

**CITY OF CEDARBURG
PLAN COMMISSION**

**PLN20220207-1
UNAPPROVED MINUTES**

February 7, 2022

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, February 7, 2022 at Cedarburg City Hall, W63N645 Washington Avenue, upper level, Council Chambers and via the [zoom](#) app. 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, Sig Strautmanis, Adam Voltz, Kip Kinzel, Heather Cain, Tom Wiza

Also Present - City Planner Jon Censky, Council Members Jack Arnett, Rick Verhaalen, 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.

ELECTION OF VICE CHAIRPERSON; AND ACTION THEREON

Vice Chairperson Mark Burgoyne withdrew from the Plan Commission at the end of December 2021, leaving the Vice Chairperson position open.

Action

A motion was made by Commissioner Cain, seconded by Council Member Thome, to elect Commissioner Kinzel as Vice Chairperson for the Plan Commission. The motion carried without a negative vote.

APPROVAL OF MINUTES

A motion was made by Council Member Thome, seconded by Commissioner Kinzel, to approve the minutes of the January 4, 2022 meeting as corrected in the following sentence:

- ~~It was largely~~The majority agreed that tent type and material be taken into consideration prior to approval. (Page 6, seventh paragraph).

The motion 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.

Jordan Larson, N81W6995 Pine Street, owner of both W61N449 Washington Avenue and the adjacent vacant parcel to the west, was in attendance to address the possible development of his vacant lot. Several years ago, the previous owner split off 0.12-acres on the west side of this vacant lot and dedicated it to the City for the future extension of Hanover Avenue. Mr. Larson explained that when he purchased the lot, he reached out to the City and was told that, due to traffic concerns, he would be unable to develop that parcel with access via Washington Avenue. At that time, City Staff recommended that when the adjacent 12.76-acre lot to the west was eventually developed, he work with the developer to gain access from this Hanover Avenue extension. Recently, a developer has submitted and received approval for plans on that 12.76-acre parcel that extends Hanover Avenue farther west than this dedicated parcel. Mr. Larson would like to know what the City intends to do with this small parcel, and whether it would be possible for that parcel to revert back to him as the owner, since it was initially split from his larger parcel. Mr. Larson will follow up with Planner Censky on this issue.

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

Planner Censky reminded Commissioners that an in-depth review of the Temporary Use Ordinance was conducted during their January 4, 2022 meeting, specifically focusing on the use of tents in the downtown Historic Preservation District. At that meeting, downtown business owners were in attendance to voice their concerns on this issue. Plan Commissioners agreed on specific requirements for the use of tents, and decided that this information be codified and added to this agenda for final review and recommendation to the Common Council.

To summarize the agreed upon conditions for approving tent requests, Planner Censky listed the following:

- References to the State Building and Fire Code safety requirements will be included.
- Requests for the use of a tent exceeding fourteen (14) days shall be one (1) time per calendar year for a period not to exceed ninety (90) days, restricted to the months of November through April.
- Tents are required to be in the side or rear yards only, generally out of view of the public.

Commissioner Cain, who prepared the proposed draft, began by briefly reviewing the above bullet points from the last meeting, and confirmed that State Building and Fire Code safety requirements were added into the proposed draft; however, she questioned the 90 day timeframe being agreed upon, and considers this still under discussion. Commissioner Cain also pointed out the last bullet point, opining the subjectivity of the term *generally out of view*, which could mean that the approval of the Commissioners could be viewed as inconsistent. She compared temporary tent use requests to conditional use permits requests, in that, fundamentally, the conditions listed in the Ordinance should be applied to every request for tent use before considering approval.

During the January meeting, Commissioners deliberated over the idea of creating a process for tent requests for extended use, that would be considered as extraordinary tents, and require a more thorough review. Commissioner Cain submitted a draft of this process, but indicated that if this idea is still on the table, it needs to be more clearly defined.

Planner Censky cautioned against comparing the process to a conditional use permit, since those requests require a public hearing, notification of neighbors within 300-feet of the lot line, and substantial evidence must be presented in order to deny any request.

Mayor O'Keefe acknowledged the impressive amount of work Commissioner Cain put into preparing the draft Ordinance; however, he concluded that it was written to essentially ban tents, since the process as presented would be onerous and the costs required to meet the conditions would make any request a non-starter. He maintained that he cannot vote in favor of the proposed revisions. He questioned the need for additional bathrooms, despite the fact that more patrons use the same outdoor space in the summer, formal surveys, and permanent electrical installation for a temporary use. He declared that a 60 or 90 day limit is not reasonable, and that the season should be from October 1 to April 30. He emphasized that the City does not want to create an unsafe environment, which is why the Building and Fire Inspectors review and approve these requests based on governing Codes, field experience and their own expertise.

Council Member Thome acknowledged that, during the pandemic when the Common Council made the decision to streamline the process for approving tent use by requiring only City Staff approval, she felt comfortable with their review. She views tents as a more permanent structure in instances where they are in place six months out of the year, every year. She emphasized that it is not a case of her not wanting businesses to thrive, but she struggles with the balance of maintaining the historic beauty of downtown and keeping up the vitality of tourism. She expressed that, although she believes that tents detract from historic Cedarburg, she would be in support of more simplified guidance. Mayor O'Keefe agreed that it is always a balancing act between vibrancy, vitality, and preserving the jewel of downtown.

Commissioner Kinzel declared that the proposed Code would make the use so difficult that businesses would not actually do it, and feels that it should be honed down a bit. He does not agree with limiting the allowable timeframe to 60 or 90 days, reasoning that renting or purchasing a high quality tent would be too expensive to install. He agreed that a formal survey of the parcel should not be required, and considers a handwritten scaled drawing as sufficient. He disagrees that a paved surface is needed. He determined that a GFCI extension cord would work instead of a hardwired installation. He does not see a need for business owners to prove to the Commission that they have a legitimate need by opening up their books and proving profitability, stating that tents allow businesses to extend their outdoor entertainment season. He believes that food and beverage preparation is governed by a business owner's food dealer's license, which the business has a vested interest in keeping. Commissioner Kinzel voiced his enjoyment in patronizing these businesses and believes they add value to the downtown District.

Commissioner Strautmanis established that he is less concerned about specificity of this Code in terms of the already regulated items that the Building and Fire Inspectors cover, than he is about ensuring that the Landmarks and Plan Commissions have a subjective perspective like they would in a design review, and does not understand why that would be a more difficult approach than having these detailed requirements in the Ordinance. He believes that this process could be handled with a more guideline approach rather than Code.

Commissioner Wiza explained that the land was laid out in the 1800's for the downtown area, making formal legal surveys in this area extremely expensive. He advised that scaled drawings are acceptable for these types of reviews. He expressed his appreciation for the points raised on the proposed Ordinance, but also finds it onerous for businesses to comply and believes it can be consolidated and simplified enough to accomplish the same thing.

Commissioner Voltz felt that the issue of locating tents on a parcel could be addressed by establishing that placement in front yards is not allowed, and requiring those placed in side yards to have a setback of greater than or equal to ten (10) feet from the front plane of the primary structure. Planner Censky suggested adding a statement about hardships being considered on a case-by-case basis for those who may not have adequate space. Commissioner Voltz also requested to add wording to the ingress and egress requirement to reflect that alternate routes must be provided for ADA access.

Council Member Arnett appeared before the Plan Commission to voice his support for temporary tent use in the downtown area. He stressed that everyone agrees proper safety measures must be followed where tents are concerned; however, he feels that if the main objection is that the tents are ugly, they are usually placed behind buildings and are only set up temporarily. He told Commissioners that he has discussed this issue with many of his constituents, and the most popular reaction he gets is that people are unaware the tents exist. He acknowledged that approvals could be considered as subjective, but countered that the Landmarks Commission has the ability to approve paint colors which has already set a precedent for that. He pointed out that the proposed Ordinance ignores the allowable dates established by the Common Council during their October 11, 2021 meeting.

Gordon Goggins, owner of the Stilt House, W62N630 Washington Avenue, attended the meeting, and advised Commissioners that after a lot line dispute with a neighbor in 2016, he paid for a formal survey of his location. At that time, the cost for one surveyor to come out and locate one property line was \$1,500. He imagines the cost for him to plat out 600 square feet of space would be a major expense. He pointed out that the Common Council mandated that he relocate the tent on his paved driveway to an unpaved surface that was less visible from Washington Avenue. He wondered if the new proposed requirements would force him to return it to its former location in the front, or result in the removal of his tent altogether. Mr. Goggins addressed the proposed electrical requirements, which would require him to run two sets of conduits from his building: one at 17 feet, and the other at 50 feet. He estimates that this would cost him \$2,000 to set up, and \$2,000 to take down 90 days later. The only way for him to comply with the heating portion is to run a natural

gas line, which would require running a trench across two properties that he does not own. Mr. Goggins informed Commissioners that when selecting his tent, it was important for him to consider wind rating and snow load as well as fire resistance, because he does not want his patrons to have a bad experience. He observed that the Code defines temporary structures the same as tents, and, as former president of the Festivals Committee, he would consider both the Kooky Cooky House and Santa's Workshop as temporary structures. These are installed on public property in front of City Hall. He questioned if they must meet the same requirements being proposed for temporary tents. He pointed out that they have been in place for 90 days, and noted that the front door of the Cooky House blocks the sidewalk, which should not be allowed. From a business owner's standpoint, he finds the proposed Ordinance to be cost crazy, not worth the hassle, and basically states "we don't want tents". He does not believe that is the intent of what Cedarburg wants.

Michelle Tietz, owner of Lime Cantina, W62N550 Washington Avenue, attended the meeting to point out that between October 1, 2021 through to the end of December 2021, 3,928 patrons chose to sit in their tent. Since they have opened, they have used the tent during the winter months, and she has determined that 27,172 patrons chose to sit in their tent, while 18,360 chose to sit inside. She concluded that people are clearly wanting something to do in the winter and the tent is providing that for them. She is concerned that the proposed requirements would make it near impossible to continue to provide this option to the City and to their customers. She questioned the need for stricter safety requirements based on how long the tent is in use, reasoning that safety should be just as important for a 90 day use as it is for a use lasting six months. She stated that she has already agreed to the changes the Fire Inspector told them they would need to make for their heat next year. She does not understand why Commissioners would want to stop them from providing people with an entertainment option that encourages them to stay in the City.

A motion was made by Mayor O'Keefe to move the existing draft of the Ordinance, along with meeting minutes where this issue was discussed for the purview of the Common Council for their consideration. Motion died for lack of second.

Commissioners went through the proposed Ordinance and made changes based on the majority agreement. Commissioner Cain agreed to update the draft and send it to Secretary Guthrie for comparison and submission to the Common Council.

Action:

A motion was made by Commissioner Kinzel, seconded by Mayor O'Keefe, to recommend approval for changes to Code Section 13-1-22(f), amending the standards for temporary uses as discussed, and carried with Mayor O'Keefe, Council Member Thome, Commissioners Strautmanis, Kinzel, Wiza, and Voltz voting in favor and Commissioner Cain voting against.

BEGIN REVIEW OF THE RECODIFICATION OF TITLE 13 ZONING CODE

Planner Censky explained that the current Zoning Code for the City was adopted back in 1988, and while it has been updated over the years, it has not had a comprehensive update since that time. Over the past year or so, City Staff has researched Zoning Codes in other municipalities, Codes on the American Planning Association (APA) website, and the latest Wisconsin DNR Floodplain Ordinance, and prepared the draft Code handouts provided to Commissioners for review and editing. In order to provide a completely updated Code to the Common Council for adoption, this review will be included on upcoming meeting agendas until it is completed. Commissioners are asked to bring their copies of the draft Code to future meetings for discussion.

Planner Censky asked Commissioners to review the Code through to page 49, residential sections, to discuss at the next meeting.

COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS

Commissioner Voltz shared his experience that attendees joining the meeting via Zoom have trouble hearing the discussions taking place in person. Mayor O'Keefe advised that Administrator Hilvo is aware of this situation, and is planning on upgrading the sound system for the room. Commissioner Strautmanis suggested using headphones, which he has found to be helpful.

MAYOR'S ANNOUNCEMENTS

Mayor O'Keefe had no announcements.

ADJOURNMENT

A motion was made by Council Member Thome, seconded by Commissioner Wiza, to adjourn the meeting at 8:51 p.m. The motion carried without a negative vote.

Victoria Guthrie
Administrative Assistant