

CITY OF CEDARBURG  
PLAN COMMISSION

PLN20180905-1  
UNAPPROVED MINUTES

September 5, 2018

A regular meeting of the Plan Commission of the City of Cedarburg was held on Wednesday, September 5, 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, Sig Strautmanis

Also Present - City Planner Jon Censky, Administrative Secretary Darla Drumel

**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.

**APPROVAL OF MINUTES**

Commissioner Voltz moved to approve the minutes of the meeting held on August 6, 2018 as presented. The motion was seconded by Commissioner Zimmerschied 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.

**REQUEST FOR CONDITIONAL USE PERMIT FOR LANDSCAPE CONTRACTING BUSINESS AND OUTSIDE STORAGE OF LANDSCAPING EQUIPMENT AT W59 N240 CARDINAL AVENUE – TIM DORSEY D/B/A LAKESIDE CONTRACTORS**

Mayor O'Keefe declared the public hearing open at 7:02 p.m.

Planner Censky advised that this request was made as a result of a zoning enforcement directive in which Tim Dorsey, the business owner, was asked to remove the accumulation of outside storage from his leased location at W59 N240 Cardinal Avenue but, instead of complying, is seeking relief from that directive by requesting Conditional Use Permit approval. This storage included old semi-truck trailers, a boat and trailer, a

delivery van and other landscape equipment which resulted in complaints from neighboring property owners expressing concerns about appearance.

Planner Censky, however, noted that all of the items noted above were removed this past weekend.

He noted that Landscape Contracting and Outside Storage and Manufacturing Areas are listed as conditional uses in the M-2 Manufacturing District. Section 13-1-60(d)(6) and (17) lists: Outside storage and outside manufacturing areas, provided that such uses shall be surrounded by a solid fence not less than six (6) feet nor more than eight (8) feet in height unless otherwise approved by the Plan Commission, or an evergreen planting screen not less than six (6) feet tall at the time of planting completely preventing a view from any other property or public right-of-way and shall be at least three hundred (300) feet from a residential district and Landscape Contracting, as of Conditional Uses in the M-2 General Manufacturing District

Mr. Dorsey advises that he is leasing the property and uses it as a satellite site to his main business site at 10603 West County Line Road, Milwaukee, Wisconsin. He further advises that he uses the site for outside storage and the building to work on his equipment.

Planner Censky urged caution with this request. Without a principal use being established on the site, the City is being asked to approve an unsightly ancillary use of a principal use that is in another city.

Tim Dorsey, the owner of Lakeside Contractors, advised he had been in the process of selling the trucks and trailers, which now have been sold. His intent is to store his landscape equipment behind the building and use the building for maintaining his equipment. Mr. Dorsey advised that he is at the site about once every two weeks on weekends.

Don Voigt, owner of the property across the street at W59 N249 Cardinal Avenue, advised that he had gone through a tough approval process for his building. He had concerns about granting a conditional use permit to the petitioner because he was not able to find any reference to Lakeside Contractors in his research.

Mr. Dorsey responded that he is a subsidiary of Andrew Enterprises LLC and has many legitimate accounts, such as Walgreens. The shop is needed to maintain his equipment and he cuts the grass for the property owners. He does not maintain regular business hours, but typically works at the building on Saturdays.

Commissioners discussed possible operating hours, screening and a commitment to keep the outside storage behind the screening. It was agreed that Mr. Dorsey's business should not be subject to more restrictions than what is required of his

neighbors. Commissioners concurred that any conditional use permit can be revoked if any issues arise.

Mary Ann Voigt, also an owner of the property across the street at W59 N249 Cardinal Avenue, felt that the lawn at Mr. Dorsey's site was not cared for adequately.

**Motion to Close Public Hearing:**

A motion was made by Commissioner Zimmerschied, seconded by Council Member Thome, to close the public hearing at 7:37 p.m. The motion carried without a negative vote.

**Action:**

Council Member Thome moved to approve the Conditional Use Permit for Tim Dorsey at W59 N240 Cardinal Avenue subject to, among others, the conditions that:

1. If, after an inspection this winter, it is determined that additional screening is needed, the outside storage area, (EXCEPT for the access to the parking lot on the south side of the storage area), shall be further screened by a solid fence or an evergreen planting screen. The size and location of the evergreens shall be determined based on the inspection.
2. The site will be continually maintained pursuant to Sections 8-1-5 and 8-1-7 of the City of Cedarburg Municipal Codes.
3. Exhibit A of the Conditional Use Permit be updated.

The motion carried without a negative vote.

**REQUEST VARIANCE OF REQUIRED ROAD RIGHT-OF-WAY DEDICATION AT W61 N830 SHEBOYGAN ROAD – JARED AND CANDICE FEIDER**

Planner Censky reported that Jared and Candice Feider recently purchased the property at W61 N830 Sheboygan Road originally intending to renovate and live in the existing home but, because of its age and state of disrepair, they decided to raze the building and build a new one instead at the same location. The Feiders advise that this location is critical to them as it will allow them the continued use of other amenities (out buildings) historic to the site and it offers Cedar Creek vistas that they hope to enjoy well into the future.

However, this location poses problems as the buildable area is sandwiched between the Floodplain to the rear and the public road right-of-way in front. Moreover, because the existing home lacks the required setback from Sheboygan Road, it is classified as legal non-conforming and by razing it, the Feiders lose the non-conforming protection of building location. Accordingly, the new home would need to meet the 25-foot setback requirement as Section 13-1-44(g)(1) of the Zoning Code states: there shall be a minimum building setback of twenty-five (25) feet from the right-of-way of all streets.

Adding to this problem is that Section 14-1-70(r)(1) of the Subdivision Code requires the public road right-of way be dedicated as part of this request and that no zoning permit shall be issued for a lot which abuts a public street dedicated to only a portion of its proposed width. Sheboygan Road is deemed a collector street, which requires a dedication of 40' from the roadway center. That setback requirement as measured from the ultimate road right-of-way (i.e. 40' from center), coupled with the 25-foot setback requirement, renders this portion of the lot unbuildable.

Accordingly, the Feiders are requesting a variance from Chapter 14 Land Divisions, Subdivision and Condominium Regulations, Section 14-1-70(r)(1), which requires dedication of the full road right-of-way width. If granted, the setback requirement will be measured from the existing right-of-way (i.e. 24.75' from center) which will place the new home 6' back from the existing home's location, or 25-feet back from the existing right-of-way. Section 14-1-90 sets forth the variance procedures and requires that the Plan Commission is responsible for granting such a variance.

Planner Censky advised that City staff does not oppose this request as it seems to be an appropriate course of action as it will provide the applicants use of their property consistent with uses of neighboring properties. Sheboygan Road is one of the earliest roads in the City where the current right-of-way was dedicated as part of the Assessor's Plat subdivision in 1926. Moreover, many of the homes constructed along this section of Sheboygan Road southeast to Washington Avenue predate zoning and therefore lack the required building setback as well. Because of this, it is highly unlikely that the full right-of-way width will ever be sought or dedicated. In fact, the City Engineering Department undertook the Sheboygan Road improvement project in 2016 wherein that work was purposefully accomplished within the existing right-of-way supporting the premise that dedication along this stretch of Sheboygan Road will not be required any time in the near future.

Commissioners discussed whether granting the variance would preclude the City from making improvements to accommodate future technology and whether or not a new zoning district should be created to protect the properties along the east side of Sheboygan Road that are currently legal non-conforming in terms of setbacks.

**Action:**

A motion was made by Vice Chairperson Burgoyne, seconded by Council Member Thome, to grant the variance to the required road right-of-way based on the following findings:

1. That it will provide the use of the property consistent with uses of neighboring properties.
2. Sheboygan Road is one of the earliest roads in the City where the current right-of-way was dedicated as part of the Assessor's Plat subdivision in 1926.

3. Many of the homes constructed along this section of Sheboygan Road southeast to Washington Avenue predate zoning and lack the required building setback as well.
4. It is highly unlikely that the full right-of-way width will ever be sought or dedicated along Sheboygan Road south to Washington Avenue. In fact, the City Engineering Department undertook the Sheboygan Road improvement project in 2016 wherein that work was purposefully accomplished within the existing right-of-way supporting the premise that dedication along this stretch of Sheboygan road will not be required any time in the near future.

**Continued Discussion:**

Commissioners discussed the merits of each of the findings.

**Final Action:**

The motion carried without a negative vote.

Vice Chairperson Burgoyne asked that it be determined how many properties are legal non-conforming regarding the right-of-way setback from Sheboygan Road to determine if a new zoning district should be created.

**RECOMMENDATIONS PERTAINING TO ANNEXATION PETITION AND PROPOSED CERTIFIED SURVEY MAP FOR 7404 WESTERN ROAD IN THE TOWN OF CEDARBURG – SARA DUNSTONE**

Planner Censky noted that Sara Dunstone has petitioned to have her one-acre parcel, located at the northeast corner of Webster Avenue and Western Avenue, annexed into the City to have access to public sewer and water facilities for a future land division. The lot is contiguous with the City's border to the east and south. This petition was accepted by the Common Council on July 30, 2018 and referred to the Plan Commission for review and recommendation.

State law requires that the annexed area be placed in temporary zoning until an ordinance is created to amend that zoning. Accordingly, this site will be placed in the Rs-1 (Temporary) until the applicant petitions the City for permanent zoning at a later date.

**Action:**

Commissioner Zimmerschied moved to recommend the annexation of 7404 Western Avenue to the City of Cedarburg, conditioned upon the application of the R-1 Temporary Zoning to the site. The motion was seconded by Commissioner Cain.

**Continued Discussion:**

Commissioners discussed the possible requirement of installing sidewalk along Webster Avenue to the north limits of 7404 Western Avenue. It was noted that Webster Avenue is in the Town of Cedarburg.

**Final Action:**

The motion carried without a negative vote.

**CONSIDER TWO-LOT CERTIFIED SURVEY MAP FOR W59 N894 SHEBOYGAN ROAD – BRETT BODENBURG AND NATASHA SHEPERD**

Planner Censky advised that Brett Bodenburg and Natasha Sheperd recently purchased the property at W59 N894 Sheboygan Road with plans to divide the parcel into two; separating the barn and the house on individual lots. This division is being requested because the ultimate goal is to convert the barn into a home for their father and they would reside in the existing home. They are requesting approval of their Certified Survey Map (CSM) which will result in two lots of 17,111sf and 50,226sf; each Code compliant with the Rs-3 District size requirement of 12,000sf. According to the CSM, these two sites will be supported by a single shared drive. The shared drive will also provide for the preservation of mature trees. Since this request will result in the dedication of the ultimate road right-of-way, the CSM will need to be approved by the Common Council as well.

Commissioners discussed the potential conflict between property owners associated with shared drives, noting that there is sufficient road frontage for a drive approach for the new lot. They also discussed the safety factor of having fewer driveway access points along Sheboygan Road. Commissioners also discussed the possible source of contention between property owners with the creation of the flag lot providing access to Cedar Creek for Lot 2.

**Action:**

A motion was made by Commissioner Zimmerschied, seconded by Vice Chairperson Burgoyne, to recommend the proposed two-lot CSM at W59 N894 Sheboygan Road subject to the following conditions:

1. New sanitary sewer and water lateral shall be cut into Sheboygan Road to serve Lot 1.
2. Common Council approval of the CSM.
3. The applicant to draft and record a shared driveway/maintenance easement.
4. Impact fees per new lot will be due at the time of building permit issuance (\$7,843.39 for 2018).

The motion carried without a negative vote.

**CONSIDER REQUEST FOR THREE-LOT CERTIFIED SURVEY MAP FOR PROPERTY LOCATED A N49 W5237 PORTLAND ROAD – MARC CASSEL**

Planner Censky explained that Marc Cassel is seeking approval of a certified survey map which will divide the existing 2.03-acre parcel located at N49 W7907 Western

Road into three lots of 24,892 sf, 30,266sf and 129,617sf in size; each Code compliant with the Rs-1 District minimum size requirement of 20,000sf. The existing home will be on Lot 3. Sewer and water laterals are installed in the right-of-way for Lots 1 and 2, but the building setback and elevation of the future homes will dictate whether grinder pumps will be required. The future homes on Lots 1 and 2 will require Plan Commission approval as these lots will be classified as infill. Since this land division will result in the dedication of public right-of-way, Common Council approval is necessary.

**Action:**

Commissioner Zimmerschied moved to approve the three-lot CSM proposed for the property located at N49 W5237 Portland Road, subject to the following conditions:

1. Common Council approval.
2. Payment of the per lot impact fee for Lots 1 and 2 at the time of building permit issuance (\$7,843.39 for 2018).

The motion was seconded by Council Member Thome and carried without a negative vote.

**REVIEW AND DISCUSS CONVERTED DRAFT ORDINANCE TO CREATE SECTION 13-1-77 POCKET NEIGHBORHOOD RESIDENTIAL DISTRICT**

Planner Censky reminded Commissioners that the Pocket Neighborhood proposed ordinance was presented by Kit Keller, Paul Rushing and Tom Kubala at the July 2, 2018 meeting. Since it was not in City ordinance form, staff was directed to codify it into language that can be easily inserted into the Zoning Code. It was also noted that because the idea of Pocket Neighborhood-style development is so new to this part of the country, the Plan Commissioners wanted to make sure the ordinance was well drafted to prevent the need for future amendments. Accordingly, staff has provided the converted draft for your review with the understanding that the text and intent of the original verbiage is maintained but in a form consistent with the Zoning Code. At this meeting we will simply be reviewing the draft.

Commissioners comments on the draft included:

1. Assure the proposed ordinance is constructed in detail so that there is no confusion when imposing it on a development.
2. The draft code needs substantial review to make sure it does not conflict with other City Code.
3. Determine if other City Ordinances need to be incorporated.
4. Carefully consider the proposed uses.
5. Convert the descriptive language into definitive, enforceable directives.
6. Protect the City from unscrupulous developers who would take advantage of the high-density zoning. Once an ordinance is adopted, it is available to developers by right.

7. Determine if such a community is open to public access, or if it is designed as private property only for its residents. And how to differentiate if the choice is up to the property owners.
8. Be specific as to who would manage the Pocket Neighborhood and what exactly the management responsibilities would be.
9. Provide a legal process to fund management of the Pocket Neighborhood.
10. Address concerns about winter conditions.
11. Determine process to establish building locations.
12. Determine legal process to transfer ownership of individual buildings.
13. Identify the minimum amount of open space required.

The petitioners, Kit Keller, Paul Rushing, and Tom Kubala, responded that the proposed code did address all the issues:

1. A Pocket Neighborhood is a traditional neighborhood, where houses face each other over a green space, rather than a street.
2. The green space would not be a community park if no access is provided.
3. It is not uncommon for cars to be parked in the open; many current properties do not have garages.
4. Each owner would buy a share of the Pocket Neighborhood.
5. A number of sites in Cedarburg would work.
6. Proposed ordinances have been provided to the City.
7. A Pocket Neighborhood is more like a co-operative; not a condominium project nor a Planned Unit Development (PUD).

Planner Censky would take the comments provided at the meeting and research pocket neighborhood ordinances already in effect. A new draft would be provided at a future meeting for Plan Commission review.

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

No comments were offered by the Plan Commissioners.

#### **MAYOR'S ANNOUNCEMENTS**

Mayor O'Keefe had no announcements.

#### **ADJOURNMENT**

A motion was made by Council Member Thome, seconded by Commissioner Zimmerschied, to adjourn the meeting at 9:17 p.m. The motion carried without a negative vote.

Darla Drumel,  
Administrative Secretary