

CITY OF CEDARBURG  
PLAN COMMISSION

PLN20200203-1  
UNAPPROVED MINUTES

February 3, 2020

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, February 3, 2020 at Cedarburg City Hall, W63N645 Washington Avenue, second floor, Council Chambers. The meeting was called to order at 7:00 p.m. by Vice Chairperson Mark Burgoyne.

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

Excused - Mayor Michael J. O'Keefe

Also Present - City Planner Jon Censky, Administrative Assistant  
Victoria Guthrie, news media

**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 to approve the minutes of January 6, 2020 as presented. The motion was seconded by Commissioner Voltz and carried without a negative vote, with Mayor O'Keefe 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.

**PUBLIC HEARING REGARDING CONDITIONAL USE PERMIT FOR A MICRO-BREWERY OPERATION LOCATED AT W51N729 KEUP ROAD – GARY KABITZKE/MAN SHED BREWING CO LLC**

Vice Chairperson Burgoyne declared the public hearing open at 7:03 p.m.

Planner Censky reminded the Commissioners that during the November 4, 2019 Plan Commission meeting, approval was recommended to the Common Council to add micro-breweries to the list of conditional uses in the B-2 Community Business District. That recommendation was approved by the Common Council on December 9, 2019, thus establishing the process for Petitioner Kabitzke and his business partner Robert Vanderloop to request approval of their micro-brewery business, Man Shed Brewing Company, to operate in the former Larson Paint store at W51N729 Keup Road.

Man Shed Brewing Company will produce craft beer for distribution at stores, bars and restaurants. They will also offer a tasting bar for the sampling and sale of soda, beer and wine. The operation will occupy the south two-thirds of the building. Since Northern Lights Tan Spa will continue to occupy and operate out of the north portion of the building, this means that the micro-brewery customer and delivery traffic will mostly be limited to the south and east sides of the building. The Man Shed micro-brewery will be a family-run operation that will also include two part-time employees.

Planner Censky explained 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. A draft of the Conditional Use document was provided in the meeting packet for consideration. The City staff recommends approval subject to the conditions contained therein.

Several members of the public attended the meeting and presented the following questions and statements regarding the operation of this business.

Joseph Schmitt, W52N687/689 Highland Drive, served as Associate General Counsel at Miller for years, and wanted to make sure the Commission was aware of what a brewery operation involves. First, he explained that a brewery involves heavy truck traffic. Second, he said there is a definite odor, which may be an issue for the residents in that area. He stated his major concern is about trucks taking Highland Drive in order to get to Routes 43 or 41, as he believes this would not be good. He said that a brewery is a production facility that uses a large amount of grain to ferment, and generally ships out their brew in bottles. His final concern is that each brewery has the right to have what amounts to a bar on their location and would like to know if the Commission is ready to approve that. He owns a building on Highland Drive and when the City came to him and asked to designate it as a historic building, he said fine. When his next-door neighbor decided they wanted to operate a fitness facility, he said fine. But he thinks approving a brewery is something the Commission should think twice about, and he believes it would be better suited for Pioneer Road.

Planner Censky responded that a micro-brewery is not a full-blown brewery, and the Petitioner would be required to get the proper liquor licensing through the Common Council.

Petitioner Kabitzke responded by stating that they will not be running a bottling operation, as it is not economical for them. He explained that they will use a canning facility that will probably not be on this property. He stated they will be kegging and selling their brew onsite by the glass or kegging it and sending it offsite.

Petitioner Kabitzke stated that he was glad to discuss the issue of odor. He said that modern commercial brewing systems do not smell anymore. He stated that if you go to the Fermentorium any day of the week, you will notice they do not smell. He pointed out that downtown Grafton now has a micro-brewery, Sahale, that is located in the middle of an apartment complex, and it does not smell. He explained that they will have a heat

recovery system used during the boiling process to remove the heat, which will then be used to produce hot water that will be used for cleaning. During this stage of the process the water condenses out as steam at which point could potentially be full of hop or grain odors. That steam is collected inside the building. He said there is another potential point where there might be odor, and that is during the fermentation process. He explained that is cleaned up by pumping CO<sub>2</sub> through small amounts of hydrogen sulfide into a container that has distilled water and baking soda, which will neutralize the hydrogen sulfide. He stated that those are the only two places that would produce any kind of odor, and they will have the described controls in place. He acknowledged that there was a concern in the neighborhood regarding spent grain and hops sitting outside in a container that might start creating an odor and stated that while it is true there is an odor, the odor is comparable to grass clippings. He explained that after grain has been processed it is dense and compact. At this point, the spent grain will be transferred into a sealed plastic container and placed on a pallet for local farmers to pick up. The farmers will use this as feed for their animals at no cost to them. In doing this, the business is not sending the waste to a landfill, as it will be repurposed.

Petitioner Kabitzke addressed the issue of the amount of grain being delivered. Their standard batch uses about 550 lbs. of grain, which takes up about a four-foot cubed space when dry. He explained that the business will not be brewing daily; in fact, they are planning to brew around 100 barrels per year, meaning they will average their brewing process at around one batch every other week. Petitioner Kabitzke explained that dry grain will likely be delivered via panel truck, possibly about once per month and the transfer of material will take place inside of their facility. Other raw materials such as yeast and hops will most likely be received via FedEx, UPS or USPS.

Deb Dassow, N73W5341 Georgetown Drive, would like it noted in the record that there appears to have been only four or five notices sent out to a very dense neighborhood. After speaking with Planner Censky prior to the meeting, she learned that due to local ordinance or local law that if you are within 300 feet of the facility you get a notice, and if you are farther out you do not get a notice. She does not think it is her responsibility as a tax paying citizen in this community to warn her neighbors of something that is happening. She really has an issue with that. She said she and her husband walk a lot and walk downtown on Sundays. She said they usually walk to the bakery and walk home, and she noticed there was a smell coming from Rebellion, not the feed mill, on Sunday morning. She does not believe there will be no smell. She said having a property that close, literally the next cul-de-sac behind the building makes her worry about her property values. She is worried that they will be selling their beer in growlers like other brewers in town so that people will be leaving with beer. She is worried that they will buy wine on the property and leave with it. She stated that the Petitioner dropped off letters that describe the business and the hours. She stated they have an elementary school four tenths of a mile down the road. She observed that it is called the Man Shed and wants to know if that means women are not allowed to go in, and stated she is just curious since it is not a 2020 name for a facility in her opinion. She is concerned that living on Georgetown Drive, which she considers a thoroughfare, that people leaving the business are going to tear down Georgetown Drive. She does not believe that everyone is going

to use the driveway for the business, and they are going to get out and go right past her house after being in a brewery from noon until 10 o'clock at night on a Saturday. She stated she has a real concern as a property owner that has lived in this community for 36 years and she is worried about safety issues, she is worried about the smell, she is worried about attracting rodents to that back lot because of the grain. She said it is a very dense neighborhood and is set up to be reminiscent of a European community, meaning the houses are very dense and the yards are sometimes .25 of an acre. She said her Council Member reminded her at one point in time when she was not happy about a giant camper in her neighborhood that she needed to be neighbor-friendly. She said these are not going to be her neighbors necessarily, that are going to the Man Shed, and they will not necessarily be leaving by going back out on the highway. She said they are going to be going right down Georgetown Drive, because if you live in the community it is more convenient. She wishes that decision makers take a walk through the neighborhood before making a decision.

Planner Censky emphasized that state law requires notice within 300 feet, which the City follows, as well as publishing in the News Graphic. Planner Censky clarified that the 300 feet requirement is from the property line. Vice Chairperson Burgoyne pointed out that if a resident thinks 300 feet is too short and would like to change it, they should talk to their Alderperson, as that is how things change.

Michael Carr, 728 Keup Road, Town of Cedarburg, stated that he and his wife live directly across the street from the proposed micro-brewery. He said they have lived there for approximately ten years. Prior to that he has 45 years of public service including two sheriff offices and correctional facilities. They moved to this location from Iowa to make this their forever home. At the time they bought the property they knew there was a paint store across the street and knew there was a tanning salon. Those were businesses that they could live with. When they found this property on the internet, his wife said she did not want businesses across the street. Once they came and looked at the location and saw what businesses were there, which was an ice cream parlor, a paint store and a tanning salon, they never envisioned a bar or brewery or anything of that nature moving across the street. At 1.2-acres, they have the largest lot in that area, and they notice everything that happens in the neighborhood including the B-2 business district that is being discussed. He described this area as having no more than ten businesses, and believes it is probably one of the smallest B-2 business areas in Cedarburg. Of those ten or fewer businesses, all of them are quiet, including the ice cream parlor. They have an elementary school that is .5 miles from this area. At .4 miles, a Plan Commission approved development is going up on Keup Road with homes listed at \$500,000, \$750,000 or more per unit, which he described as an exclusive area being developed on what was once a farm field. When talking about a micro-brewery being within four tenths of a mile, he is concerned what that will do to the value of these properties. When they moved to Cedarburg, they saw a lot of artistic buildings and artwork and those kinds of wares. They thought this was a place they wanted to live. They felt the investment made was a type of life they wanted to pursue after retirement. They are avid walkers and have noticed that many of the artists and stores downtown are changing to micro-breweries, or distilleries or resale shops. The B-2 area off Keup Road is different and should not

become a downtown. He mentioned that the Town of Cedarburg was recently in a similar situation as this, when they were asked to consider granting a liquor license to Casey's convenience store on Wauwatosa Road. He said the Town Commission denied the license due to the proximity to a City residential area, as well as to the local high and middle schools. He said this is the reverse situation, as he lives in the Town of Cedarburg, and he believes the City should make the same decision. He said this B-2 district is like an island surrounded by residential areas.

Mr. Carr mentioned the letter that went out to residents from the City made the business sound like a sampling only bar, but the letter that went out from the Petitioner states they will be serving beer and wine. He stated that he believes the proposed operating hours of the brewery would not be legal, as wine cannot be sold after 9:00 p.m. Additionally, state law requires sampling to end at 7:00 p.m. Therefore, he would like to know what the business will be doing after that time.

Vice Chairperson Burgoyne clarified that the service of wine and liquor licensing is not up for discussion at this meeting. This is an issue that will be decided by the Common Council when the Petitioner submits their application for a liquor license.

David Larson, who along with his wife owns W51N729 Keup Road, the location where the micro-brewery has proposed to operate, stated they have owned the 1¾-acre parcel since 1977, and wanted to give the Plan Commission a historic perspective of the parcel by providing the following timeline:

- The main building was constructed in late 1950's/early 1960's as an A&P grocery store, which operated out of this location for several years.
- In the mid 1970's Tri-Par Sales and Service purchased the property and operated on the north half of the building (primarily where the tanning salon is), and that was a liquor store. Tri-Par also sold firewood, propane tanks and as a busy store, had multiple deliveries and a lot of traffic. Back then deliveries were made to the west side of the property, and in fact, there is still a cut out in the street from the service drive on the north side of the building off Georgetown Drive. Tri-Par also added the south addition and used that as a Simplicity dealership, which serviced small engines and sold outboard motors.
- In the mid 1980's Tri-Par left, and the space became Ozaukee Hardware for many years, which also received many deliveries. Mr. Larson's family opened a paint store in the building and received full semi loads of paint deliveries on a weekly basis. In addition, many small trucks made deliveries to the businesses. When this business was taken over by Sherwin Williams, these deliveries continued.

During the time that Mr. Larson has owned the parcel, truck traffic from these businesses was never an issue. He pointed out that the Man Shed micro-brewery would be a much smaller operation than these businesses, meaning truck traffic should not be an issue.

Mr. Larson stated that as far as odor is concerned, he takes the owner's word that this will not be an issue and pointed out that what is objectionable to some is not to others, such as the Cedarburg Roastery coffee shop. He recalls that when it opened in downtown Cedarburg people initially complained about the odor, but it never bothered him. He understands the residents' concept of "Not in My Backyard" when it comes to businesses. He shared his own experience of when he appeared in front of the Plan Commission in opposition of the Lasata development being built behind his house. He stated that he discovered after Lasata came in that he was wrong for a whole number of reasons. He understands neighbors' concerns. He informed the Commission that he has spoken with several business owners wanting to lease his space on Keup Road. However, he considers himself a very picky landlord and wanted to make sure his tenant provided the right business and business model for the area. A micro-brewery will not be an inexpensive investment for the owners and for him as a landlord. He has been a Cedarburg resident for 40 years, and believes it is not good for the community or neighborhood to have vacant buildings. This micro-brewery is a small business that started out as a hobby and grew as a love for brewing and added that you cannot argue the success and popularity of where micro-breweries are today. He compared the current popularity of micro-breweries to the popularity of coffee shops a few years ago. When Java House opened in downtown in the late 1970's/early 1980's, he never in his wildest dreams expected a business to thrive by selling cups of coffee, but now Starbucks, the Roastery and Fiddleheads have joined them and are successful businesses in Cedarburg. He believes the same will be true for micro-breweries. They are very different than a bar or a tavern, they attract a different clientele, and will not be open until 2:00 a.m. He does not believe that people will leave the establishment and go down Georgetown Drive. As a resident of Cedarburg for 40 years, he still does not know his way around Georgetown. He gets lost every time he goes in there, and he avoids it. It was designed that way in order to discourage through traffic.

James Blank, N73W5341 Georgetown Drive, grew up in La Crosse. He worked at Heileman Brewery every summer of his college years, and his uncle was a brew master. He asked Planner Censky for clarification on the preliminary meeting held on November 4 regarding this matter and questioned how the public was notified. Planner Censky stated that in November the Plan Commission made a recommendation for approval to the Common Council. During the December meeting of the Common Council they discussed and approved to amend the B-2 zoning text to include micro-breweries as permitted by conditional use. Planner Censky clarified that as a text amendment to the Zoning Code, it was not specific to this particular site and notices were not required to be distributed by state law.

Mr. Blank went on to say to his Council Member, Patricia Thome, that he thinks this should be changed locally, as he believes that notifications should have been sent out on a broader scale to all citizens affected, as he does not believe that 300 feet is very far. He stated that he does not know how many truck drivers that are CDL licensed are driving after consuming alcohol, but he thinks that is a major concern of the people in this area. They may not be coming down Georgetown Drive, but he lives there, and they travel down Georgetown Drive during the day. They have officers there from time to time sitting with

their radar guns. He believes that is a bigger concern than what he has heard from the proponents of the Man Shed. Addressing the issue that the building owner gave, he said he does not believe that there were that many houses in the area, as his house was built in 1974 and a lot of other houses have been built along Keup. Vice Chairperson Burgoyne interjected to state that the Chairperson has a right to correct information given, and wanted to state that he also lived in Georgetown for 25 years and the homes there were generally built in the early 1960's. Vice Chairperson Burgoyne said this does not mean he is implying that all of them were, but they were built after Mr. Larson's building was there. Mr. Blank stated that the houses within 300 feet were not there. Their cul-de-sac was all built in 1974, except for two of them that were built in the 1990's. He noticed that the building was sitting vacant for a of couple years and finds it hard to believe that this business was the best choice for the landlord.

Mr. Blank asked the Commission for clarification on what the difference was between the Commission allowing a micro-brewery in this area and the Commission denying a CBD dispensary in the last year. Planner Censky explained that the CBD dispensary was requesting to operate in the downtown area, which is zoned as a B-3 Central Business District. The micro-brewery is requesting to operate in a B-2 Community Business District. These districts are different and have different uses that are permitted to operate and permitted to operate conditionally. The CBD dispensary was not listed for use in the B-3 Central Business District, nor was it similar to other listed uses in that district; therefore, it was denied. Although micro-breweries were not listed in the B-2 Community Business District as permitted to operate or permitted to operate conditionally, micro-breweries are similar to other uses that are listed, such as bars, taverns, micro-distilleries, and liquor stores. When the Plan Commission considered adding micro-breweries to the list of uses that can be permitted to operate conditionally in the B-2 Community Business District, it made sense to recommend that the use be added to the list.

### **ACTION TO CLOSE PUBLIC HEARING**

A motion was made by Council Member Thome and seconded by Commissioner Kinzel to close the public hearing at 7:51 p.m. The motion was carried without a negative vote, with Mayor O'Keefe excused.

Petitioner Kabitzke was asked to address a question that was posed by Mr. Carr regarding whether they intend to stop serving at 7:00 p.m. Petitioner Kabitzke stated that they will be serving during the hours listed on the letter that was distributed to neighbors.

Discussion by the Commissioners continued, as they requested additional clarification from the Petitioner. Petitioner Kabitzke addressed these questions by stating that the demographic for their micro-brewery operation are people between the ages of 35 – retirement age. He said they are planning to apply for a liquor license through the City that will allow their establishment to serve beer and wine. He stated that he is confident that their process will not emit bad odors to the neighborhood. He admitted that he is unsure of the delivery schedules for their products at this time, other than they will be taking place during business hours. He added that he does anticipate increased truck

traffic during the construction and set up phase of the business. He said they do not plan on hosting outdoor bands or offering outdoor drinking at their building. He did say they may hold open mic nights and music inside the building and agreed they will not prop open any doors or windows that would allow the sound to cause a disturbance to the neighbors.

Petitioner Kabitzke asked and was granted permission from the Commission to read from the last paragraph of their letter sent out to their neighbors. He stated they intend to show good corporate social responsibility and their aim is to achieve a positive impact on the community. In addition they plan on having fundraisers and will operate their business in an environmentally sound way.

Commissioner Strautmanis stated that he believes patron behavior at this establishment will be different than would be found at a typical bar due to the demographic and hours of operation. He explained that when a Conditional Use permit is issued, it is specific to the business, and does not go with the property if the owners decide to sell or move.

Commissioner Cain pointed out that this establishment is different from Casey's in that it is not a convenience store where children will frequent to buy snacks or otherwise patronize. She explained that the hours of operation are included on the Conditional Use permit, and any variation of that would have to have prior approval by the Plan Commission. She believes that due to the Petitioner's investment in their business they will show a good faith effort to follow the restrictions of the Conditional Use permit.

Council Member Thome agreed and believes the Petitioners will back up their investment. She said the Commission has a history of revisiting Conditional Use permits for compliance and wants to make sure that the residents are aware of that as well. She also wanted to state that she has received positive feedback in support of this business from neighbors who are looking forward to having this type of business within walking distance. She believes that current technology will be in place to control odors as the Petitioner claims. She stated she would like to vote to move forward on approving this conditional use permit.

Planner Censky further explained that issuing a Conditional Use permit puts conditions in place that the business owner must follow as requirements to operate. He said substantiated problems or failure to comply with the conditions on the permit may result in the revocation of the permit. He also explained that per Wisconsin law it is difficult to preclude a business from operating on an allowed Conditional Use, and if the City denies a person's Conditional Use application without substantial evidence, the person can appeal that decision to the circuit court.

Commissioner Kinzel agreed with the Commissioners' previous statements and wished the Petitioner success in their business venture.

Planner Censky will update the Conditional Use documentation to reflect the proper business hours of Monday through Friday 4:00 p.m. to 10:00 p.m., Saturday 12:00 p.m. to 10:00 p.m., and Sunday 12:00 p.m. to 5:00 p.m.

**ACTION:**

A motion was made by Vice Chairperson Burgoyne to approve the Conditional Use permit with updated business hours, for operation of a micro-brewery at W51N729 Keup Road, in the B-2 Community Business District. This motion was seconded by Commissioner Kinzel and carried without a negative vote, with Mayor O'Keefe excused.

**REVIEW PROPOSED ORDINANCE REGARDING COMPOSITION AND APPOINTMENT TO CITY PLAN COMMISSION SEC 2-4-5(a)(b) AND RECOMMEND TO COMMON COUNCIL**

Commissioner Voltz recused himself from the discussion.

Commissioners are being asked to consider recommending approval of an Ordinance that will serve to change the composition of the Plan Commission. This change would provide some flexibility in where Commissioners reside since currently, all members of the Commission must be citizens of the City of Cedarburg. Commissioner Voltz recently sold his home in the City and moved into the Town of Cedarburg; as such, the composition of the Plan Commission is no longer Code compliant. Therefore, the intent of this change is to allow one Plan Commission Member to reside outside of the City if he/she is affiliated with a business located within the City.

Per City staff, Commissioner Voltz was appointed to the Commission three years ago and has since proven to be a huge asset in helping assess site and architecture plans, meeting with applicants at a moment's notice and providing general guidance regarding City development. Since he continues to be committed to Cedarburg through his profession as an architect with the local Kubala/Washatko Architectural firm, staff believes his continued contribution to the Plan Commission serves only to benefit the City. Accordingly, staff recommends approval.

**Action:**

A motion was made by Commissioner Strautmanis to approve the Ordinance with recommendation to the Common Council. This motion was seconded by Commissioner Cain and carried without a negative vote, with Mayor O'Keefe excused and Commissioner Voltz recused.

Commissioner Voltz resumed his duties as Plan Commissioner.

**COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS**

No comments or announcements were offered by Commissioners.

**MAYOR'S ANNOUNCEMENTS**

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

**ADJOURNMENT**

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

Victoria Guthrie  
Administrative Assistant