

CITY OF CEDARBURG
PLAN COMMISSION

PLN20191104-1
UNAPPROVED MINUTES

November 4, 2019

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, November 4, 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, Adam Voltz, Kip Kinzel, Heather Cain, Sig Strautmanis, Mark Burgoyne

Also Present - City Planner Jon Censky, 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

A motion was made by Council Member Thome to approve the minutes of October 7, 2019 as presented. The motion was seconded by Commissioner Burgoyne and carried without a negative vote.

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.

PUBLIC HEARING REGARDING CONDITIONAL USE ZONING FOR A DOG GROOMING AND DAYCARE OPERATION LOCATED AT W63 N149 WASHINGTON AVENUE – MICHELLE HINTZ

Mayor O'Keefe declared the public hearing open at 7:05 p.m.

Petitioner Hintz is requesting Conditional Use approval to operate a dog daycare and grooming business from the vacant tenant space directly south of and within the same building as the George Webb restaurant. Operating hours for this business will be weekdays from 7:00 a.m. to 6:00 p.m. with occasional weekend hours upon request. Customers will be required to drop-off and pick-up the dogs at the rear door and the dogs will be kenneled in one of six existing rooms in the facility. The Petitioner is requesting a maximum of five dogs per room and any outdoor activity will take place in the open area to the rear of the building near the existing dumpsters as shown on the site plan. Any dog droppings will be properly removed, bagged and placed in the dumpster.

The Conditional Use document presented was drafted to reflect the restrictions similar to that of the Flying Fur dog kennel at N28 W5901 Lincoln Boulevard which allows for a maximum of 20 dogs on site at a time, each weighing 30 pounds or less.

Section 13-1-54 of the Zoning Code for the B-2 Community Business District states: *Animal hospitals, pet daycare facilities, and kennels are permitted as a conditional use provided all principal structures and uses are not less than one hundred (100) feet from a residential use if kennels are provided.* Please note no residential structures are located within one hundred feet of this building.

Petitioner Hintz requested the Conditional Use Permit be adjusted to accommodate thirty dogs on site, stating that the dogs will not be caged, but will be kept at a maximum of five dogs per room. They will also have an activity area indoors that will allow the dogs the opportunity to exercise and minimize the need for outdoor time. Petitioner Hintz requested to have the weight limit stricken, as more popular dogs, such as Retrievers and Golden Doodles do not meet this weight restriction. She pointed out that the temperament of the dog should be taken into consideration rather than the size of the dog. Any dogs displaying aggressive behavior will not be allowed in their facility. Planner Censky clarified that the City does not currently have breed restrictions in place; however, it does have restrictions against unleashed vicious dogs. Commissioner Cain would like to make sure that the Conditional Use Permit states that the dogs must be leashed when outside of the facility. She would also like to add a condition stating that proper removal of dog droppings is required.

No comments were offered from the public.

Action to Close Public Hearing:

A motion was made by Commissioner Kinzel and seconded by Council Member Thome to close the public hearing at 7:20 p.m. The motion was carried without a negative vote.

Action:

Planner Censky will update the Conditional Use Permit to increase the limit of dogs from twenty to thirty and strike the weight restriction. A motion was made by Commissioner Strautmanis to approve the Conditional Use Permit with these changes, as well as the additional statements that dogs must be leashed when outside of the facility and dog droppings must be removed properly. This motion was seconded by Council Member Thome and carried without a negative vote.

REQUEST FOR ZONING TEXT AMENDMENT TO ALLOW MICROBREWERIES AS A PERMITTED USE IN THE B-2 DISTRICT – MAN SHED BREWING CO LLC/GARY KABITZKE

Petitioner Kabitzke and his business partner are requesting a Zoning Text Amendment to add “microbreweries” to the list of uses permitted in the B-2 Community Business District.

This will create an approval process for their plan to operate a microbrewery from within the building that formerly housed the Larson Paint Store at W51 N729 Keup Road. If this text amendment is recommended by this Commission and then approved by the Common Council, the Petitioners will need to return for approval of their brewery business in the vacant building. As indicated in their application, this business will be producing craft beers and sodas. They will also have a tasting bar for the sale of beer, wine and soda and sell beer through distribution stores, bars and restaurants.

Planner Censky advised the Plan Commission that there are two types of principal Uses listed in each Zoning District: Uses permitted by-right and those permitted as Conditional Uses. Uses permitted by-right are allowed in a district without the need for special administrative review and approval; whereas, Conditional Uses have unique characteristics that are permitted only after a public hearing is held, a Conditional Use Permit is issued, and is subject to the limitations and conditions specified therein. While bars, cocktail lounges and taverns are currently included on the list of Conditional Uses in the B-2 District, microbreweries are not. Because microbreweries exhibit characteristics that may impact a neighborhood, staff recommends that, if this use is to be listed in the B-2 Community Business District, it be listed as a Conditional Use where appropriate conditions can be applied.

Commissioners should be aware that the law on Conditional Uses has recently changed, making it difficult to deny such a request, since a denial must be based on substantial evidence other than personal preferences or speculation. According to *Boardman/Clark's Municipal Law Letter*, any requirement or condition of approval must be related to the City ordinance and, to the extent practicable, must be measurable. Conditions may include the permit's duration, transfer or renewal. If the Conditional Use application is denied, the applicant can then appeal directly to Circuit Court.

Mayor O'Keefe questioned if odor would be an issue during the mash process. Petitioner Kabitzke stated odor is not an issue due to the heat exchangers that are added to the waste recovery system. Commissioner Strautmanis stated he had no problem adding microbreweries as a Conditional Use, as it would allow the Commission to deal with these types of businesses on a one-to-one basis.

Action:

A motion was made by Commissioner Kinzel to approve a Zoning Text Amendment to include microbreweries in the B-2 District. This motion was seconded by Commissioner Burgoyne and carried without a negative vote.

FINAL APPROVAL OF ARCHITECTURAL PLANS, CONDOMINIUM PLAT AND DOCUMENTS, CERTIFIED SURVEY MAP, AND DEVELOPMENT AGREEMENT FOR CEDARBURG TRAIL CONDOMINIUMS LOCATED EAST OF EVERGREEN BOULEVARD, NORTH OF PIONEER ROAD – GREG JAMES

This property was rezoned, and the Land Use Plan amended for Petitioner James 26-unit (13 two-family structures) condo project last April. He has since completed the work on his final detailed plans and is requesting approval of the site, landscaping, exterior lighting, architectural plans, condo plat and documents, Certified Survey Map and the Development Agreement. If approved, the Development Agreement and condo documents will go to the Common Council for their approval.

Condominium Plat/Documents:

The condo plat and supporting documents were drafted pursuant to the Wisconsin Statutes Chapter 703 and serve to establish the number of buildings, specific building location, common elements, limited common elements, association responsibilities, use of common and limited elements, and assessments for common expenses. The plat provides the visual and legal representation of the documents. City Staff's review of the condo plat indicates compliance with the Rd-1/PUD Zoning requirements.

Architectural Plans:

These plans reflect all of the recommended changes from past discussions regarding alternate designs, including some buildings with side entry garages to reduce the number of front facing garages, changes to the roof line from one building to the next, color changes to the front pedestrian doors, an increase in the depth of porches to 6' and a series of columns across the front of the porch. Petitioner James has provided four separate building designs, including elevations for each building, which will be repeated throughout this project.

Landscaping:

Petitioner James proposes to preserve as much of the existing natural vegetation along the border of the property as possible. Where there are gaps along the north property line, he will introduce 6' arborvitaes. Between the buildings he proposes 2 ½" fast growing Pyrus and Chanticleer pear trees and will border each building with a landscaped stone planting bed with 2' yews.

Lighting:

While there will not be street lighting, each garage will have a wall mounted coach light which will serve to illuminate the driveways and front door areas.

Certified Survey Map:

Petitioner James had a Certified Survey Map (CSM) created by a registered land surveyor and is now requesting final approval. The proposed CSM meets all the requirements of the City's Zoning Code.

Development Agreement:

This proposal has been submitted as a private condo project and will be served by public utilities; therefore, City Engineer Tom Wiza drafted the Development Agreement to insure that installation of these utilities meet City standards, and also to guarantee that private facilities such as roadway construction, curbs, gutters, driveways, and sidewalks

are constructed to City standards as well. It also addresses and reflects the transfer of a portion of the adjacent City owned outlot to be used to correct deficiencies that were discovered with the existing storm water detention pond and will serve to expand the pond as necessary to accept the impacts of this development. Plan Commissioners are reminded that the City entered into a contract to sell Petitioner James part of the outlot for an agreed upon value of just over \$9,974.00. However, since the City is asking him to correct some existing deficiencies of the existing pond and to expand the pond at a cost that will likely exceed the price of the land, the Development Agreement proposes to waive the cost of the 0.197-acre parcel.

Commissioner Voltz observed that the front gable on building #2 is larger than the front entry. He would like to see that gable replaced by a shed style dormer, which he believes will fit the scale better and allow for a more prominent entry. Commissioner Strautmanis pointed out that when a building has a front-facing style masonry, he believes wrapping the masonry around the corner of the building at least 2' or 4', will give it a more three-dimensional appearance.

Action:

A motion was made by Commissioner Burgoyne to approve the site, landscaping, exterior lighting, architectural plans, condo plat and documents, the CSM and the Development Agreement, and seconded by Commissioner Kinzel based on the following adjustments to the plans:

1. Change front gable to shed type dormers on building #2
2. Add a minimum 2' wrap of front-facing masonry around the corners of the buildings

This motion was carried without a negative vote.

REQUEST FOR ARCHITECTURAL APPROVAL TO RENOVATE AND EXPAND THE EXISTING HOME LOCATED AT W61 N734 MEQUON AVENUE – MARK WEILAND

After the August 5, 2019 Plan Commission meeting, Petitioner Weiland hired a professional architect to prepare plans based on the feedback and input from the Commission. Petitioner Weiland, along with his architect Brian Breit of Countryside Designs, met at City Hall with Commissioner Voltz and Planner Censky to review the design. At that meeting, Commissioner Voltz found the plans to be in order and reflective of the suggestions given. Plan Commissioners are reminded that because the proposed home was initially deemed out of character with the surrounding neighborhood, the Petitioner was asked to provide a stepped approach with a single-story element in front stepping back to two-stories in the rear.

Since Petitioner Weiland's lot is larger than the surrounding properties and far exceeds the size requirements of the Rs-5 District, the proposed home is Code-compliant to the setback, offset and FAR requirements. **Section 13-1-122(a) Architectural Review: Building Scale and Mass** states that *the relative proportion*

of a building to its neighboring building, to pedestrian or observers, or to other existing buildings shall be maintained or enhanced when new buildings are built or when existing buildings are remodeled or altered.

While the new home design continues to be larger than the surrounding homes, the updates seem to better fit the area and reflect the direction he received at the August meeting. While it seems functionally questionable and concerning for noise pollution to have a second story workshop, there is nothing in the City Code to prevent one. Petitioner Weiland is aware of the concerns of the Plan Commission and that any complaints regarding noise will need to be addressed immediately upon notice. City Staff's review of the plans indicate compliance with the technical requirements of the Rs-5 regulations.

Commissioner Voltz observed that the gable along the front elevation increases the wall height, which works against the efforts to make it appear like a one and one-half story home. He believes the addition of the gable gives the home a two-story appearance when viewed from Mequon Avenue. He suggested it be replaced with shed style dormers which brings the roof line down to where there is much less wall, making it fit in a bit more with the neighbors. Petitioner Weiland and Architect Breit agreed to update the design with this suggestion and resubmit to Commissioner Voltz and Planner Censky for review and recommendation of approval.

A few of Petitioner Weiland's neighbors attended the meeting and had the following comments regarding the project.

Greg Boerner, W61 N721 Mequon Avenue, was concerned about the change of size to the house from a single-story ranch to a two-story home, and how it would affect his neighbors. He also questioned if Petitioner Weiland would be completing the work himself, if there is a time limit from the City on building permits before it needs to be extended, where the staging for building materials would be located, and where the dumpster(s) would be placed on the property during the construction. He questioned if Petitioner Weiland had been in contact with Cedarburg Light & Water since he is at the very end of that line with six other homes being fed. Stating that his comments were not personal, he voiced displeasure at being a long-time resident of the area and seeing someone new move in and be allowed to build a large house that does not fit in with the rest of the neighborhood. Mr. Boerner asked Planner Censky about building sheds, since when he was building sheds, he was told he had to keep the height at or below the existing roofline. He also feels that the Commission changes every few years and everything seems to change with them, along with different rules and ideas. He does not feel that it is fair that prior restrictions seem to have lapsed.

Jeffrey Bublitz, N72 W6110 Appletree Lane, believes that the City should distribute complete copies of the plans to the neighbors to review, stating that no one knows the plan details. He said that the only discussion taking place is between the Commission and the homeowner and no one else has a clue as to what is going on and he thinks it needs to be addressed in the neighborhood. He expressed concern about the fact

that the house will have a second-floor deck that will violate the privacy of the surrounding houses. In response to Mr. Boerner's questions, Petitioner Weiland stated that he will have help performing the construction. He plans on placing the construction dumpster to the west side of the house and staging materials in the back. He also spoke with the utility company and verified that he can pull 200-amp service which, since he is the only one using his workshop, is all that he will need.

In response to the neighbors' concerns, Planner Censky stated that building permits are valid for two years. He said typically the construction of or addition to single family homes are reviewed only by the City Building Inspector and are not run through the Plan Commission for the approval process. The reason this project is being brought to the Plan Commission is because Building Inspector Baier questioned the size of the building plan. Upon review of the submitted building permit application, Inspector Baier and Planner Censky agreed to classify the project as an Infill Development. This classification ensures that the project is sent through the Plan Commission approval process. A courtesy notice is sent out to homeowners with adjacent properties in order to advise them that a project is being presented to the Commission. This allows them the opportunity to stop by Planner Censky's office in City Hall to view the plans and/or to come to the Plan Commission meeting and watch the process. Planner Censky stated that the current revised building plan fully complies with the technical requirements of the City Code.

Mayor O'Keefe pointed out that Petitioner Weiland has met with the Plan Commission several times regarding his design and has been working with the City in order to ensure compliance with City Code. Commissioner Burgoyne added that at this point, the Plan Commission is tasked with looking at the project for compatibility with the neighborhood and whether it will be complimentary and of equal or more value to everything around it. Commissioner Burgoyne added that he has served on the Plan Commission for several years and stated that occasionally ordinances do get changed here and there, but not frequently and not without proper review and approval.

Commissioner Strautmanis pointed out that the size of the second-floor deck is not what he would consider to be overly huge or obnoxious and is located within the rear footprint of the building. He also mentioned that privacy concerns would be of a mutual self-interest, as he was sure the homeowner would have similar concerns for their own privacy when using their deck. He suggested the installation of some sort of screening or lattice work may provide a level of privacy. Commissioner Cain suggested Petitioner Weiland submit a landscaping plan that includes the planting of evergreens or other trees, which can act as a buffer to further ensure privacy for neighbors and the homeowner.

Action:

Mayor O'Keefe made a motion to give architectural approval with the landscaping plan pending, to be reviewed at the next meeting. Commissioner Voltz seconded the motion, which was carried without a negative vote.

COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS

The Plan Commission meeting schedule for 2020 was distributed to Commissioners.

MAYOR'S ANNOUNCEMENTS

Mayor O'Keefe had no announcements.

ADJOURNMENT

A motion was made by Mayor O'Keefe, seconded by Commissioner Cain, to adjourn the meeting at 8:13 p.m. The motion carried without a negative vote.

Victoria Guthrie
Administrative Assistant