing at 7:20 p.m. Vice Chairperson Burgoyne seconded the motion and it carried without a negative vote, with Council Member Chris Reimer excused.

**Continued Discussion:**

City Planner Censky confirmed that the Conditional Use cannot be specific only to Karmen Smith and Anytime Fitness. Any other business moving to that location could operate without any other approvals if the requirements of the granted Conditional Use are met.

**Action on Conditional Use Request:**

A motion was made by Vice Chairperson Burgoyne, seconded by Commissioner Schara, to approve the Conditional Use for a twenty-four hour health club facility offering fitness and tanning services as defined in the Anytime Fitness informational packet, with the condition that any substantiated material problems associated with this use shall be corrected upon notification, and if left uncorrected may result in the revocation of this Conditional Use Permit.

**Continued Discussion:**

Commissioner Brown asked if the Police Department had been consulted on the proposal. Planner Censky advised that the Chief of Police was aware of the proposal and did not offer any objections.

**Final Action on Conditional Use Request:**

The motion carried without a negative vote, with Council Member Chris Reimer excused.

**REQUEST FOR OUTDOOR ALCOHOL BEVERAGE LICENSE TO SERVE ALCOHOLIC BEVERAGES ON A PROPOSED NEW DECK TO BE LOCATED OFF THE BACK OF THE CEDARS BOWLING FACILITY LOCATED AT W53 N404 PARK LANE – CEDAR III LLC/MICHAEL KOWALKOWSKI**

Planner Censky reported the City Clerk's office received an application for an Outdoor Alcohol Beverage License to serve food and alcoholic beverages outdoors at the Cedar's Bowling Alley located at W53 N404 Park Lane. According to Section 7-2-17(b) of the Licensing and Regulations Code, the Common Council shall, on a case-by-case basis, take into consideration the size of the outdoor seating area and its location with respect to adjacent neighbors when deliberating on a request of this nature. Before the Council makes its decision, however, the Plan Commission must review the request to determine if it could be harmful, offensive or otherwise adverse to the surrounding neighborhood and then recommend that the license be granted as requested, modified or denied. Fencing, or other measures needed to provide control over the operation of the beer garden, shall be identified by the applicant and no amplified sound or music is permitted in the outdoor seating area.

Planner Censky advised that Cedar III LLC proposes to construct a 30' x 30' deck to the rear of the building, which will include a 36" decorative rail fence on the north and east side. The south and west sides of the deck will be up against the building. City staff's site visit reveals that the area behind Cedar Bowling Center is open to Cedar Creek as well as the rear yards of properties to the north. While this setting provides a nice visual environment for their customers, City staff's concern is that the potential noise associated with this outdoor activity could negatively impact the adjacent neighbors to the north. Accordingly, in an effort to soften those potential impacts, Commissioners should consider the following:

1. Establish hours for the use of the deck to be between the hours of 12:00 p.m. and 9:00 p.m. Sunday through Thursday, and 12:00 p.m. and 10:00 p.m. on Friday and Saturday.
2. The proposed 36" rail fencing along the north side of the deck be replaced with a 7-foot high stockade style fence.
3. Eliminate the stairs leading down from the deck to discourage customers from leaving the deck with their drinks.

Mayor Myers expressed concern with eliminating steps from an elevated deck that may be required as an emergency exit. Planner Censky noted that he spoke with the Chief of Police who agreed with the elimination of the stairs, but had not talked to the Building Inspector for his input. Before the Common Council meeting, he would have the Building Inspector review the plans.

**Action:**

Commissioner Brown moved to recommend the Common Council award an Outdoor Alcohol Beverage License to Cedar III LLC to serve alcoholic beverages on a proposed new deck to be located off the back of Cedar Bowling Center located at W53 N404 Park Lane, contingent upon the following:

1. Establish hours for the use of the deck to be between the hours of 12:00 p.m. and 9:00 p.m. Sunday through Thursday, and 12:00 p.m. and 10:00 p.m. on Friday and Saturday.
2. The proposed 36" rail fencing along the north side of the deck be replaced with a 7-foot high stockade style fence.
3. Eliminate the stairs leading down from the deck, to discourage customers from leaving the deck with their drinks, if it is determined by the City Building Inspector to meet Code requirements.

The motion was seconded by Vice Chairperson Burgoyne.

**Continued Discussion:**

A representative from Cedar III LLC explained that the desire for the deck is due to the implementation of the smoking ban starting July 5, 2010. Some tables would be provided, but there would be no amplified music, as it is prohibited by the Outdoor Alcohol Beverage License. In response to a suggestion to place the deck at the south corner of the building, he noted that the interior layout and the door size were not conducive to that location.

Commissioner Brown advised that he visited the site and that there is a great view from the proposed deck. He felt that relocating it to the other corner would be inadvisable as a giant air conditioning unit is located there and a large Cedar tree would have to be removed.

**Final Action:**

The motion carried without a negative vote, with Council Member Chris Reimer excused.

**REQUEST FOR OUTDOOR ALCOHOL BEVERAGE LICENSE TO SERVE ALCOHOLIC BEVERAGES ON AN EXISTING PATIO LOCATED BEHIND THE VINTAGE CAFÉ AND CITY DELI AT W63 N674 WASHINGTON AVENUE – DEBRA McQUAID**

Planner Censky reported that the Vintage Café and City Deli has been using an existing patio directly behind their building at W63 N674 Washington Avenue to serve food and drink for up to twenty customers. Occasionally they have offered those customers alcoholic drinks without the knowledge that an Outdoor Alcohol Beverage License was required for such service. When the new owner came in to renew the liquor license, she was informed of the requirement and that owner immediately applied for the appropriate license.

Planner Censky advised that the patio is in an area behind their building that is very secluded and out of view from Washington Avenue and neighboring properties. Along the entire north property line is an existing 4-foot high stockade fence and to the south is a thick growth of lilac and hydrangea bushes varying in height from 3 feet to 4 feet. To the east is Cedar Creek. The applicant indicates that, weather permitting, they propose to use the outdoor patio on a seasonal basis daily from 11:00 a.m. to 6:30 p.m.

Section 7-2-17(b) of the Licensing and Regulations of the Code states that the Common Council shall, on a case-by-case basis, take into consideration the size of the outdoor seating area and its location with respect to adjacent neighbors when acting on a request. Before the Council makes its decision, however, the Plan Commission must review the request to determine if it could be harmful, offensive or otherwise adverse to the surrounding neighborhood and then recommend that the license be granted as requested, modified or denied. Fencing or other measures needed to provide control over the operation of the beer garden shall be identified by the applicant and no amplified sound or music is permitted in the beer garden. Since the Vintage Café has been operating this facility for the past few years without a problem, Planner Censky opined that this is an appropriate use in Cedarburg's downtown area.

**Action:**

A motion was made by Commissioner Brown, seconded by Commissioner Emmerich, to recommend the Common Council award an Outdoor Alcohol Beverage License to Vintage Café and City Deli to serve alcoholic beverages on a patio located off the back of its location at W63 N674 Washington Avenue on a seasonal basis daily from 11:00 a.m. to 6:30 p.m. The motion carried without a negative vote, with Council Member Chris Reimer excused.

**CONSIDER REQUEST TO APPROVE A THIRD DRIVEWAY APPROACH AND ENTRANCE TO PROPERTY LOCATED AT N70 W6238 BRIDGE ROAD – CHRIS WEBER**

Planner Censky reported that the property located at N70 W6238 Bridge Road is bordered on three sides by public streets: Alder Street to the north, Bridge Road to the south and Riveredge Drive to the west. While the homes along this stretch of roadway face Bridge Road, the garages to these homes are accessed off Alder Street. Chris Weber's driveway extends from Alder Street through his garage, which has an overhead door on each side, and then across the entire length of his property to Bridge Road. That single drive technically constitutes two approaches and entrances to his property from a public roadway. He is now proposing a third driveway approach from Alder Street to access a two-car garage that he plans on constructing this summer. According to Section 6-3-1(b)(7) of the Public Works Code, however, no more than one driveway entrance and approach is permitted for any lot or premise except where deemed necessary and feasible without the impairment of safety, convenience and utility of the street by the Plan Commission. In this instance, the two existing driveway entrances are grandfathered and the third requires the Plan Commission's approval.

Planner Censky noted that while Alder Street is classified as a public street, it functions more like an alley. No homes front on this street but rather adjacent property owners use it to access their garages and very little pass-through traffic exists. The City's Director of Engineering & Public Works had reviewed the proposal and has no objections. If approved, staff would expect little or no impact on the surrounding area.

Planner Censky advised that in order to build a new structure where the deteriorating shed exists, Mr. Weber needs to petition the Board of Appeals for a variance to the twenty-five foot setback requirement. Commissioner comments can be provided to the Board of Appeals if desired. Mr. Weber noted that a variance is being pursued because the grade of his lot makes it difficult to move the garage and there are a number of Cedar trees that would be sacrificed to meet the setback requirement.

Commissioner Brown advised that he had no objection to a driveway on Alder Street, and noted that the driveways for all the other properties on that block are located along Alder Street. He suggested that this would be a good opportunity to remove a driveway access from Bridge Road. Mr. Weber indicated he could comply with that request, if he receives approval for the garage. As it is, the Bridge Road access has a rather high curb along each side of the narrow driveway, which discourages its use by visitors anyway. He is concerned, however, that any physical change to block the driveway from Bridge Road would impose considerable expense to his project.

Vice Chairperson Burgoyne was hesitant to require elimination of the Bridge Road drive, although practically speaking he did not disagree with Commissioner Brown from a standpoint of reducing the number of conflict points along this stretch of road. His concern was that the driveway restriction could de-value the property for resale purposes.

Commissioner Brown answered that good planning dictates that this driveway be eliminated. A fence or planters could be installed to block vehicles from its use and the driveway left to fall into disrepair. He opined that it is not good policy to have more than one driveway to a property. Commissioner Brown added that much of the curb, in front of Mr. Weber's property on Bridge Road, is marked to prohibit parking because of its proximity to a corner.

Commissioner Kaiman agreed with Commissioner Brown in that removal of the driveway would make things much more efficient, and access to Alder Street is an improvement to the property.

Commissioner Emmerich viewed the proposal solely as an improvement and saw no reason to vacate the Bridge Road access. He questioned what methods would be required to close off the access since the drive approach would remain, and whether the drive should then fall into disrepair.

**Action:**

Vice Chairperson Burgoyne moved to approve the addition of a third driveway approach along Alder Street for property located at N70 W6238 Bridge Road. The motion was seconded by Commissioner Emmerich.

**Continued Discussion:**

Commissioner Brown cautioned that approval of the third approach would be setting a bad precedent. Commissioner Emmerich noted that this situation is a rare occurrence and such approvals are made on a case-by-case basis. No precedent would be set. Vice Chairperson Burgoyne agreed; the improvement happens to be for a property that has an extra driveway.

**Call the Question:**

A motion was made by Vice Chairperson Burgoyne, seconded by Commissioner Emmerich, to call the question. The motion carried with Mayor Myers, Vice Chairperson Burgoyne, and Commissioners Emmerich, Kaiman and Schara voting in favor; Commissioner Brown voting against; and with Council Member Chris Reimer excused.

**Continued Action:**

The motion to approve a third drive approach failed with Vice Chairperson Burgoyne and Commissioners Emmerich and Schara voting in favor; Mayor Myers and Commissioners Brown and Kaiman voting against; and with Council Member Chris Reimer excused.

**New Motion:**

Commissioner Brown moved to accept the proposal with only two driveways; that the driveway to Bridge Road be vacated, and with a recommendation to the Board of Appeals to grant a variance to the setbacks to build the proposed garage. The motion was seconded by Commissioner Kaiman.

**Discussion:**

Commissioner Brown stated that if the Board of Appeals denies the variance request and the garage is built in compliance with the setback requirements, Mr. Weber will be required to come back to the Plan Commission for approval of the third drive approach accessing Alder Street. Mayor Myers stated that if the variance is denied, and the garage is not built, the drive to Bridge Road will not have to be vacated.

Commissioner Emmerich questioned what constituted vacating the driveway since the driveway apron would still be there. Council Member Brown stated that it would have to be blocked off. Vice Chairperson Burgoyne felt that vacating the driveway was undefined and requiring it to be blocked off was inappropriate. He would be satisfied if Mr. Weber agreed to discontinue its use.

**Call the Question:**

A motion was made by Vice Chairperson Burgoyne, seconded by Commissioner Emmerich, to call the question. The motion to call the question carried without a negative vote, with Council Member Chris Reimer excused.

**Final Action:**

The motion as stated by Commissioners Brown and Kaiman carried without a negative vote, with Council Member Chris Reimer excused.

Mayor Myers explained that though Mr. Weber would still be required to go to the Board of Appeals for the variance from the setback requirements, he would go with a recommendation to grant the variance from the Plan Commission. Mayor Myers advised that the recommendation may help to receive the variance. It was confirmed that, if the variance is granted, the driveway onto Bridge Road would no longer be used.

**RECESS**

Mayor Myers left the meeting at 8:05 p.m. Vice Chairperson Burgoyne took over the proceedings and called a short recess.

**DISTRIBUTION OF MANUFACTURING AND BUSINESS DISTRICTS FOR REVIEW THAT WERE PREPARED AS PART OF THE RECODIFICATION OF THE ENTIRE CODE**

Planner Censky noted that last month's packet included the **existing** B-4 Office and Service, B-5 Business Park, B-6 General Business and Warehousing, M-1 Limited Manufacturing, M-2 General Manufacturing and M-3 Business Park Districts and the **proposed** B-4 Office and

Service, B-5 Business Park, M-1 Limited Manufacturing and the M-2 General Manufacturing Districts for review. Since a number of Commissioners were not at the April meeting, the intent was to distribute the information then and discuss it at this month's meeting.

Planner Censky advised that because the City's Zoning Code includes some duplicative districts and other districts that have never been applied to any site in the City, this recodification will serve to eliminate certain districts. For example, the list of districts identified above includes two Business Park Districts (i.e. the M-3 and B-5) and the B-6, which has never been used. By combining the Business Park Districts into one and eliminating the B-6 District, the total number business and manufacturing districts are reduced by two. Also, "Adult Entertainment Establishments" have been moved from the B-2 and B-3 Districts and placed as a conditional uses in the M-2 General Manufacturing District. In the revised code, Adult Entertainment Establishments will now require a license from the Common Council prior to being considered anywhere within the M-2 District.

As with past meetings, no recommendation is being sought at this time; feedback is being requested to be included in the final draft.

Commissioner Brown suggested that the Permitted Uses in the B-5 Business Park District be less specific so that possible businesses will not be discouraged from locating in Cedarburg. He also suggested that the Floor Area Ratio (FAR) in the M-1 Light Manufacturing District be higher than 30%. Commissioner Brown preferred the language under SEC. 13-1-59(a) in the current Code, describing the purpose and intent of the M-1 District, over the redraft. He also suggested that the Permitted Uses in the proposed M-1 Light Manufacturing District was too limiting; technology, repair and large scale warehousing-distribution centers were not listed.

Planner Censky advised that Council Member Radtke suggested that the Plan Commission consider "*Buildings larger than 40,000 square feet in gross floor area shall require a conditional use permit.*" However, since the Commission reviews all new development, Commissioners Brown and Burgoyne did not feel that requirement was necessary and, therefore, it should be eliminated. Commissioners agreed that the same requirement should be eliminated from the B-5 Business Park District.

### **MAYOR'S ANNOUNCEMENTS**

None.

### **ADJOURNMENT**

Commissioner Brown moved to adjourn the meeting at 8:25 p.m. The motion was seconded by Commissioner Schara and carried without a negative vote, with Mayor Myers and Council Member Chris Reimer excused.

Darla Drumel,  
Administrative Secretary