

CITY OF CEDARBURG  
PLAN COMMISSION

PLN20200803-1  
UNAPPROVED MINUTES

August 3, 2020

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, August 3, 2020 via the [zoom](#) app. The meeting was called to order at 7:01 p.m. by Mayor Michael J. O'Keefe.

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

Excused - Sig Strautmanis

Also Present - City Planner Jon Censky, Administrative Secretary Victoria Guthrie, Council Members Barbara Lythjohan, Kristin Burkart, Robert Simpson, and 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, seconded by Commissioner Kinzel, to approve the minutes of July 6, 2020. The motion 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.

### **REQUEST FIFTH EXTENSION TO CONDITIONAL USE REQUEST AND SITE, ARCHITECTURAL, LANDSCAPING, AND LIGHTING APPROVAL FOR MULTI-TENANT BUILDING PROPOSED FOR VACANT LOT LOCATED SOUTH OF W62N186 WASHINGTON AVENUE – CONCORD DEVELOPMENT/ANDREW PETZOLD**

Planner Censky reported that Concord Development is requesting a fifth extension to their approved site, architectural, landscaping, and lighting plan, and conditional use permit (CUP) for the northernmost tenant space of their proposed 7,030 square foot multi-tenant building, to be located south of the Walgreens Drug Store on south Washington Avenue. City records indicate that these plans were originally approved by the Plan Commission on August 3, 2015, and additional one-year extensions were granted on June 6, 2016, August 7, 2017, August 6, 2018, and August 5, 2019.

The Petitioner is requesting this extension in accordance with **Section 13-1-126, Finding Lapse of Approval**, under **Lapse of Site Plan Approval**, which states *if a developer of a project which has been granted site and/or architectural plan approval has not obtained and complied with the provisions of a building permit consistent with said plan approval within one year of the date of the initial approval, the plan approval shall lapse. Upon application, the Plan Commission may renew its approval of the site and/or architectural plan as initially granted or may require changes as deemed appropriate.*

Since there has been no change to zoning in the area or to the Zoning Code that would affect this project, the City Staff has no objection to this request and recommends extending the approval and all conditions thereof to August 2021.

**Action:**

A motion was made by Commissioner Kinzel for approval of the fifth extension to the CUP and Site, Architectural, Landscaping, and Lighting Plan through to August 3, 2021. This motion was seconded by Council Member Thome and carried without a negative vote with Commissioner Strautmanis excused.

**REQUEST WAIVER TO SECTION 93-1-101(g) OF THE ZONING CODE TO ALLOW AN ACCESSORY STRUCTURE TO EXCEED THE SIZE LIMIT FOR A NEW GARAGE TO BE LOCATED AT W66N515 MADISON AVENUE – DAVID HINTZ**

Planner Censky explained that the Petitioner is seeking to replace his existing garage with one that exceeds the 720-square foot size limit that was recently established for accessory structures; therefore, he is seeking a waiver as permitted under **Section 13-1-101(g)** of the **Zoning Code**. The Petitioner is proposing to build a standard looking 24' x 36', 864 square foot garage located directly behind his home facing east. The plans show two overhead garage doors, a pedestrian door and windows on the first and second floors of the east elevation; a utility door and two sets of windows on the west elevation; and a second pedestrian door and window on the south elevation. The garage will be sided with cedar board and batten material and the roof will be of either asphalt shingles or a standing seam metal roof.

City records indicate that the Petitioner's property includes two separate parcels: a 13,504-square foot parcel fronting Madison Avenue to the east and an 8,712-square foot parcel directly to the west.

The setback on the initial plans that accompanied the Land Use Application did not show the placement of the garage with respect to the line that divides the two lots, making it impossible to determine whether it met the required setback. Due to this original placement, Planner Censky recommended that the two lots be combined as a condition of waiver approval; however, Petitioner Hintz submitted updated plans earlier today showing the location of the garage and that the structure is in compliance with the setback for the east parcel. In response to this change, Planner Censky stated that although approval for the waiver should not require combining the lots, he would prefer to see them joined in order to eliminate the west lot which is landlocked and undevelopable. As of

now, the west lot is inaccessible by vehicle, sewer, and water and if someone proposed to create a lot like this today, it would not be approved due to that fact.

Petitioner Hintz attended the meeting and stated that having two separate tax keys is not a problem for him. He added that he has no intentions of doing anything with the lot to the west, preferring to leave it as is, and emphasized that his only concern at this time is getting approval to build his garage. Commissioner Cain questioned why the Petitioner does not want to combine the two lots, to which he responded that he believes the process would probably take a few months and he does not feel it is relevant to the approval of the waiver. He further declared that even if he did not own the west lot, he would still be requesting to build the same garage in the same location.

Commissioner Cain suggested that now would be a good time for the Petitioner to undertake the action of combining the lots, since it would serve to clean up the inconsistency of lot lines with the lots to the north. Although she feels that there is adequate interest to see them combined, she agreed that it should not hold up approval of the waiver for the garage.

In light of the proximity of the structure to the shared lot line, Vice Chairperson Burgoyne pointed out that this placement may possibly prevent the Petitioner from getting an access road to the west lot in the future without a special exception. Vice Chairperson Burgoyne feels that approving what the Petitioner is asking for is the right thing to do.

Mayor O'Keefe agreed, stating that the garage does not appear to be a large monstrosity and seems to fit in the lot.

Eric Hofhine attended the meeting on behalf of his parents Duane and Joann Hofhine, who reside at N50W6678 Western Road, which is the parcel located directly south of Petitioner Hintz. Mr. Hofhine voiced his support of the proposed garage, but also believes that it is a good idea to combine the two lots. He stated that he can relate to the Petitioner because he personally had to go through the process to combine his own lots on Columbia Road. He feels that combining the lots would provide continuity to contiguous neighbors and prevent it from being parceled off in the future. Mr. Hofhine remarked that he believes the garage will be a great addition to the property and added that the Petitioner has done wonders with the house as well.

Commissioner Kinzel made the observation that the Petitioner is not proposing to do anything to the west lot that effects anyone living there now, and if he chooses not to combine them, the lot will remain as it has for the last 100 years. Commissioner Kinzel concludes that if the Petitioner wants to keep his lots as is, he should not be forced to do otherwise.

Council Member Thome observed that if the structure had not been proposed to exceed the 720 square foot limit, the Plan Commission would not be involved in this decision, or even be aware that the structure was being built. Personally, she would like to see the lots combined in order to clean up the anomaly that is there; however, she wants the Petitioner to be able to make his own call on that matter, and will not vote against the waiver for the garage.

**Action:**

A motion was made by Vice Chairperson Burgoyne for approval to waive Section 93-1-101(g) of the Zoning Code to allow the accessory structure to exceed the size limit as proposed. This motion was seconded by Commissioner Kinzel and passed without a negative vote with Commissioner Strautmanis excused.

**REQUEST APPROVAL FOR ADDITION OF FOUR (4) GRAIN BINS AT THE FACILITY LOCATED AT N144W5660 PIONEER ROAD – PIONEER PET PRODUCTS/JON SUPANICH**

Planner Censky explained that the Petitioner is proposing to install four grain storage bins to be located in a center position directly behind their building. These bins are needed for the company to buy grain in bulk to reduce their operating costs. The bins will be 16-feet in diameter and will stand 30-feet tall with the discharge elevator at a height of 55-feet. For comparison purposes, the Kemps Dairy at W55N155 McKinley Boulevard, has seven above-ground storage tanks that range in height from 24-feet to 74-feet.

City records indicate that in 2013, the Petitioner received approval of two 15-foot diameter 21-foot high storage tanks to be located directly behind their building; however, those tanks were never installed.

City Staff notes that while the M-2 General Manufacturing District has a height limit of 45-feet for any building, **Section 13-1-100(b)** of the **Zoning Code** exempts *special structures, such as elevator penthouses, gas tanks, grain elevators, observation towers, scenery lofts, manufacturing equipment and necessary mechanical appurtenances, cooling towers, fire towers, substations, and smoke stacks* from the height limitations of the Zoning Code.

Accordingly, these proposed storage bins are Code compliant to the height restriction; therefore, Planner Censky has no objection to these plans.

**Action:**

A motion was made by Council Member Thome to approve the addition of the grain bins as proposed. This motion was seconded by Commissioner Kinzel and carried without a negative vote with Commissioner Strautmanis excused.

**REQUEST APPROVAL OF LANDSCAPING/BUFFER PLAN FOR BOZEMAN'S BAR LOCATED AT N50W5586 PORTLAND ROAD – ERIK AND REBECCA KNUTH**

The Plan Commission recommended approval of an Outdoor Alcohol Beverage License on July 6, 2020 for use of the patio on the east side of the Bozeman's Bar. At the July 13, 2020 Common Council meeting, concerns were raised by the adjacent neighbor regarding noise and cigarette smoke nuisance associated with this use, pointing out to the Council that the patio is located only 25-feet from his bedroom window. Due to this issue, the Common Council denied the request and asked the Petitioner to work with the Plan Commission to find a solution to this problem.

In response, the Petitioner hired a landscape architect to draft a buffer plan, which they provided to the City after the original packets for this meeting were issued. This plan was forwarded to the Commission for review just prior to this meeting. Planner Censky summarized the plan as the creation of an undulating berm measuring 35' x 10' x 3', which will be planted with arborvitae cedar trees and butterfly perennials. Planner Censky advised the Commission that if this landscaping plan is approved, the Petitioner's request for the Outdoor Alcohol Beverage License will be placed on the Common Council agenda scheduled for Monday, August 10, 2020 for reconsideration.

Ron Sella, W55N503 Highland Drive, is the neighbor that raised those concerns at the previous Common Council meeting regarding noise and smoke from the outdoor space. Petitioner Knuth joined the meeting and stated that he and Mr. Sella had a discussion with the purpose of creating a noise and visual barrier between the properties and came to an agreement that the submitted landscaping plan will adequately address those concerns. Additionally, Petitioner Knuth offered to stop the outdoor seating at 9:00 p.m. His patrons who wish to smoke after that time will need to do so on the front stoop, as they have done in the past.

Petitioner Knuth plans on building the proposed berm in the next two weeks and stated he will not use the outdoor seating area until the berm is complete. He pointed out there is a swale located on the Sella's side of the shared lot line, which means that he will need to push the berm a little farther back on his lot to prevent any runoff of mulch or other landscaping material. He said the berm will direct water down to the swale to flow down the drain that joins their properties.

Planner Censky complimented Petitioner Knuth and Mr. Sella on their ability to work out a mutually agreeable plan. Council Member Thome concurred, adding that she believes this is a perfect example of two parties coming together to address a concern, and voiced her appreciation to them for doing so. Petitioner Knuth added that the Sellas are great neighbors and he is happy to work with them to resolve this issue.

Petitioner Knuth wanted to know if he could move forward with the build for the berm without the Common Council's approval on the Outdoor Alcohol Beverage License. He explained that he would like to move forward since he has had several restaurant and bar patrons request to sit outside in order to comply with social distancing. Vice Chairperson Burgoyne cautioned him against starting the project before getting approval from the Common Council. He explained that even if it sounds like it will be approved, starting off a project like that and then presenting to the Council afterwards may give the impression that he assumed or disregarded their decision.

Commissioner Voltz echoed the sentiments of the other Commissioners, emphasizing that it is great to see people coming together to find a solution. He expressed that his only concern is if there will be a requirement for the property owner to maintain the trees on the berm in the event that replanting may be needed in the future. Planner Censky reassured him that if the landscape berm is approved, the Commission will be able to come back and require the owner to be consistent with the history of the plan, if necessary.

Mr. Sella was in attendance and told Commissioners that he and his wife are in agreement with the landscaping plan. He said that the Common Council advised him that if he works with the Petitioner everything should be approved without a problem. He added that if Petitioner Knuth wants to begin the landscaping project, he has no problem with that. Mayor O'Keefe suggested that Mr. Sella attend the Common Council meeting on Monday as well in order to voice his support for the Petitioner.

Harold Wendt, W55N511 Highland Drive, resides at the parcel located three lots to the northeast of Bozeman's Bar, and was also in attendance at the Common Council meeting on July 13, 2020. He recalls that Council Member Verhaalen expressed concern for pedestrians that frequent the sidewalk along Highland Drive and did not want people drinking and hanging on the fence while other people were walking by. Mr. Wendt thinks the berm idea is great, but he would like to see the fence that runs along this portion of the sidewalk raised to at least 5-feet in order to create more separation between the public sidewalk and the establishment's drinking area. Mayor O'Keefe stated that this issue is probably one to tackle on Monday night, as the topic being addressed tonight is focused on the landscaping buffer.

**Action:**

A motion was made by Vice Chairperson Burgoyne for approval of the landscaping/buffer plan as proposed. This motion was seconded by Council Member Thome and carried without a negative vote with Commissioner Strautmanis excused.

**REQUEST TO RECOMMEND APPROVAL FOR THE CERTIFIED SURVEY MAP FOR THE CITY OWNED BUSINESS PARK LOCATED AT N130W6603 STATE ROAD 60 – CITY OF CEDARBURG**

The proposed Certified Survey Map (CSM) will serve to divide the 59-acre Business Park into four separate parcels of the following sizes: 20-acres, 6.1-acres, 3.1-acres, and 26.3-acres.

The 20-acre parcel will serve the current and future needs of the Wilo Company. The 3.1-acre site will serve to establish the location of the south lot line for future utility location purposes. Both the 6.1-acre and the 26.3-acre parcels will be available for future business development. The CSM will also serve to dedicate the required public road right-of-way for State Highway 60 and for the City's Business Park. Additionally, the CSM will establish the necessary utility easements within the park.

Since the CSM involves public road right-of-way dedication, Common Council approval is required and therefore this map will be placed on the next Common Council meeting agenda for their approval.

While this CSM is in preliminary form and may be adjusted for the specific location of the easement and other technical requirements, the general lot layout will remain unchanged. City Staff review indicates full compliance with the dimensional requirements of the M-3 Business Park District; therefore, approval is recommended.

### **Action**

A motion was made by Council Member Thome to recommend approval of the CSM as proposed. This motion was seconded by Mayor O'Keefe and carried without a negative vote with Commissioner Strautmanis excused.

### **REQUEST EXTRATERRITORIAL LAND DIVISION APPROVAL FOR TOWN OF CEDARBURG RESIDENTS TO DIVIDE THEIR PARCEL LOCATED AT 327 DOUGLAS LANE – ANDREW AND RHIANNON WILSON**

Planner Censky reported that the Petitioners are seeking approval to divide their 4.6-acre parcel of land located at 327 Douglas Lane in the Town of Cedarburg into two separate lots of 3.049-acres and 1.542-acres. This parcel is within the City's extraterritorial plat approval jurisdiction; as such, the law allows the City to review and approve this proposed CSM. Although approval is required from the City of Cedarburg Plan Commission, this land division will not result in the dedication of public right-of-way, meaning approval from the City of Cedarburg Common Council is not necessary.

The proposed CSM is also scheduled for review by the Town of Cedarburg Plan Commission at their August 15, 2020 meeting. Accordingly, City of Cedarburg Plan Commission approval should be subject to the conditions established at that meeting.

Planner Censky reviewed the CSM and found that it complies with the Town of Cedarburg's Zoning Code requirements. In response to Council Member Burkart's request for clarification, Planner Censky explained that the City has extraterritorial plat review and approval authority extending out to about one mile and a half into the Town. Historically, towns were considered as holding places for lands that were ultimately to be annexed into cities. Authority was given to cities to review what is happening in those areas.

### **Action:**

A motion was made by Council Member Thome to approve the extraterritorial land division provided that any conditions established at the Town of Cedarburg Plan Commission meeting on August 15, 2020 are met. This motion was seconded by Mayor O'Keefe. The motion carried without a negative vote with Commissioner Strautmanis excused.

### **DETERMINE SEPTEMBER 2020 PLAN COMMISSION MEETING DATE**

This meeting date is set for Thursday, September 3, 2020.

### **COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS**

It has been brought to the attention of Council Member Thome that there is a possibility that the Stagecoach Inn and Lime Cantina may be using amplified music in their outdoor areas. The Commission is aware of other establishments that have gone through the proper Outdoor Alcohol Beverage License process as per City Ordinance. Council

Member Thome stated that she believes the Commission needs to be consistent in requiring that businesses follow the proper processes.

Mayor O'Keefe acknowledged that these are tough times, but fair is fair and if some businesses are playing by the rules and getting all of their permissions in advance, he thinks it is reasonable to require that others do so as well. Mayor O'Keefe stated that this afternoon he spoke with Alex Uhan, who has been working with the Lime Cantina. Mr. Uhan assured him that the restaurant is working with the Cultural Center to avoid any overlap in outdoor music performances.

Commissioner Voltz wondered if there was a way for the Plan Commission to support these businesses as they go through the process and suggested scheduling an earlier meeting prior to September 3 for these businesses so that they do not lose out on the balance of the summer.

Commissioner Cain pointed out that amplification is limited in number by permit, so by default the majority of the sets should be acoustic. Council Member Thome confirmed this and added that six occurrences per year is the limit and they can only take place with approval and neighbor notification.

### **MAYOR'S ANNOUNCEMENTS**

Mayor O'Keefe had no announcements

### **ADJOURNMENT**

A motion was made by Council Member Thome, seconded by Commissioner Voltz, to adjourn the meeting at 7:56 p.m. The motion carried without a negative vote with Commissioner Strautmanis excused.

Victoria Guthrie  
Administrative Assistant