

CITY OF CEDARBURG
PLAN COMMISSION

PLN20200420-1
UNAPPROVED MINUTES

April 20, 2020

A special meeting of the Plan Commission of the City of Cedarburg was held on Monday, April 20, 2020 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, Vice Chairperson Mark Burgoyne, Kip Kinzel, Adam Voltz, Heather Cain, Sig Strautmanis

Excused - Council Member Patricia Thome

Also Present - City Planner Jon Censky, Council Member Jack Arnett, Administrative Assistant Victoria Guthrie, news media

STATEMENT OF PUBLIC NOTICE

Planner Censky confirmed that the agenda for the meeting had been posted and distributed in compliance with the Wisconsin Open Meetings Law.

PUBLIC HEARING REGARDING CONDITIONAL USE APPROVAL TO BUY/SELL FIREARMS AS A HOME OCCUPATION FOR HIS RESIDENCE LOCATED AT N65W7335 CLEVELAND STREET – RICHARD LEACH

Mayor O'Keefe declared the public hearing open at 7:01 p.m.

Planner Censky advised that Petitioner Richard Leach is a former Police Officer who is in the process of applying for a Federal Firearms License (FFL) to legally acquire, transport and occasionally sell firearms from his residence at the above referenced address. Since this use involves some business activity from his home, it is classified as a home occupation. While City Ordinance **Section 13-1-24, Home Occupations**, contains two lists of uses: permitted home occupations and prohibited ones, neither list includes the acquisition, transportation and sale of firearms. However, **Section 13-1-24(d), Unspecified Home Occupations**, states that *any proposed home occupation that is neither permitted nor specifically prohibited shall be considered a conditional use and be granted or denied at the discretion of the Plan Commission*. Accordingly, Petitioner Leach is requesting conditional use approval to operate under the terms of an FFL from his home.

A review of Wisconsin law indicates that an FFL is required to enable an individual or company to engage in a business pertaining to the manufacturing or importation of firearms and ammunition, or the interstate or intrastate sale of firearms. According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), to acquire an FFL one must:

1. Be 21 years of age.
2. Have a business venue for selling firearms.
3. Not have a history of criminal actions, mental illness and dishonorable military discharge.

After receiving an application for an FFL, the Federal Firearms License Center will verify the information and then run a background check on the person listed on the application. Following the background check, an Industrial Operations Investigator (IOI) will contact the applicant to conduct an interview to again verify the information and to ensure the applicant is knowledgeable on federal, state and local laws and requirements of the business. The IOI will also inspect the premises to make sure that the business properties meets ATF security regulations and that there be a lock on the entrance to the premises and a lock on the storage location of the firearms.

Moreover, Planner Censky notes that State law protects this type of use as Wis. State Stats **s. 66.0409 (2), Local Regulation of Weapons**, which reads: ***Except as provided in subs. (3) and (4), no political subdivision may enact or enforce an ordinance or adopt a resolution that regulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration, or taxation of any knife or any firearm or part of a firearm, including ammunition and reloading components, unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.***

Planner Censky has reviewed the application and its contents, and would like to remind Commissioners that any requirement or condition of approval must be related to the City's ordinance, and to the extent practicable, must be measurable and may include, among others, the permit duration, transfer or renewal. Included in the packet for this meeting is the draft conditional use document for consideration. Planner Censky recommends approval subject to the conditions contained therein.

Petitioner Leach explained that as the National Director of the not for profit youth development organization Scholastic Action Shooting Program (SASP), part of his job is to raise funds to support the program. Currently, SASP works with an FFL in Burlington, Wisconsin, who receives their firearms and ships them to locations where their events are being held. This type of transportation ends up costing the organization a significant amount of money. If Petitioner Leach obtains his FFL, he can legally transport firearms, saving money which can then be used to fund other programs, such as scholarships for the participants.

Petitioner Leach stated that the application he has filed with the ATF requires general hours of operation, which he indicated would be 10:00 a.m. to 9:00 p.m., by appointment. Planner Censky stated this information will be updated on the draft CUP.

Council Member Arnett pointed out that he has not received any negative feedback from the constituents within his district regarding this request. Petitioner Leach added that he went door to door to speak with his neighbors prior to submitting his application in order to make sure that he could address any issues they may have with the nature of his proposed business.

ACTION TO CLOSE PUBLIC HEARING

A motion was made by Commissioner Kinzel and seconded by Commissioner Cain to close the public hearing at 7:10 p.m. The motion was carried without a negative vote, with Council Member Thome excused.

Commissioner Cain requested that Planner Censky make updates to the draft CUP to reflect the hours of operation between 10:00 a.m. to 9:00 p.m. She also would like him to correct the draft CUP wording from "Owner" and "Permittee" to reflect that the holder of the permit is both "Owner and Permittee" for this particular CUP.

Commissioner Strautmanis questioned the Petitioner on how the firearms would be secured, and how he would make sure this practice is in compliance with the FFL. Planner Censky answered that as part of the background check performed by the ATF, the assigned IOI will perform a physical inspection in order to ensure the firearms are properly secured. After this initial inspection, future inspections are conducted on an at-will basis to ensure continued compliance. Petitioner Leach added that the firearms will be secured inside the home as opposed to a separate structure. Commissioner Strautmanis requested that Planner Censky include the responsibility of firearms security be added to the draft CUP in addition to the acquisition and sale of firearms.

Petitioner Leach advised the Commissioners that the process for obtaining his FFL has been delayed due to COVID-19 actions that are currently restricting inspections. He wants to make sure his approval for the CUP does not expire prior to his FFL being issued. If this step gets delayed for several months, Planner Censky advised Petitioner Leach to contact him in early March of 2021 in order to request an extension of the CUP approval by the Plan Commission.

Action:

A motion was made by Commissioner Cain to approve the CUP as a permitted use with changes to the draft CUP that indicates the business hours stated above, changes references from "Owner" and "Permittee" to "Owner and Permittee", and includes the responsibility of the Owner and Permittee to secure the firearms.

This motion was seconded by Commissioner Kinzel and carried without a negative vote, with Council Member Thome excused.

COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS

No comments or announcements were offered by Commissioners.

MAYOR'S ANNOUNCEMENTS

Mayor O'Keefe had no announcements

ADJOURNMENT

A motion was made by Commissioner Strautmanis, seconded by Commissioner Cain, to adjourn the meeting at 7:17 p.m. The motion carried without a negative vote, with Council Member Thome excused.

Victoria Guthrie
Administrative Assistant