

CITY OF CEDARBURG  
PLAN COMMISSION

PLN20211101-1  
UNAPPROVED MINUTES

November 1, 2021

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, November 1, 2021 at Cedarburg City Hall, W63N645 Washington Avenue, upper level, Council Chambers and via the [zoom](#) app. The meeting was called to order at 6:59 p.m. by Vice Chairperson Mark Burgoyne.

Roll Call    Present -        Vice Chairperson Mark Burgoyne, Council Member Patricia Thome, Sig Strautmanis, Adam Voltz, Heather Cain

Excused -        Mayor Michael J. O'Keefe, Kip Kinzel

Also Present -    City Planner Jon Censky, Council Members Jack Arnett and Kristin Burkart, Administrative Secretary Victoria Guthrie

**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 Voltz, to approve the minutes of October 4, 2021. The motion carried without a negative vote with Mayor O'Keefe and Commissioner Kinzel excused.

**COMMENTS AND SUGGESTIONS FROM CITIZENS**

Vice Chairperson Burgoyne 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.

**RECONSIDER CERTIFICATE OF APPROPRIATENESS TO REPLACE WINDOWS ON THE BUILDING LOCATED AT W61N510 WASHINGTON AVENUE – CEDARBURG MERCANTILE/MIKE AND CINDI PURNELL**

Planner Censky reminded Commissioners that during the Landmarks Commission meeting on September 9, 2021, the Petitioners requested approval to replace the windows in their building with wood, two over two pane windows, which match the original windows on the north, east and west sides of the building. The Landmarks Commission recommended approval for the Certificate of Appropriateness to replace the upper windows on the west side as proposed; however, they denied replacement of the remaining windows after finding them eligible for repair. The Petitioners came in front of the Plan Commission during their October 4, 2021 meeting, hoping to get approval for their replacement proposal. The Plan Commission denied their request to replace all of the windows, and followed the recommendation given by the Landmarks Commission.

Both of these decisions were based on the information that this building was listed in the National Register of Historic Places as a contributing building to the Washington Avenue Historic District; however, it has since been discovered that this initial status had been changed to non-contributing, due to changes made to the building façade prior to the initial designation. With this new information, the Petitioners went in front of the Landmarks Commission during their October 28, 2021 meeting, during which the Landmarks Commission recommended approval to replace all windows as proposed. Based on this recommendation, they are in front of the Plan Commission again seeking approval on a Certificate of Appropriateness for these replacements.

**Action:**

A motion was made by Council Member Thome for approval of the Certificate of Appropriateness to replace the windows with wood windows, two over two, matching as closely as possible to the original windows, as proposed by the Petitioners. This motion was seconded by Commissioner Strautmanis and carried without a negative vote with Mayor O'Keefe and Commissioner Kinzel excused.

**REQUEST APPROVAL OF THE REVISED ARCHITECTURAL THEME FOR THE VILLAS AND TOWNHOMES IN THE SUBDIVISION LOCATED AT W73N1122 WASHINGTON AVENUE – FAIRWAY VILLAGE/HALEN HOMES**

Planner Censky reminded Commissioners that the Petitioner, Erica Marty of Halen Homes, attended the September 8, 2021 meeting to present architectural plans to establish the design theme for the single-family and two-family homes for the Fairway Village development. At that time, Commissioners provided feedback indicating that they felt the designs lacked elements reflecting the image of Cedarburg, thus distinguishing it from developments in other communities. They suggested varying architectural elements and materials, altering the design and size of dormers, creating functional and welcoming front porches, stepping back the garages, and wrapping design elements from the front elevation around to the side of the buildings. They expressed approval for the color schemes that were presented. Petitioner Marty further discussed these ideas with Planner Censky and Commissioner Voltz, and submitted revised plans based on that feedback.

Planner Censky explained that changes to these plans show an increase in the depth of the front porches to at least six feet from the stairs to the wall, functional dormers, and wrapped design elements. He surmised that these changes distract from the appearance of the dwellings as being garage dominant. For the single-family homes, the Petitioner provided seven different material/color palettes and four options for the two-family structures. Planner Censky reiterated that the proposed plans are meant to establish the architectural theme for both the side-by-side townhomes and the single-family components of this subdivision, and that going forward, the Petitioner will submit individual plans to the City Building Inspector, who will use these designs as guidance for issuing building permits.

Commissioner Strautmanis expressed his approval on the progress made with the single-family home designs. He noted that changes to the townhome designs are not as drastic; however, they are showing more articulation, and he believes they are heading in the right

direction. Commissioner Voltz agreed, adding that he understands that double garage doors on the townhomes do not provide a lot of space for articulation. He feels that the sides are under composed, but the rear building sides have improved. Commissioner Voltz placed the varying townhome designs side-by-side in order to replicate the view from Augusta Lane, and suggested the possibility of differentiating the corner townhomes by extending the porches and wrapping elements around them in order to prevent repetition. Petitioner Marty pointed out that they are maxed out on the square footage of these lots, but they intend to preplan all elevations and color palettes on these townhomes to minimize repetition. She informed Commissioners that she would like to start building townhomes by January 2022. Planner Censky suggested that Commissioners move to approve the overall proposed theme, and that the Petitioner can work with Commissioner Voltz when the townhome plans come in.

Commissioner Strautmanis stated that he appreciates the architectural variety for the single-family home designs and would give his thematic approval. Commissioner Cain pointed out that the mixed materials on the plans do not appear to include stone anywhere other than the piers, to which Commissioner Strautmanis stated that he is fine with the piers having stone, and would prefer no stone in the façades, since a smattering of stone as a wall covering does not look as nice.

**Action:**

A motion was made by Commissioner Strautmanis to approve the revised architectural theme for the Villas and Townhomes as proposed, with the Petitioner working with City Staff and Commissioner Voltz on refining townhome plans. This motion was seconded by Council Member Thome and passed without a negative vote with Mayor O'Keefe and Commissioner Kinzel excused.

**REQUEST CONCEPT REVIEW FOR REVISED DEVELOPMENT PLAN FOR  
PROPOSED TWO-FAMILY SUBDIVISION LOCATED AT 6660 SUSAN LANE, TOWN  
OF CEDARBURG – QUARRY SITE/WYNDALE INVESTMENTS LLC**

Planner Censky reminded Commissioners that Petitioner Craig Caliendo of Kings Way Homes submitted proposals during both the May 3, 2021 and September 8, 2021 Plan Commission meetings for feedback on a development located in the former quarry site. Based on this feedback, which was to remove buildings shown in the wooded areas of the parcel, the Petitioner approached the Common Council to ensure that his project was economically feasible before pursuing annexation into the City. During their September 27, 2021 meeting, the Common Council had a reaction similar to that of the Plan Commission, recommending the removal of two buildings in the northwest corner and shifting the road away from the area to protect the woods as much as possible.

Petitioner Caliendo took those suggestions into consideration and submitted a revised development plan. With the removal of the two buildings in the northwest corner, this project will now consist of 35 side-by-side ranch style buildings (70 units), at a density of 1.75 units per gross acre and 2.0 units per net acre, exclusive of the quarry.

Planner Censky provided the following City Staff Comments:

- Identified wetlands will need to be dealt with when proceeding through the approval process.
- Fire hydrants shall be placed according to City Ordinances.
- Road construction shall be adequate to support the weight of fire department apparatus.
- Roadway turning radius shall be adequate to allow for easy access for fire apparatus.
- Fencing should be considered around the pond.
- Introduction of a road connection along the east side of the circle for a future road.
- Each side of the entrance boulevard shall be 24' face to curb.
- Roadway width for private roads is to be 28' curb face to curb face.
- Consider moving the entrance road to the east to line up with the existing drive.
- Static groundwater level should be monitored to determine the ultimate water level of the quarry.
- Include in the private covenants an alert to future owners within this project that the depth of the quarry exceeds what the City's emergency dive team is rated for rescue.

Planner Censky noted that the Petitioner will again seek support from the Common Council on this revised plan prior to submitting an annexation petition. Procedurally, following annexation, the Petitioner will need to pursue a Land Use Plan amendment to establish classification for the project and the site will need to be rezoned accordingly. Currently, the Land Use Plan classifies this property as Medium Density Residential south of the quarry and Industrial and Manufacturing to the north. Once the Land Use classification is established, the Petitioner will then need to proceed with the subdivision approval process.

Council Member Thome voiced her appreciation to the Petitioner for his efforts to preserve as much of the woods as possible and expressed her support for the project.

Commissioner Strautmanis would like to see Susan Lane and Susan Court lined up closer than shown on the drawing. He finds the revised plan an improvement as far as preserving the woods; however, he would like to see more of the woods on the southwest corner of the parcel protected.

Commissioner Voltz agreed, stating that although a couple of the structures are encroaching further into the woods than he would like, he is supportive of the project. Vice Chairperson Burgoyne also expressed his support.

Commissioner Cain stated her appreciation of the improved design, although, ideally, she would like to see buildings 1, 2, and 3 removed from the wooded area. Commissioner Strautmanis said that he would give his unequivocal support if those three structures were not there. He suggested that the Development Agreement include some sort of precaution or fencing requirement in order to protect the woods that is left. Planner Censky indicated that this can be done through zoning by adding an Upland Conservancy District Non-Shoreland overlay in this area, as well as adding protection via the homeowners association. Petitioner Caliendo pointed out that these are condos, so they will not include large yards that might encroach on the woods. Commissioner Voltz would be in favor of seeing the project move forward as well, but wants to make sure this area is safeguarded from construction work and traffic.

Rob Vanden Noven, W68N1068 Kensington Avenue, was in attendance to provide handouts showing his modification of the development plan, which eliminates the traffic circle near the entrance, thereby moving the road farther away from the woods. He suggested that the developer also consider dedication of property to a land trust for preservation. Planner Censky agreed to forward these handouts to the developer of the project.

**DISCUSSION AND RECOMMENDATION FOR UPDATES TO THE ZONING CODE SECTION 13-1-22(f), GENERAL PROVISIONS, USE RESTRICTIONS, TEMPORARY USES**

Due to confusion over the City's temporary use approval, local businesses have begun using tents to accommodate outdoor dining in their establishments. Prior to the pandemic, outdoor tent requests were sent thru the Landmarks Commission (if located in the Historic Preservation District) and the Plan Commission for approval. Restrictions were placed on the length of time allowed for use, and where the tents were installed on their parcels.

In 2020, businesses were temporarily shut down due to the pandemic, placing financial hardship on these establishments. As restrictions regarding social distancing and indoor capacities gradually began to lift, several downtown businesses made the decision to install tents in order to maximize profits, especially since many of these locations have limited indoor space. During this time, the Common Council decided to streamline the request process by temporarily suspending Commission authorization, requiring only City Staff approval from the Building Inspector, Planner and Fire Inspector. Recently, the Common Council made the decision to continue this process until the end of this year. However, they have requested that the Plan Commission establish rules to accommodate these temporary tent uses going forward, effective January 1, 2022, asking that the Plan Commission allow tent uses between October 1 and May 30 every year.

Planner Censky told Commissioners that the current Zoning Code governs temporary uses under **Section 13-1-22(f)**, which states, ***Temporary uses, such as food sales, nursery stock sales, fireworks sales, and real estate sales, and field offices or shelters for materials and equipment being used in the construction of a permanent structure may be permitted with the conditions and/or restrictions established by the City Plan Commission after review and approval.*** He added that in 1997, the Plan Commission approved the following administrative procedures for temporary use permits for private property, which have since been the basis for approvals:

- The Building Inspector issues temporary use permits for private properties.
- The maximum duration for use shall not exceed a one-time two-week period or fourteen cumulative days, except for the following uses:
  - (1) Plant material and nursery stock sales may be allowed according to the seasonal duration of the plant materials being sold.
  - (2) Christmas tree sales may be allowed according to the seasonal nature of the product being sold.
  - (3) Temporary uses associated with a community festival may be allowed for the period concurrent with the festival.

- (4) Temporary uses associated with Maxwell Street Days may be allowed for a period concurrent with Maxwell Street Days.
- (5) Any request for a temporary use permit for a period longer than fourteen days (other than the items listed above) shall be referred to the Plan Commission for review and action.
- (6) Temporary use permits shall state that no unattended merchandise stands, displays or material shall be allowed.

A draft ordinance was included in the meeting packet and would serve to legitimize the administrative procedures adopted in 1997 and to establish rules for temporary tent use based on the directive of the Common Council.

Council Member Jack Arnett was in attendance, and explained to Commissioners that the Common Council voted 4 to 3 in majority to support tent use for downtown businesses, as their customers demand this type of space. He explained that since the primary objection to tent use is safety and aesthetics, the Council is looking to the Landmarks and Plan Commissions for guidelines on approving these uses. He stated his belief that City support of tent use during colder months is a pro-business approach, adding that it is important to be fair and consistent when approving these uses. He stated that the Council's suggestion of the October 1 through May 30 timeframe is not to imply that the tents remain up that entire time, but to eliminate use during the summer months.

The last tent use request was presented during the August 2, 2021 Plan Commission meeting, with the discussion centering around the need to establish criteria to regulate tent use in the downtown area. During this meeting, Commissioner Cain volunteered to research other municipalities to see how they handle these requests. She stated that most of what she is finding is the result of COVID-19 restrictions, which she feels is the initial reason the Plan Commission was asked to accommodate these requests despite the size of the tents and the longevity of the use. She does not believe that the City's continuance to allow this use is something to be considered as pro-business, pointing out that when these establishments created their initial business plans, it was based on a principal structure. Commissioner Cain questioned the fairness of building owners in the downtown area spending money to maintain the integrity of their structures, while others are allowed to just set up tents. In allowing these installations to increase capacity, she questioned the need to take into consideration the requirement for additional restrooms and wash stations for food preparation and service, as well as emergency ingress and egress. She voiced her belief that in order to be considered pro-business, a weighted and measured approach to approval must be used before setting a precedent.

Vice Chairperson Burgoyne observed that the use of tents is only advantageous for a few, adding that he expects to see tents on the golf course or in a back yard, but not the downtown Historic District, which Cedarburg has worked hard for the last 50 to 60 years to maintain. He stated that Cedarburg has great festivals that include tents; however, he does not believe that the canvas tents add one iota of value to them. He reasoned that an increase in tent use requires increased city resources in order to adequately perform inspections. He believes that the Plan Commission will need to do more homework, as it appears to be more of a complex issue.

Planner Censky advised that these types of requests used to be limited to special events, but have since increased in popularity, pointing out that not all of them are filtered through the temporary use process, but through the outdoor alcoholic beverage procedure, which originates in the Clerk's office.

Commissioner Strautmanis observed that business owners may consider a tent as a de facto extension of their premises, but it expands beyond their footprint.

Commissioner Voltz wondered at what point the City considers a temporary structure as a permanent one, reasoning that permanent structures require a review. He also agreed that using a measured approach to approve these uses is important, and stressed the need to be fair. He pointed out that events and festivals happen in Cedarburg all year, every year, where tent use is allowed, and sometimes adding a tent allows someone to test out an idea for a few seasons prior to committing to a product or business.

Council Member Thome pointed out that not every bar or restaurant has room to set up a tent, and in allowing others to do so, it limits their ability to be competitive. She would like to see the timeframe of use limited to the season such as sixty days at the beginning or sixty days at the end.

Commissioner Cain asked Planner Censky for the Landmarks Commission's general opinion on tent use in the Historic District, which he described as not favorable, but it is more of an issue for them if the tent is visible from Washington Avenue. He agreed to add it to the next Landmarks agenda for their input.

Greg Zimmerschied, who owns and leases properties in the downtown Historic District, stated that he is not sure that tents make good neighbors, adding his belief that tents change this dynamic, as there is a difference when you are divided by a stone wall versus a canvas wall. He gave the example of walking through Cedar Creek park to enjoy its peaceful beauty, only to have that positive experience interrupted by the intrusion of loud music coming from a downtown outdoor establishment. In cases where tent use is allowed, that particular business forces others to partake of their product, such as music, whether they want to or not. When businesses decide to lease square footage in the City, they normally do their homework prior to signing the lease. By allowing them to set up tents, this allows them to double or triple their space, which is additional space that they do not have to pay for. In terms of vibrancy, he stated that he does not believe that bars should be driving the ambiance of downtown Cedarburg and mentioned the negative reactions to the pedal tavern. He places his faith in the Landmarks and Plan Commissions and their experience with maintaining the historic downtown. Mr. Zimmerschied believes that Cedarburg has one of the most unique downtowns in America, and that people are visiting and frequenting these local businesses because of that, not because they see a tent.

Commissioners agreed that this topic needs further discussion.

**COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS**

Council Member Thome advised that the Common Council discussed the Outdoor Amplified Sound and Music Ordinance during their October 25, 2021 meeting, and decided to boost the limit of weekly events from two to three per establishment. She believes in allowing amplified music in the City, but hopes to have Plan Commission support in getting a reduction in the maximum decibel levels of these events, in consideration of residents who may find the noise disruptive.

Commissioner Strautmanis questioned the tile work being done on the façade of PJ Piper's Restaurant downtown. Planner Censky advised that the Landmarks Commission approved this work along with the tile color and design. He will contact Landmarks Commissioner Tom Kubala and request that he visits the site.

**MAYOR'S ANNOUNCEMENTS**

Mayor O'Keefe was not in attendance; therefore, no announcements were made.

**ADJOURNMENT**

A motion was made by Commissioner Voltz, seconded by Commissioner Cain, to adjourn the meeting at 8:30 p.m. The motion carried without a negative vote with Mayor O'Keefe and Commissioner Kinzel excused.

Victoria Guthrie  
Administrative Assistant