

CITY OF CEDARBURG
PLAN COMMISSION

PLN20180620-1
UNAPPROVED MINUTES

June 20, 2018

A special meeting of the Plan Commission of the City of Cedarburg was held on Wednesday, June 20, 2018 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 O'Keefe.

Roll Call: Present – Mayor Michael J. O'Keefe, Council Member Patricia Thome, Mark Burgoyne, Greg Zimmerschied, Heather Cain, Adam Voltz

Excused - Sig Strautmanis

Also Present - Council Members Jack Arnett and Kristin Burkart, City Planner Jon Censky, Assistant City Attorney Tim Schoonenberg, Administrative Secretary Darla Drumel, news media

STATEMENT OF PUBLIC NOTICE

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

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 APPROVAL OF OUTDOOR SEATING ASSOCIATED WITH THE OUTDOOR ALCOHOL BEVERAGE LICENSE FOR THE NEW BRANDYWINE RESTAURANT AT THE FORMER GENERAL STORE MUSEUM AT W61 N480-86 WASHINGTON AVENUE – ANDREW AND RHIANNON WILSON

Planner Censky recalled that, as a result of the discussion at the June 4, 2018 meeting regarding the cost of having a survey created to establish private property versus public right-of-way lines for this outdoor seating area, it was decided that a right-of-way encroachment agreement may be a better and more cost-effective way of handling this request. Accordingly, Assistant City Attorney Tim Schoonenberg drafted an agreement which will supplement the Outdoor Alcohol Beverage License under consideration for the Brandywine restaurant. This Agreement will establish specific areas along the outside of the building where the exact location of the property line and the right-of-way line is not confirmed but where the customers and employees may encroach on the right-of-way for the delivery of alcoholic beverages and food to tables.

The seating requested will consist of three tables and chairs along the south side and seven located in the cove along the west side of their restaurant. According to Andrew and Rhiannon Wilson, the business owners, the seating area will be enclosed with a decorative Solar Stanchion post and chain fence which will stand 40" tall. Prior to this meeting Police Chief Tom Frank and City Building Inspector Mike Baier met on site with the applicant and have determined that this outdoor seating plan meets with their standards.

These plans were reviewed by the Landmarks Commission on May 24th and they recommended approval as proposed by unanimous vote.

Planner Censky continued that the proposal for seats on the west side of Brandywine were acceptable, but there is concern about the seating on the south side of the building along Spring Street. After he and the City Engineer made some measurements at the site, they determined that the fence should be placed seven feet from the building to meet ADA access requirements. Planner Censky noted, however, that the location of the fence may encroach upon the pedestrian lane. He suggested that two options could be considered by the Plan Commission as follows:

1. Recommend approval of the three tables on the south side along Spring Street without the chain and stanchion delineation, subject to the approval of the Police Chief.
2. Recommend approval of the location of the three tables as proposed but without alcohol beverage services.

Commissioner Cain questioned how allowing the outdoor alcohol service without a fence could be reconciled with past approvals. She suggested that it may be appropriate to evaluate the current practice before deciding on the Brandywine request. Commissioner Cain explained that she received information from City Engineer Tom Wiza that there should be room for the trees and signage at the curb and then a five-foot open walkway area that is measured from that point. Nothing should impede foot traffic in that five-foot sidewalk area. From the five-foot sidewalk to the building is the only area that should be available for outdoor seating. She is amenable to licensing use of the public right-of-ways but cautions that every business along Washington Avenue would be requesting the same.

Planner Censky explained that when outdoor seating first was requested, the Police Chief asked for fencing for those specific locations. Therefore, the fence criteria are linked directly to the Police Chief. Planner Censky added that all approvals in the past are specific to each request. He pointed out that there are four reviews for each and every request for outdoor alcohol beverage service seating areas: the Police Chief, the Landmarks Commission (if in the Historic District), the Plan Commission and the Common Council.

Vice Chairperson Burgoyne noted that all prior approvals required fences, which has worked well because they are functional, fair, and helps neighbors.

Commissioner Voltz advised that only one table must have handicap access, not the entire seating area, to meet ADA requirements.

Commissioner Zimmerschied thought that requiring a fence did not always make sense and should be decided on a case-by-case basis. He pointed out that many cities allow dining over the entire sidewalk.

Vice Chairperson Burgoyne urged that the Mayor set up a committee to review the issue and bring a proposal back to the Plan Commission for discussion.

Commissioner Cain opined that the chain and stanchion provide a true visual delineation. She advised that the public right-of-way is in the public trust and people should be able to walk freely and safely in the sidewalk area. She noted that it is the pride of the City to be a walkable community.

Council Member Arnett noted that he had taken measurements which indicate that there is adequate space on the south side of Brandywine to have the five-foot sidewalk and a fence. He asked the Commission to recommend approval subject to verification of his measurements.

Council Member Thome recalled that C. Wiesler's was the first to be approved for outdoor dining (possibly two decades ago) and the Police Chief was concerned about alcohol being passed to those outside the designated serving area. She pointed out that Cedarburg is changing and becoming more user-friendly, as the concept of using an encroachment license demonstrates. She agreed that there were no concerns with the serving area along Washington Avenue in the front of the building. She did, however, believe a fence was necessary.

Commissioner Voltz stated that he had no problems with the seating areas on the west side and the south side as proposed. It is simply a matter of delineating the space. He noted that the license could be revoked at any time if issues develop.

Assistant City Attorney Schoonenberg responded that is why he made the license renewable annually, allowing the Plan Commission to monitor the situation.

Action:

A motion was made by Vice Chairperson Burgoyne, seconded by Council Member Thome, to recommend approval of the proposal for the Outdoor Alcohol Beverage License on the west side of Brandywine along Washington Avenue, and to put off a decision on the south side seating area.

Continued Discussion:

Commissioner Cain worried that fencing is necessary to preserve the public right-of-way, especially on Spring Street. She also had concerns that the proposed umbrellas were impractical, unworkable and would provide a hindrance to pedestrians in the public right-of-way.

Council Member Arnett stated that there is no issue with space constraints on the south side along Spring Street, pointing out that the tables are twenty-eight inches wide, a three-foot corridor can be provided for the servers which is adequate, and the sidewalk area would be five and one-half to six feet wide.

Call the Question:

Vice Chairperson Burgoyne moved to call the question. The motion was seconded by Commissioner Zimmerschied.

Continued Discussion:

Vice Chairperson Burgoyne noted that the south side was the only undecided issue.

Commissioner Cain suggested that the decision can be contingent upon Director Wiza measuring the necessary public right-of-way and then whatever is left could be used by the business owner.

Action to Amend the Motion:

Vice Chairperson Burgoyne moved to amend his motion by clarifying that the Plan Commission recommended approval of the west seating area but **reject** the seating area on the south side.

Action to Call the Question and Close the Discussion:

The motion to Call the Question and close discussion carried without a negative vote.

Final Action on Motion:

The motion as amended failed with Vice Chairperson Burgoyne voting in favor; and Mayor O'Keefe, Council Member Thome, and Commissioners Voltz, Cain, and Zimmerschied opposed, with Commissioner Strautmanis excused.

New Motion:

A motion was made by Commissioner Zimmerschied, seconded by Council Member Thome, to recommend approval of the proposed Outdoor Alcohol Beverage License as shown on Exhibit A, drafted by City Planner Censky, contingent upon the City Engineer verifying the required public right-of-way which will delineate the area to be used by Brandywine and which includes the fencing as proposed. There will be no encroachment over the fence.

The motion carried with Mayor O'Keefe, Council Member Thome, and Commissioners Voltz, Cain and Zimmerschied voting in favor; and Vice Chairperson Burgoyne voting against, with Commissioner Strautmanis excused.

Continued Discussion:

Commissioner Cain requested that the license agreement include an indemnification provision that is not limited by the insurance obligation. Assistant City Attorney Schoonenberg concurred with the request.

Assistant City Attorney Schoonenberg advised that he needs a document for Exhibit A that includes the specific measurements of the seating areas.

COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS

Commissioner Zimmerschied suggested that the issue of outdoor dining and the serving of alcohol be an agenda item at a future meeting.

MAYOR'S ANNOUNCEMENTS

Mayor O'Keefe did not offer any announcements.

ADJOURNMENT

A motion was made by Vice Chairperson Burgoyne, seconded by Commissioner Zimmerschied, to adjourn the meeting at 8:06 p.m. The motion carried without a negative vote, with Commissioner Strautmanis excused.

Darla Drumel,
Administrative Secretary