

CITY OF CEDARBURG
PLAN COMMISSION

PLN20190805-1
UNAPPROVED MINUTES

August 5, 2019

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, August 5, 2019 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 Michael J. O'Keefe.

Roll Call: Present - Mayor Michael J. O'Keefe, Council Member Patricia Thome, Mark Burgoyne, Adam Voltz, Kip Kinzel, and Heather Cain via speakerphone

Excused - Sig Strautmanis

Also Present - City Planner Jon Censky, City Attorney Michael Herbrand, Administrative Assistant Victoria Guthrie, news media

STATEMENT OF PUBLIC NOTICE

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

APPROVAL OF MINUTES

Commissioner Voltz pointed out the following correction needed to be made on the last sentence of the second full paragraph on page PLN20190701-3, "A standing seam galvalume roof was approved. Substitution of charcoal grey 3-tab asphalt shingle was approved for the main roof; however, the bay window projection and the awning above the garage should be maintained as galvalume regardless of the main roof." The motion with the updated language was made by Mayor O'Keefe and seconded by Commissioner Kinzel and carried without a negative vote with Commissioner Strautmanis excused.

COMMENTS AND SUGGESTIONS FROM CITIZENS

Mayor O'Keefe offered the opportunity for the public to speak on any issue unrelated to the agenda items. He advised that the Plan Commissioners would not be able to respond to any comments since they were not noticed on the agenda. No comments from the audience were offered.

CONSIDER ONE-YEAR EXTENSION TO APPROVED SITE, ARCHITECTURAL, LANDSCAPE, AND EXTERIOR LIGHTING PLANS FOR A 7,030 SQUARE FOOT MULTI-TENANT BUILDING TO BE LOCATED AT W62 N180-186 WASHINGTON AVENUE – ANDREW PETZOLD/CONCORD DEVELOPMENT

In the packet for tonight's meeting, Planner Censky included copies of the originally approved plans, along with the meeting minutes from August 3, 2015. The Petitioner is seeking a fourth extension of that approval. Since nothing has changed in that area regarding zoning, the staff has no objection to this extension subject to the original conditions of the approval.

Action:

A motion was made by Commissioner Voltz, seconded by Council Member Thome, to grant an extension of approvals of the site, architectural, landscaping, and exterior lighting plans along with a Conditional Use Permit for a restaurant with a drive-up window to August 3, 2020. The motion carried without a negative vote, with Commissioner Strautmanis excused.

**ZONING TEXT AMENDMENT FOR B-3 CENTRAL BUSINESS DISTRICT
PERMITTED ACCESSORY USES – MARTIN AND KATHLEEN SCHOENKNECHT**

Planner Censky began the discussion by stating that this proposed change would not only benefit the Petitioner's downtown building but will also serve to benefit other buildings in the downtown area. Currently the zoning only allows residential uses on the second and third floors in these buildings. Ground floors are restricted to commercial uses where tenants are dependent on pedestrian traffic. This proposed change would continue to prohibit residential uses on the ground floors for the portion of the buildings that are facing a public street; however, the side and rear of the buildings would allow for residential or commercial uses. Council Member Thome asked if side frontages would be excluded in this amendment. Planner Censky clarified that corner buildings facing a public street are not excluded and will a ground floor space would be restricted to commercial use for that portion of the building facing a public street.

Commissioner Voltz observed that while this change appears to make smart use of downtown space, he feels that the Zoning Code does not define the accessory residential use as being primary. As such, he asked the Commission to consider setting a threshold for establishing primary use, his concern being that someone could theoretically put a postage stamp sized commercial area in the front of a building just to meet the updated code.

Planner Censky stated that as far as threshold, the current Code states that the building must be existing in order to meet primary use. In other words, no minimum amount of square footage has ever been specified for space to be designated as commercial. As the primary use is currently commercial, there must be a commercial component in the space facing the public street on the ground floor. In Petitioner Schoenknecht's situation, the front of their building is currently being used for residential, as Planner Censky reminded the Commission they just recently amended the Code to allow existing residential structures to be used as residential. This decision was made based on the idea that bringing residents to the downtown area would help support downtown businesses. The proposed amendment change currently under discussion is

considered as an extension to Zoning text change.

Commissioner Voltz pointed out that the Code goes so far as to define the minimum floor area for one- and two-bedroom units. He suggested using this opportunity to include a percentage requirement of the floor space to be used for primary commercial, in order to eliminate any possible ambiguity on that issue. Commissioner Kinzel questioned the reasoning behind having to set a required percentage of commercial space, if the building is zoned 100% commercial on the ground floor frontage. Commissioner Voltz suggested considering not just the frontage itself, but the depth of the commercial area, in order to make sure the space is usable.

City Attorney Herbrand stated that although there could potentially be a disproportionate ratio of commercial versus residential area, any commercially used space would need to qualify for an occupancy permit from the City, so there is some protection regarding that concern. Planner Censky added that all occupancy permits are reviewed by Plan Staff. He does not envision owners placing closet sized commercial space in their frontage; however, he has received calls from downtown building owners who have a tough time leasing the sides and rear portion of that building to commercial tenants due to the lack of visibility and foot traffic. When the owner asked in the past if he can make this area into a residential component, the answer as the zoning text stands now has always been no.

Petitioner Marty Schoenknecht advised the Commission that although they had mentioned before that they would change their ground floor space to commercial, right now they are not 100% sure. Unless that would be one of the parameters of getting the zoning changed, they may end up using other plans. They currently have one of the five to seven homes in downtown Cedarburg that are residential. They wanted to make the east half of the building into a two-floor apartment for them to reside in, as opposed to the small 900 square foot apartment they are currently living in. They are considering making the other side garages on the ground floor, with another 900 square foot apartment in the rear of the building and using the space they are currently working on as a storage area. Commissioner Kinzel inquired as to whether they plan on leaving the front of the building as residential, and the Petitioner restated that is something they may change.

Planner Censky stated that the back portion of the building may need to be rezoned as multi-family and leave the front portion as commercial. Petitioner Schoenknecht stated that he would need to know whether the front will be residential, as they need to know before they start cutting holes in the concrete block for windows. If it needs to be zoned as commercial, they cannot add windows to the north and west sides, as the lot is too close to the neighboring lot. If commercial on the ground floor is required, they can always make something work and use the upstairs as an apartment, although that would not be ideal. Petitioner Kathleen Schoenknecht added that she does not have a problem with rezoning the back half of the building.

Commissioner Voltz reiterated that it would be his wish to see it defined in some way

rather than leave it ambiguous. Planner Censky stated that the issue appears to need more study. Commissioner Voltz said at this time he suggests doing nothing. Planner Censky agreed and offered to speak with Petitioners Schoenknecht and bring it back to the September Plan Commission meeting. Vice Chairperson Burgoyne also offered to provide input regarding zoning text to Planner Censky.

Action:

No action.

**LANDSCAPE PLAN APPROVAL FOR THE CEDARBURG CULTURAL CENTER
LOCATED AT W62 N546 WASHINGTON AVENUE – GINKGO LEAF STUDIOS**

Planner Censky summarized the landscaping plan submitted to the Commission for approval. The change will include a couple of patios interconnected by a new colored concrete walkway, replacing the asphalt path that currently leads out to the parking lot from the rear entrance. On the periphery of this new outdoor gathering area are nicely landscaped gardens. This plan was designed by local architect James Drzewiecki of Ginkgo Leaf Studios.

Architect Drzewiecki described the area as an outdoor gathering space, providing room for overflow from events inside the Cultural Center, such as wedding receptions when the weather is nice. The circular patio spaces could double for various children's activities and outdoor classrooms. During art events, they could also set up sculptures or other art pieces for display. Architect Drzewiecki pointed out that they have maintained the walkway through the middle of the space and included a secondary walkway with a ramp as an alternative to using stairs. Based on his calculations the walkway would be ADA compliant, which they deemed important. This walkway can also double as a short cut for the children to enter/exit the side door for activities.

Mayor O'Keefe complimented what he considers to be a beautiful use of space. Vice Chairperson Burgoyne added that the space is very attractive, as Council Member Thome described the design as wonderful.

Action:

A motion was made by Vice Chairperson Burgoyne to approve the landscape plan. The motion was seconded by Commissioner Voltz and carried without a negative vote with Commissioner Strautmanis excused.

**REQUEST TO MAKE A DETERMINATION OF BOUTIQUE CHARACTERISTICS –
JENNIFER KAWCZYNSKI/ERTH BOUTIQUE**

Petitioner Kawczynski has refined her list of proposed items she will be selling from her store, which is included in the meeting packet. She has also changed the name of her store from Erth Dispensary to Erth Boutique. As indicated in the staff report, Planner

Censky stated the current Code does not include a definition of boutiques and due to the history of this issue, staff expressed reluctance to issue an occupancy permit at staff level. City Code does allow the Commission to approve uses that are not listed in the district but have similar characteristics to those that are listed. The reason this was brought before the Plan Commission is for the Commission to make that determination based on the revised list that her store has similar characteristics to other boutique stores in the downtown area.

Commissioner Voltz questioned which stores in the downtown area are currently considered boutique stores. The Commission came up with possibly Weeds, Lillies and Ryloo. They agreed the term "boutique" gives the impression of a women's clothing or accessories store.

Council Member Thome stated she looked through this list keeping in mind the recent statements the FDA has come out with on cannabidiol (CBD) products. She said that since other stores in the district are currently selling CBD products, and this applicant intends to sell CBD products, she believes the Commission needs to consider FDA statements on what is allowed or not allowed for sale in the district. Commission Members suggested that this Commission review again the proposed ordinance from a few months ago when the matter was first brought before them. As per the FDA, CBD is not considered to be food for humans or animals, and it is currently illegal to market food or dietary supplements containing CBD. They also claim there are unknown issues with drug interactions and possible long-term effects on the liver. The Commission sought input from City Attorney Herbrand on whether it makes sense for the City to decide that no CBD products are allowed for sale unless they are approved by the FDA.

Commissioner Cain believes that if the FDA has not approved CBD edibles as safe for human or pet consumption, the Plan Commission cannot be charged with changing the zoning ordinance to allow it while still protecting the health and safety for residents. She questioned if the City can approve a business selling products not approved by the FDA. With the long list of inventory proposed by the Petitioner, she was concerned how the city could ensure or enforce that other items do not get included over time.

Mayor O'Keefe mentioned that the Commission had already considered and rejected the sale of CBD for the Central Business District. He feels the listed items are like the list provided to the Commission before and feels this request has already been answered. Commissioner Kinzel stated he agreed.

Planner Censky posed the initial question that was asked by this Petitioner: Does the boutique proposed exhibit similar characteristics to other boutiques in the district? Mayor O'Keefe believes it does not.

As far as the ordinance itself, Council Member Thome feels that the Commission needs to address the sale of CBD compounds ingested by humans or pets, used as pain relief or other non-inferred uses making medical claims. With the current stance of the FDA

on these products, Council Member Thome believes the Commission needs to go back and look at CBD from a compliance standpoint.

Commissioner Kinzel suggested striking the word boutique from the permitted uses list altogether, as it lacks clear definition. Commissioner Voltz agreed, stating that any ambiguity left can become another stumbling block, and would like the path forward to be clear and fair. The Commission also discussed that a permitted uses review would also present a good chance to either strike or more closely define other uses such as variety stores or tobacco shops.

City Attorney Herbrand advised that staff is still investigating and drafting the CBD ordinance they proposed a few months ago. This will be discussed in a future meeting, as this issue is sure to come back to the Commission in the future. In the meantime, he suggested the Commission act on this Petitioner's request.

Action:

A motion was made by Council Member Thome to deny the occupancy permit as the Commission finds the characteristics of the proposed use are not consistent with the characteristics of other similar stores in the downtown area. The motion was seconded by Commissioner Cain and passed by unanimous vote, with Commissioner Strautmanis excused.

RESUBMISSION FOR ARCHITECTURAL APPROVAL FOR W61 N734 MEQUON AVENUE – MARK WEILAND

At the meeting held June 3, 2019, the Plan Commission told Petitioner Weiland to work with an architect to come up with a design that fits the neighborhood and to come back with another plan. The applicant's revised plans were submitted for review at this meeting.

Commissioner Voltz stated he appreciated the effort Petitioner Weiland put into this updated plan and he agrees that lowering the roofline, along with adding the shed type dormers, works to bring the house down to a more appropriate scale. However, he still struggles with the overall form and mass of the house. It tries to fit in, but he believes there is a great opportunity with this larger site. Having a skilled home designer or architect take a comprehensive look at the site could result in a more elegant solution. Commissioner Voltz stated that it feels forced in his opinion. When looking at the side elevations where the home steps out 18", it feels like it is all an effort to try and reduce that frontage, but it is not really adding up. It is as if the form of the home, the overall gesture, has not taken into consideration the site. Commissioner Kinzel stated he thinks that dormers are a nice way to bump up a roof instead of going straight up, which looks a lot more massive. He stated that dormers soften it up quite a bit.

Commissioner Voltz observed that the floor plans are not coordinated with the model views. Petitioner Weiland stated he took the dormers off the second floor, since he thought it was just representing square footage. With the knee walls, he was trying to

match up the dormers to the floor layout. Commissioner Voltz suggested reducing the number of dormers, perhaps moving the two bigger spaces on the end towards the center for a larger dormer in the middle. Commissioner Kinzel stated that he liked that Petitioner Weiland tried to get a little more height out of it in the dormer aspect, but the amount of them and the proximity to the roof edge might look different if they were brought in further.

Petitioner Weiland stated that although he did contact and work with architects throughout the planning process, he came up with the current plans on his own. He admitted that he must have come away from the June meeting with the wrong idea on updating the plans. He thought the message was to try to soften up the front the best that he could and used Commissioner Strautmanis's advice on using dormers to help achieve that look. He decided to use shed type dormers as opposed to gables due to the size, and he is already losing a significant amount of floor space with the roof line. He is trying to minimally disrupt the current basement footings and wants to use as much of the foundation as he can with the existing house.

He also believed the Commission recommended a one story for the first 12 feet with a two story behind it. He believes the most efficient and best use of the property was to build a second floor rather than extend one story to the back of the property. Otherwise he would end up with a massive square building and potentially a very large basement.

Planner Censky stated that what he heard during the June meeting was advice to Petitioner Weiland to try a stepped approach, starting with a single story in front and building up from there.

Petitioner Weiland stated that he would rather not move the existing stairwell going down into the basement, but he is having trouble trying to make everything fit. He stated that he is building the house personally, so he is also trying to keep it as simple as possible. Commissioner Voltz suggested that in order to make the overall existing footprint work, he may have to be willing to make those kinds of changes to the footprint. Otherwise, those existing stairs are dictating what he is doing with the entirely new home above that. Commissioner Voltz claimed that he is looking at the plans for solutions, but it is tough being stuck using the original floor plan, with the front modified just enough to try to make it fit in. He believes the starting point is challenged.

Planner Censky brought up the issue of Petitioner Weiland adding a wood workshop and the possible noise associated with that use. He wants to make sure the Petitioner is aware of the necessity of soundproofing this space and being considerate of his neighbors around him. He does not want to see noise complaints coming into the City from the workshop. He also stated that since meeting in June, he has had a number of neighbors stop by with concerns. Although they did not submit letters to the City, some of them did show up to this meeting to voice their concerns regarding the size, mass and length of this construction project.

Michelle Bublitz of N72 W6110 Appletree Lane. Mrs. Bublitz stated their backyard faces

the Petitioner's backyard. When they look outside the back of their house, they see his entire backyard. Their concern is the size of the house, as well as the length of time it is going to take him to construct it. She believes it is out of character for the neighborhood; it is too big. She works all three shifts and sleeps during the day sometimes. They have lived in their house for over 26 years and most people in the area have been there over 15 years. It is not a neighborhood of starter home families, but retirement home families who choose to live there because of the small community. She is concerned that the house is just too big.

Jeff Bublitz of N72 W6110 Appletree Lane. Mr. Bublitz pointed out that over the years when other neighbors put additions on their houses, they had to match the existing roofline of their ranch homes. Mr. Bublitz put a storage facility in his own back yard a few years ago, and it had to match the same elevation of his existing roofline. He also stated that there were a couple of neighbors that could not make this meeting who had big concerns with the project moving away from the approved plans. If Petitioner Weiland takes his house up to two stories, he is going to be 75 feet from their back door, and he is going to be looking into their kitchen. He could look out of his upstairs with binoculars and see the Fire Department.

Catie Barth of W61 N735 Mequon Avenue. Ms. Barth lives right across the street from Petitioner Weiland. As his neighbor, she is not opposed to him doing something with his property. As a designer by trade, she did talk to him about the design. She is not totally against it.

Robb Rusch of M72 W6126 Appletree Lane. Mr. Rusch resides right next door to Petitioner Weiland. He spoke with the Building Inspector and Planner Censky and understands that he does not have a say on whether the construction can be done or declare they do not want construction on their street. However, he does feel that it would not be good for the neighborhood. He is worried about how long the construction will take, as Petitioner Weiland is known to start projects and not finish them. He is worried that these projects are going to be going on forever. If the construction is done within the City Code, he is fine with it, but he thinks a two-story house would be unattractive.

Mayor O'Keefe wanted to know if there is a way to build a two-story house there that would fit, and if it would help to get some architectural drawings done.

Petitioner Weiland stated the expense of paying an architect to draw up a full set of plans only to have the Commission deny it would not be worth it.

Commissioner Kinzel does support people improving homes throughout the area. However, he does not want to advise him to have plans drawn up if there is no further support for going forward. He believes the Commission can provide more direction. Planner Censky stated there were issues with the submitted plans regarding elevations and perspectives, and these were the types of drawings that typically would not be approved by the Plan Commission. He would like to see the drawings more refined.

Commissioner Voltz stated that Petitioner Weiland would not have to bring a full set of plans in, and that he would be more than willing to meet with Planner Censky and Commissioner Strautmanis and any other member of the Commission in the Planner's office to talk about a sketch, so that he did not have to take it to design development or construction document level. He does not want to say that the existing footprint is guaranteed to make it into a successful or approvable project. He also wanted to clarify that he is not saying that partial approval will be given. Council Member Thome added that if Commissioner Voltz assists him with sketches and the sketches come back to the Commission, that does not guarantee approval.

Action:

No action.

DETERMINE SEPTEMBER 2019 MEETING DATE

Commissioners agreed that Tuesday, September 10, 2019, would be the next meeting date.

COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS

Commissioner Voltz questioned why the sidewalk for Bell Orthodontics was not finished along with the construction project, as that was a condition for approval. Planner Censky said that this issue went to the Common Council, and the Council said the City is not going to require it, at this point in time. Mayor O'Keefe said the Council did not want a "sidewalk to nowhere", and thought it made sense to require them to build the sidewalk when it is eventually needed.

MAYOR'S ANNOUNCEMENTS

Mayor O'Keefe had no announcements.

ADJOURNMENT

A motion was made by Council Member Thome, seconded by Commissioner Kinzel, to adjourn the meeting at 8:20 p.m. The motion carried without a negative vote with Commissioner Strautmanis excused.

Victoria Guthrie
Administrative Assistant