

**CITY OF CEDARBURG  
PLAN COMMISSION**

**PLN20101004-1  
UNAPPROVED MINUTES**

**October 4, 2010**

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, October 4, 2010 at Cedarburg City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. The meeting was called to order at 7:00 p.m. by Mayor Greg Myers.

Roll Call: Present - Mayor Gregory Myers, Mark Burgoyne, Brook Brown, Joe Emmerich, Keith Kaiman

Excused - Council Member Chris Reimer, Park & Forestry Chairperson Lynne Buehler

Also Present - City Planner Jon Censky, City Attorney Kaye Vance, 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 Commissioner Brown, seconded by Vice Chairperson Burgoyne, to approve the minutes of August 2, 2010 as presented. The motion carried without a negative vote, with Council Member Chris Reimer and Commissioner Buehler excused.

**COMMENTS AND SUGGESTIONS FROM CITIZENS**

No comments or suggestions were offered.

**SECOND EXTENSION TO OCTOBER 6, 2008 APPROVAL OF SUPERSALES GAS STATION BUILDING EXPANSION CONNECTING CONVENIENCE STORE TO CAR WASH AT W62 N174 WASHINGTON AVENUE – RON GALL**

Planner Censky reported that the owners of Supersales are once again requesting an extension to the 2008 approved site and architectural plans for the 750-square foot addition to the Supersales convenience store/gas station. This addition was originally approved along with new gas dispensers and a canopy on October 6, 2008, with the condition that the building addition be completed during the summer of 2009. While the new gas dispensers and canopy were installed, construction of the addition was held off because of the precarious state of the economy. To preserve their approval status, they requested and received a one-year extension on October 6, 2009. Since the economy continues to be slow and shows little sign of improvement, they would prefer to continue to hold off on construction. Accordingly, with hopes that the economy will improve next summer, they have submitted a request for another one-year extension.

**Action:**

Vice Chairperson Burgoyne moved to grant an approval extension to December 31, 2011 for the building plans to construct an addition connecting the convenience store to the car wash at W62 N174 Washington Avenue. The motion was seconded by Commissioner Brown and carried without a negative vote, with Council Member Chris Reimer and Commissioner Buehler excused.

**ZONING TEXT AMENDMENT REQUEST TO ADD SINGLE-FAMILY HOMES AS A PERMITTED USE IN THE B-3 CENTRAL BUSINESS DISTRICT – KELLY RANDALL**

Planner Censky reported that Mr. Randall is having trouble refinancing his single-family home because of its non-conforming status in the B-3 Central Business District. Accordingly, he is requesting a zoning text change to add single-family homes as permitted uses in that District to render his home, and other homes in the B-3 District, conforming. The timing of this text change is important to Mr. Randall, as his bank will extend his closing date and interest rate for only a short period of time. The applicant's home is among others in the Downtown area that existed prior to the establishment of the B-3 District, but since single-family homes are not currently listed as permitted uses, all such homes are classified as legal non-conforming.

Planner Censky noted that, at the urging of the Downtown Master Plan Committee, "existing single-family homes" was added to the list of permitted uses in the proposed recodified B-3 District, but that change is pending adoption of the new zoning code. He provided copies of the proposed and current B-3 District language that was reviewed by the Plan Commission in March, 2010. Item #53 of the proposed district language under "Permitted Uses" is the reference to existing single-family homes that was, among other changes, considered. Since the requested change is critical to Mr. Randall's success in refinancing his home and will benefit others in same situation, the intent is to move this specific change to the forefront. If recommended, a public hearing would be scheduled before the Council at their October 25, 2010 meeting.

City Attorney Vance cautioned Commissioners that they should consider if the change would be consistent with their long-range planning. Currently the property is legal non-conforming, which means that the use can remain single-family residential until structural changes over 50% of its value are made or it is not occupied for a year. Then the use must change to a use permitted under the B-3 District, which currently does not include single-family residential homes. A text change to include single-family homes would apply to the entire B-3 District.

Planner Censky further explained that the intent is to protect existing single-family structures; not to allow new single-family structures. This change is consistent with the long-range plans to encourage residential uses downtown to help support City businesses.

City Attorney Vance advised that the Commission could make a Zoning Code text amendment to list existing single-family homes a conditional use and also could recreate the B-3 District into a traditional neighborhood district.

Planner Censky advised that a traditional neighborhood district would have to be created and then the entire downtown area rezoned to it.

Vice Chairperson Burgoyne opined that it was unlikely commercial properties in the B-3 District would choose to revert back to single-family residential use due to the value of commercial versus residential. The Downtown Master Plan Committee recommendation was important in encouraging more residential use so that the businesses are not only used as tourist attractions but locally.

Planner Censky noted that traditionally downtowns started out with single-family mixed in with commercial. That's what makes Cedarburg a quaint city that other communities try to emulate and that is reflected in the Smart Growth Comprehensive Master Plan – 2025 recently adopted. This requested change would be in keeping with the adopted plan. If listed as a conditional use, the zoning text change would have to go through the public hearing process at the Common Council level and then a public hearing would have to be held at the Plan Commission to consider the conditional use for Mr. Randall's property. He added that there are few existing single-family homes downtown to create a problem.

Mayor Myers advised he had no problem with the proposed text change as long as it was not spot zoning and granting special treatment to a single property. Commissioner Kaiman opined that if the businesses became residential it would not be adverse to the nature and feel of Cedarburg.

Vice Chairperson Burgoyne added that the text amendment would also eliminate the problems and challenges associated with non-conforming uses related to restricting improvements and reconstruction. Designating these homes as non-conforming has no advantage to the City anymore.

City Attorney Vance questioned what an "existing single-family house" was. The amendment permits "residential uses within existing single-family homes." If a building looks like a single-family house but actually operates as a commercial property, at what point does it become an existing single-family home. If it is commercial now, it is commercial; it is not an existing single-family home. City Attorney Vance advised that the language is unclear.

Commissioner Kaiman responded that the language may indicate that buildings that were originally built for single-family home use could be reverted back. City Attorney Vance asked if the Commissioners wanted virtually every building downtown to be converted to residential use and research would have to be done on the use of each building when it was constructed.

Commissioner Kaiman suggested that it would be easily determined, by architectural style, which buildings had originally been constructed for residential use. City Attorney Vance noted that could include a large number of downtown buildings. Commissioner Kaiman agreed, but still did not see a problem. Granted, there might be a better way to clarify the language.

Planner Censky reported that the language was excerpted from other municipal zoning codes in a similar situation. Most buildings now are converted from residential to commercial uses, but he felt strongly that, among others, the Armbruster home and Mr. Randall's home should be protected.

City Attorney Vance advised that spot zoning in and of itself is not illegal if there is a public policy behind it, so you can pick out specific residences as long as the policy is, for instance, to protect

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the historic nature of the neighborhood. That might be an alternative, depending on what the Commissioners want the downtown to look like going forward.

Planner Censky advised that single-family homes are not addressed in the current B-3 District uses, therefore they become legal non-conforming. When the original code was drafted, it could have been an oversight or a decision was made to eliminate residential in their Central Business District.

City Attorney Vance expressed confusion as to why the banks would care if the home was legal non-conforming because it always could be a single-family home, if granted a conditional use or using spot zoning. Vice Chairperson Burgoyne believed that in this economical environment, the banks are more diligent in protecting their loan investments due to the inability to restore the residential use if the property were destroyed in excess of 50% of its value. City Attorney Vance reiterated that the method to protect these properties would be a policy decision. City Attorney Vance stated that the zoning needs to reflect what the Plan Commission wants the Downtown to look like.

**Action:**

A motion was made by Commissioner Kaiman, seconded by Vice Chairperson Burgoyne, to recommend to the Common Council a B-3 Central Business District zoning text amendment to add "Residential uses within existing single-family homes" to the list of permitted uses. The motion carried without a negative vote, with Council Member Chris Reimer and Commissioner Buehler excused.

**MAYOR'S ANNOUNCEMENTS**

There were no announcements.

**ADJOURNMENT**

Commissioner Brown moved to adjourn the meeting at 7:20 p.m. The motion was seconded by Commissioner Emmerich and carried without a negative vote, with Council Member Chris Reimer and Commissioner Buehler excused.

Darla Drumel,  
Administrative Secretary