

**CITY OF CEDARBURG
COMMON COUNCIL
AUGUST 27, 2018**

**CC20180827-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, August 27, 2018, at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor O'Keefe called the meeting to order at 7:00 p.m.

ROLL CALL: Present - Common Council: Mayor Mike O'Keefe, Council Members Jack Arnett, Kristin Burkart, Rick Verhaalen, Garan Chivinski, Patricia Thome

Excused - Council Members Dan von Bargen and Rod Galbraith

Also Present - City Administrator/Treasurer Christy Mertes, City Clerk Constance McHugh, Director of Parks, Recreation and Forestry Mikko Hilvo, Planner Jon Censky, City Attorney Michael Herbrand, Police and Fire Commissioner Linda Krieg; interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor O'Keefe's request, City Clerk McHugh verified that notice of this meeting was provided to the public by forwarding the agenda to the City's official newspaper, the *News Graphic*, to all news media and citizens who requested copies, and by posting in accordance with the Wisconsin Open Meetings law. Citizens present were welcomed and encouraged to provide their input during the citizen comment portion of the meeting.

APPROVAL OF MINUTES

Motion made by Council Member Thome, seconded by Council Member Burkart, to approve the minutes of the August 13, 2018 meeting. Motion carried unanimously with Council Member von Bargen and Galbraith excused.

PUBLIC HEARING: CONSIDER ORDINANCE NO. 2018-13 TO REZONE THE PARCEL AT W68 N926-30 WASHINGTON AVENUE FROM B-2 COMMUNITY BUSINESS DISTRICT TO B-2/PUD COMMUNITY BUSINESS DISTRICT/PLANNED UNIT DEVELOPMENT DISTRICT, WHICH INCLUDES SITE, ARCHITECTURAL, LANDSCAPING, EXTERIOR LIGHTING AND CSM APPROVAL

Mayor O'Keefe opened the public hearing on this matter at 7:02 p.m.

Bell Investment Properties, LLC plans to erect a new orthodontic facility on the same site in the same location as the former building at W68 N926-30 Washington Avenue. Planner Censky said to accomplish the proposed redevelopment project the applicant needs the use of the PUD Overlay District for the flexibility it offers in applying the regulations of the base B-2 District. This flexibility is needed because the existing structure does not currently meet the setback requirements and therefore is classified as legal non-conforming. Because this site has public road frontage on three of the four sides and the B-2 District setback requirements are substantial at 40 feet, redevelopment of the site is severely hindered, if not impossible. Compounding this situation is the requirement that the applicant dedicate the full width right-of-way of Washington Avenue.

Accordingly, the only way to accomplish the plan is to introduce the PUD Overlay District to allow the Plan Commission and Council to set regulations based on the plan proposed. The modifications to the underlying district are as follows:

Nonconformity to Standards:

As permitted under the PUD Overlay District, the applicant is seeking approval to adjust the following standards of the underlying B-2 District:

1. **Code Requirement** – **Sec. 13-1-54 h. B-2 District. Setback and Yards.** There shall be a minimum building setback of forty (40) feet from the right-of-way of all existing or planned streets.

Nonconformity – The proposed setback from Washington Avenue is 39.1' and from Cambridge Avenue the proposed setback is 15.4'

2. **Code Requirement** – **Sec. 13-1-82(f) (3) Parking Requirements (Landscaping)** States: A perimeter greenbelt of at least five (5) feet in width shall be installed along the street frontage and along all interior lot lines.

Nonconformity – Parking is proposed at a point up to the Washington Avenue right-of-way line and from Cambridge Avenue at a point .5' from the right-of-way line. From the north property line parking is proposed up to the property line (The existing asphalt is located up to this property line as well).

3. **Code Requirement** – **Sec.13-1-82 (c) Parking Stall Size** States: Each parking space shall not be less than one hundred and eighty (180) square feet, exclusive of the space required for ingress and egress.

Nonconformity – 2 parking stalls measure 150 square feet.

Site Plan:

The applicant is proposing a 6,913 square foot building dedicated to the Orthodontic practice only. For the most part, the plan is to utilize the site, traffic pattern and parking layouts as currently exists but with a slightly expanded paved area to better define the parking stalls and traffic circulation. The site will be supported by 32 parking stalls, an increase from the existing 28 stalls. The site plan shows the continued use of the 10' drive along the north side of the building but because this does not have sufficient width to meet two-way traffic requirements, it will need to be indicated as one-way traffic only. To prevent cars from scraping the new building, staff recommends that a stone separation from the building of at least 1½ feet be provided. Off the northeast corner of the parking lot they propose to locate the 12' x 16'7" dumpster. The dumpster will be constructed of CMU (concrete) walls that stand 6' tall accessed from the west through a 6' high chain link fence with privacy slates on heavy duty hinges.

Architecture:

Architecturally, the plans propose an attractive building defined by quality building material, and inviting design with a color scheme that compliments other buildings in the area. Specifically, the applicant proposes a building that stands 32' tall at the peak with material consisting of attractive natural split stone with decorative EIFS crown molding at the top, aluminum clad windows and an expansive standing seam charcoal color metal roof. In the gable over the main entrance on the west elevation, the plan shows their corporate symbol and in the gable on the east elevation is the other corporate symbol and the identification name.

Landscaping:

According to the Landscape plan, the main entrance off Cedarburg Road and extending out from the base of the existing monument sign will be enhanced with the Plantings of Goldstrum Black-eyed Susan, Spirea and Dwarf Fountain grasses under a single Red Oak. This planting scheme is repeated on the north side of the entrance and along the Cambridge Avenue frontage adjacent to the parking lot as well. Foundational plantings include Miss Kim Lilacs at the southeast corner of the building accented by groupings of Sunrise Forsythia, Taunton Yew, Snowmound Spirea and Karl Foerster's Feather Reed grass.

Exterior Light:

The building will be lit with decorative wall sconces that measure 22" high and 7" wide located on all sides. These will be Kirchler lights of either the Manhattan collection or the Camden Collection of either Anvil Iron or textured black color to complement the colors of the building. Either choice is appropriate for this building. The site lighting will be limited to replacing the existing pole lights with new poles at the same location and of the same height but with new light fixtures.

Signage:

The existing monument sign along Washington Avenue will remain in its current location and will be untouched. Staff notes however, that since the sign is located partially within the public right-of-way, the applicant will need to sign an agreement permitting it to remain but with the understanding that if the City ever needs it relocated or removed, that work will be completed at the expense of the owner.

Certified Survey Map:

As part of this project, the applicant has submitted a Certified Survey Map which will serve to dedicate the 40' ultimate road right-of-way along Washington Avenue because the existing property line is defined to the center of the street.

The Plan Commission reviewed the request and unanimously recommended approval subject to the following stipulations:

- Cedarburg Light and Water approval of the water service to building.
- If the water use increases, the applicant will be responsible for paying for the increase.
- The applicant shall be limited to land disturbance activity of less than 0.5 acres and if the disturbance exceeds that limit a storm water management plan shall be required and approved by the City Engineer.
- Fire protection features shall be approved by the Cedarburg Fire Department.
- The applicant signing a waiver to maintain the monument sign at his expense in its current location in the Washington Avenue right-of-way.
- The north driveway to be set off from the building by 1' to 1½'.
- Extension of the public front sidewalk across the entire Washington Avenue frontage.

Council Member Verhaalen asked if the requirement of a sidewalk on Washington Avenue will alter the plans. Architect Ian Wilson of Nolan Carter said the applicant has agreed to include the sidewalk in the design.

Council Member Thome asked if the two smaller parking stalls could be labeled as compact. Planner Censky said they could be marked that way.

Council Member Burkart said there have been a few recent requests for PUD Overlays and asked why the B-2 zoning district is so restrictive. Planner Censky said the B-2 District is typically applied to new businesses and does not reflect businesses located in the historic district. There is not enough room on the site to meet the requirements of the Code so flexibility is necessary. This is the intent of the PUD Overlay District.

Council Member Burkart asked if the parking will come up to the right-of-way on Washington Avenue and Cambridge Avenue. Planner Censky said there will be green space between the parking area and the sidewalk and between the sidewalk and the road.

Mayor O'Keefe asked if the sidewalk on Washington Avenue will be problematic in terms of stormwater management. Mr. Wilson said the plans were redesigned after the Plan Commission meeting and after meeting with Director Wiza to include the sidewalk. One problem involves a catch basin and stormwater management infrastructure that is located where the sidewalk will go. There are limitations as to how far north the sidewalk can go. It must stop where the driveways are.

Motion made by Council Member Thome, seconded by Council Member Arnett, to close the public hearing at 7:13 p.m. Motion carried unanimously with Council Members von Barga and Galbraith excused.

Motion made by Council Member Burkart, seconded by Council Member Thome, to adopt Ordinance No. 2018-13 rezoning the parcel at W68 N926-30 Washington Avenue from B-2 Community Business District to B-2/PUD Community Business District/Planned Unit Development District, which includes site, architectural, landscaping, exterior lighting and CSM approval, subject to conditions imposed by the Plan Commission listed above.

Council Member Arnett questioned the sidewalk requirement when the sidewalk does not connect to anything. He suggested it be delayed until a future time.

Mr. Wilson said that while the sidewalk has already been included in the redesigned plans, there would be reduced construction costs if it were not required. Planner Censky said it could be deferred and the applicant could be specially assessed if it is determined it is needed in the future.

Council Member Arnett offered an amendment to the motion to defer construction of the sidewalk on Washington Avenue indefinitely. The amendment was seconded by Council Member Verhaalen. The motion to amend the motion carried unanimously with Council Members von Barga and Galbraith excused.

With Council Members Arnett, Burkart, Verhaalen, Chivinski, and Thome voting aye and Council Members von Barga and Galbraith excused, the original motion as amended carried unanimously.

CONSIDER RESOLUTION NO. 2018-23 COMMENDING CARLSON TOOL AND MANUFACTURING FOR 60 YEARS OF SERVICE IN THE COMMUNITY

Council Member Thome said the resolution honoring Carlson Tool and Manufacturing is certainly well deserved. She said Carl Edquist is her mentor and one of her favorite people. She thanked the Edquist family and employees.

Motion made by Council Member Thome, seconded by Council Member Arnett, to adopt Resolution No. 2018-23 commending Carlson Tool and Manufacturing for 60 years of service in the community. Motion carried unanimously with Council Members von Barga and Galbraith excused.

CONSIDER IMPLEMENTATION OF A COMMUNITY TREE PLANTING PROGRAM

Director Hilvo said the Forestry Department is behind in tree planting. He often receives calls from residents asking when a new tree will be planted after one is removed. His answer is that it can take up to 3-4 years to get a replacement tree. Residents will then ask if they can get a new tree if they pay for one.

In addition, the directive from the Common Council is to have a zero percent increase in the budget. To do this Director Hilvo proposes moving \$16,000 from the tree planting account to the contracted services account in order to keep up with tree and stump removals. He is proposing a community tree planting program that would allow residents to pay \$300 to cover the costs of a new tree that would be planted by an outside contractor and overseen by the City Forester. He said this will be a way for residents to get a new tree, keep costs down for the City, and allow funds to be transferred for tree and stump removal to help catch up on the backlog.

Council Member Thome asked if transferring the funds from the tree planting account to the contracted services account would be permanent. Director Hilvo said this would be done for a few years so that work on tree and stump removal can get caught up.

Council Member Thome said she appreciates Director Hilvo's creativity; however, she cautioned using fund raising instead of tax dollars for things typically paid for through taxes.

Council Member Verhaalen said he disagrees this would be fundraising. He said the backlog of tree and stump removals is an unfortunate event because of the Emerald Ash Borer. He said someone paying for a tree would not be a tax because the homeowner still has a choice.

Council Member Burkart asked Director Hilvo if he believes the Forestry Department will be caught up in terms of tree and stump removal in two years. Director Hilvo said he thinks the Department will be caught up.

Council Member Arnett said he thinks this program is a great idea. It would be optional for the homeowner. He asked if homeowners can contract for this service on their own. Director Hilvo said the City Code allows for a resident to obtain a permit to plant a tree in the right-of-way, but the work must be done by a licensed arborist. This may or may not be less expensive for residents and could create other problems.

Council Member Arnett said the City has an undesignated fund balance. He encouraged the Council to discuss using funds from the fund balance for tree planting.

Council Member Burkart said she appreciates the creativity of Director Hilvo, but this program could push people who cannot afford a tree to the end of the line. Council Member Thome said the program could put off the planting of a tree for the foreseeable future of anyone who cannot afford one. Council Members Verhaalen and Arnett disagreed and said the program could decrease the waiting time for a new tree.

Council Member Chivinski suggested there be a hybrid solution to the problem that would put the community tree planting program in place and use a portion of fund balance for tree planting for other residents so the entire tree planting program does not come to a stop.

Council Member Thome said she is generally supportive of the community tree planting program but would like to address it as part of the discussions regarding the budget.

Council Member Burkart said she has a problem with a program that places priority for those who can pay versus those who cannot.

Council Member Verhaalen made a motion to approve the community tree planting program as proposed by Director Hilvo whereby residents can pay \$300 to have a tree planted by a contractor based on a recommendation by the City Forester and overseen by the City Forester. The motion was seconded by Council Member Arnett. Motion carried with Council Members Arnett, Verhaalen, Chivinski, and Thome voting aye, Council Member Burkart voting nay, and Council Members von Bergen and Galbraith excused.

Council Member Arnett again encouraged the Council to consider using funds from the fund balance for tree planting.

PAYMENT OF BILLS

Motion made by Council Member Arnett, seconded by Council Member Thome, to approve the payment of the bills dated August 20, 2018, transfers for the period 08/09/18 through 08/20/18, and payroll for the period 07/29/18 through 08/11/18. Motion carried unanimously with Council Members von Bergen and Galbraith excused.

LICENSE APPLICATIONS

Motion made by Council Member Burkart, seconded by Council Member Thome, to authorize the issuance of new Operators licenses for the period ending June 30, 2019 to Benjamin D. Voith and Gina R. Wildner. Motion carried unanimously with Council Members von Bergen and Galbraith excused.

Motion made by Council Member Verhaalen, seconded by Council Member Arnett, to authorize issuance of renewal operators licenses for the period ending June 30, 2019 to Joshua P. McCutcheon and Scott W. Steffen. Motion carried unanimously with Council Members von Bergen and Galbraith excused.

CITY ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes said Amy Mazza will begin employment in the Treasurer's Office as Accountant II/Accounts Payable on August 28.

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Thome reminded the Council of the Greater Cedarburg Foundation Gala on September 22, 2018.

Council Member Arnett congratulated the City Clerk's Office on another successful election.

Council Member Chivinski congratulated City Administrator/Treasurer Mertes on receiving the GFOA Distinguished Budget Presentation award.

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Thome, seconded by Council Member Verhaalen, to adjourn to closed session at 7:53 p.m. pursuant to State Statutes 19.85(1)(g) to confer with legal counsel who is rendering oral or written advice concerning strategy to be adopted by the Council with respect to litigation in which it is or is likely to become involved, more specifically, to discuss the Rachel LePlant claim against the City for a vehicle accident that occurred on February 14, 2018 and State Statutes 19.85(1)(e) to deliberate or negotiate the purchasing of public properties, the investing of public funds, or conducting other specified public business whenever competitive or bargaining reasons require a closed session, more specifically, to consider cellular tower leases for location on the monopole constructed on Western Avenue and to consider the purchase of a parcel of land and Access and Permanent Utility Easement Agreement related to a portion of N69 N5269 Columbia Road. Approval of August 13, 2018 closed session minutes. Motion carried on a roll call vote with Council Members Arnett, Burkart, Verhaalen, Chivinski, and Thome voting aye and Council Members von Barga and Galbraith excused.

RECONVENE TO OPEN SESSION

Motion made by Council Member Verhaalen, seconded by Council Member Thome, to reconvene to open session at 8:12 p.m. Motion carried on a roll call vote with Council Members Arnett, Burkart, Verhaalen, Chivinski, and Thome voting aye and Council Members von Barga and Galbraith excused.

**CONSIDER CELLULAR TOWER LEASES FOR LOCATION ON THE MONOPOLE
CONSTRUCTED ON WESTERN AVENUE**

Motion made by Council Member Arnett, seconded by Council Member Thome, to postpone this item. Motion carried unanimously with Council Members von Barga and Galbraith excused.

**CONSIDER PURCHASE AGREEMENT AND ACCESS AND PERMANENT UTILITY
EASEMENT AGREEMENT BETWEEN BMO AND THE CITY FOR A PARCEL OF
LAND THAT IS A PORTION OF N69 W5269 COLUMBIA ROAD**

Motion made by Council Member Thome, seconded by Council Member Verhaalen, to approve the amended purchase agreement and Access and Permanent Utility Easement agreement between BMO and the City for a parcel of land that is a portion of N69 W5269 Columbia Road. Motion carried unanimously with Council Members von Barga and Galbraith excused.

**CONSIDER AUTHORIZING THE CITY ADMINISTRATOR/TREASURER TO SIGN ALL
DOCUMENTS RELATED TO THE PURCHASE OF A PARCEL OF LAND THAT IS A
PORTION OF N69 W5269 COLUMBIA ROAD**

Motion made by Council Member Verhaalen, seconded by Council Member Thome, to authorize City Administrator/Treasurer Mertes to sign all documents related to the purchase of a parcel of land that is a portion of N69 W5269 Columbia Road. Motion carried unanimously with Council Members von Barga and Galbraith excused.

ADJOURNMENT

Motion made by Council Member Arnett, seconded by Council Member Burkart, to adjourn the meeting at 8:15 p.m. Motion carried unanimously with Council Members von Barga and Galbraith excused.

Constance K. McHugh, MMC/WCPC
City Clerk