

CITY OF CEDARBURG
PLAN COMMISSION

PLN20170501-1
UNAPPROVED MINUTES

May 1, 2017

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, May 1, 2017 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 Kinzel.

Roll Call: Present - Mayor Kip Kinzel, Council Member John Czarnecki, Mark Poellot, Greg Zimmerschied, Heather Cain

Excused - Mark Burgoyne, Daniel von Barga

Also Present - Council Members Jack Arnett and Patricia Thome, City Planner Jon Censky, City Attorney Tim Schoenenberger, 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

A motion was made by Commissioner Zimmerschied, seconded by Council Member Czarnecki to approve the minutes of April 3, 2017 as presented. The motion carried without a negative vote, with Vice Chairperson Burgoyne and Commissioner von Barga excused.

COMMENTS AND SUGGESTIONS FROM CITIZENS

Mayor Kinzel advised that comments from the public would be accepted at this time, or would be accepted at the time an issue is being discussed. No comments were offered at this time.

PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT REQUEST TO CONSTRUCT A TELECOMMUNICATIONS TOWER IN PLACE OF THE WATER TOWER LOCATED AT N49 W6411 WESTERN ROAD – CEDARBURG LIGHT & WATER

Mayor Kinzel declared the public hearing open at 7:07 p.m. Administrative Secretary Drumel confirmed that proper legal notice had been provided.

Planner Censky noted that Cedarburg Light & Water currently has lease agreements and conditional use permits for five wireless telecommunication carriers on the City water tower located at N49 W6411 Western Road. These carriers each have their

antenna with the associated cables physically mounted on the water tower and their equipment shelter at the base. Given the age of the water tower coupled with the weight of the added antennas and associated cables, the structural integrity of the tower is nearing its limits. Because of this, Cedarburg Light & Water has decided to begin planning for a new water tower on their Wauwatosa Road site and the removal of this one.

However, before the Western Road tower can be razed, the City needs to have a plan to address the lease agreements they have with the existing carriers. Accordingly, after much deliberation, it has been determined that the best solution is for the City to construct a new monopole to be able to transfer the antennas and equipment to before razing the water tower.

While the new monopole will be less obstructive than the water tower, it measures 192 feet high whereas the water tower is 154 feet high. This new cell tower will be located on the site north of the water tower site directly behind the police reserves garage and will be served by a 12-foot wide access drive. The base of the cell tower would be twenty-five feet by twenty-five feet surrounded by an eight-foot high chain link security fence.

Planner Censky advised that State law governs the siting of telecommunication towers. Even though the City Code requires that these towers shall not exceed a height equal to their distance from the nearest property line, the Ordinance is unenforceable.

Planner Censky further advised that a letter had been received from John M. Wirth of Mallery & Zimmerman, representing Jackson Western LLC, the owner of the former Mercury Marine Plant #1 site at N49 W6326 Western Road, located across the interurban trail from the proposed monopole. This letter is attached to these minutes. Mr. Wirth maintained that State Statutes allow engineering for the monopole "showing that a [pole] is designed to collapse within a smaller area than the setback or fall zone area required in the zoning ordinance" and requested action be tabled until that engineering was provided and assurance that damage to neighboring properties caused by a falling tower would be covered by the City's insurance.

City Attorney Schoonenberg stated that the City Code cites a limitation on height alone and does not reference a fall zone. Therefore, it is unenforceable. A conditional use permit does not require an engineering report and the City is fully insured, so there is no legal reason to delay approval.

Planner Censky advised that when the engineering is completed, it will be reviewed and will require the approval of the City Engineer, who will assure the structure is sound.

Commissioner Cain expressed concern about the different look and feel the monopole would have versus the water tower, and if humming from the facility has been

considered, noting it would be located close to homes. She questioned whether there had been an investigation to find a better location for the new monopole.

Commissioner Zimmerschied advised that other communities had designated their water towers as Landmarks, which could be a possibility rather than razing the existing structure. He also suggested that the monopole be designed more in keeping with the historic nature of Cedarburg, perhaps a modern version of a water tower look and feel with "Cedarburg" or some other designation added.

Commissioner Poellot advised that he was also visually struggling with the design of the proposed tower.

Commissioners and the public were advised that Light & Water is pushing to make the change because of their concerns about structural safety with the existing water tower. It was noted that the City is funding the tower and the proposed design would keep the costs down, whereas personalizing the structure would drive the costs up. The proposed design would also allow easier access to replace equipment, such as a change for 4G to 5G, where old equipment is now left on the water tower when improvements are made. If the City were to construct the tower, it would retain the revenue it receives from the cell companies. Otherwise, the cell companies would have the right to construct towers wherever they see fit without City control, and instead of one structure, the result may be several towers within the residential areas of the community. The negative aspect of a cell tower designed to collapse on itself is that it howls. The proposed monopole has a super high rating; there would be other major property damage prior to the tower ever falling. As far as location, people are already used to a tall structure at the site and it is more appropriate to locate such a structure near the already existing high tension lines.

Council Member Arnett reported that the Common Council has asked about other aesthetics, but have not found a viable option. There are a few alternative structure options, which are found to be more costly and have performance issues.

No other public comments were offered.

Action to Close Public Hearing:

Mayor Kinzel moved to close the public hearing at 7:30 p.m. The motion was seconded by Commissioner Zimmerschied and carried without a negative vote, with Vice Chairperson Burgoyne and Commissioner von Barga excused.

Action on Conditional Use Request:

A motion was made by Mayor Kinzel, seconded by Council Member Czarnecki, to approve the conditional use permit for a monopole to be constructed at N49 W6411 Western Road subject to City Engineer review of the engineering and that the letter from Attorney Wirth is included in the minutes as part of the official record. The motion

carried without a negative vote, with Vice Chairperson Burgoyne and Commission von Bargen excused.

REQUEST FOR ZONING TEXT AMENDMENT TO CONSIDER ALLOWING ROOFED PERGOLA OR SIMILAR FENCE STRUCTURE WITHIN THE REAR YARD SETBACK ARE FOR SITES WITHIN THE B-3 DISTRICT – JOVANA CUBRIC/FIDDLEHEADS COFFEE

Planner Censky reported that Fiddleheads Coffee is proposing to install a seasonal patio enclosed by a pergola structure in the rear yard of their shop at W62 N605 Washington Avenue. The intent is to expand the outdoor seating area from the south side of the building to the area directly to the west and between the building and the adjacent building that fronts Turner Street. Review of their site; however, reveals that there is insufficient room in their rear yard for the proposed pergola enclosure to meet the required fifteen-foot rear yard setback. Fiddlehead's rear yard is approximately eighteen feet deep.

As a result, Fiddleheads Coffee is requesting a Zoning Code text amendment to allow the Landmarks and Plan Commissions to consider, on a case-by-case basis, outdoor patios enclosed by a pergola or similar fence structure in the rear yard setback area for sites in the B-3 Central Business District.

At their April 13th meeting, the Landmarks Commission voted unanimously to recommend approval.

City Staff feels that this request is in keeping with the policy of encouraging outdoor activity in the downtown area of Cedarburg and therefore recommend approval.

Jovana Cubric of Fiddleheads Coffee explained that the pergola was desired to make the patio more private for their customers and that it would be located two-feet away from the neighboring fence.

Council Member Czarnecki suggested that conflicts with residential neighbors to these outdoor patios be avoided by adding language that would not allow the use when the property is adjacent to residential properties or that permission must be received from the neighboring resident(s). He cited the complaints he has heard from the neighbors to the outdoor events held by the Cedarburg Art Museum.

Commissioner Cain pointed out that adjacent property owners are given notices when requests are reviewed by the Plan Commission and would have the opportunity to provide input at that time.

Commissioner Zimmerschied noted that the tables under the pergola could be pulled back further away from a lot line.

If recommended, the text amendment would be forwarded to the Common Council for a public hearing, and then the request for the pergola would be submitted to the Plan Commission for action.

Action:

Commissioner Zimmerschied moved to recommend approval of the text amendment as proposed. The motion was seconded by Council Member Czarnecki and carried without a negative vote, with Vice Chairperson Burgoyne and Commissioner von Barga excused.

REVIEW SITE, ARCHITECTURAL, LANDSCAPING AND LIGHTING PLANS FOR PROPOSED NEW GARAGE AT W68 N563 EVERGREEN BOULEVARD; COMMUNITY METHODIST CHURCH

Planner Censky noted that Community Methodist Church is requesting approval to construct a garage off the Juniper Lane entrance to their parking lot. The proposed garage will be setback twenty-five feet from the Juniper Line right-of-way; twenty feet north of their south property line; and will measure 24' X 32' for a total of 768 square feet in size.

According to their plans, the garage will have two overhead doors and one pedestrian door on the north elevation and both the east and west elevations will include a 48" X 48" window on the lower portion and a 24" X 24" window on the upper. The south elevation will have no windows or doors. The building will be covered with Double 5 vertical Vinyl Siding with a Vinyl fake-brick base and an asphalt shingled roof.

Dave Blachmer of Community Methodist Church reported that they have a shed, but need more room for storage. The new garage would have room for lawn equipment etc., storage and shelving on one side, storage of Christmas trees and similar items above and then room for a workshop on the other side.

Carol Miracle of W69 N533 Margie Lane objected that the size of the garage would be more width than needed for three cars and eight feet deeper. The architecture has an industrial look. It will be an eyesore that will decrease neighboring property values and reduce the City's tax income. Ms. Miracle asked that a requirement of approval be to plant dense screening of arborvitae on two sides of the structure.

Ms. Miracle noted that Community Methodist Church showed concern for the neighbors during their renovation. However, before a building permit is issued, she proposed the Church come back with a landscaping plan and a garage plan with more of a green look to be more compatible with the residential neighborhood.

Mr. Blachmer stated that a garage cannot be hidden and the direct neighbor already has a heavy tree screen along the property line. The location of the new garage is pushed as far north as possible to be set away from the neighbor. The area closer to

the Church is being left open in the event that sometime in the distant future, there is a desire to add an educational facility.

Commissioner Poellot expressed concern over the siding material. Mr. Blachmer responded that if there was an increase in the cost of the siding material, the garage would not be economically feasible. The Commissioners were assured that the Church wants a nice looking building as well.

Ms. Miracle added that the garage will be visible from Juniper Lane, which is a high-traffic route to the High School and a lot of people will see it.

Commissioner Zimmerschied noted that the Church did a nice job with the renovation project and would like to see the garage held to a higher standard. Landscaping along the south and Juniper sides may be the solution.

Action:

A motion was made by Council Member Czarnecki, seconded by Commissioner Cain, to approve the proposed new garage at W68 N563 Evergreen Boulevard as proposed with the condition that three arborvitae trees are planted on the south side of the building. The motion carried without a negative vote, with Vice Chairperson Burgoyne and Commissioner von Bargaen excused.

REQUEST APPROVAL OF DIFFERENT DOORS THAN THOSE ORIGINALLY APPROVED FOR THE EAST FAÇADE OF THE BUILDING LOCATED AT W62 N590 WASHINGTON AVENUE – GREG ZIMMERSCHIED

Commissioner Zimmerschied recused himself from the discussion.

City Attorney Schoonenberg advised that due to the excused absences of Vice Chairperson Burgoyne and Commissioner von Bargaen, and Commissioner Zimmerschied recusing himself, an approval would require three out of four votes.

Planner Censky reported that Mr. Zimmerschied is requesting approval to change the doors for those originally approved for the rear of this restored building to a different style garage door and a re-purposed pedestrian door. Specifically, the doors originally approved for this elevation were more basic and had an actual garage door appearance while the new proposed garage door seems more fitting for the intended retail use of the building. The garage door will be a white steel insulated single door and the pedestrian door will be a re-purposed wood door.

At their April 13th meeting the Landmarks Commission reviewed this request and noted that they prefer this change over the previously approved plans and recommended approval by unanimous vote.

Action:

Council Member Czarnecki moved to approve the proposed door changes as presented. The motion was seconded by Commissioner Poellot and carried without a negative vote, with Vice Chairperson Burgoyne and Commissioner von Bargaen excused and Commissioner Zimmerschied recused.

Commissioner Zimmerschied resumed his duties as a Plan Commissioner.

COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS

No comments or announcements were offered.

MAYOR'S ANNOUNCEMENTS

There were no announcements.

ADJOURNMENT

Commissioner Cain moved to adjourn the meeting at 8:10 p.m. The motion was seconded by Council Member Czarnecki and carried without a negative vote, with Vice Chairperson Burgoyne and Commissioner von Bargaen excused.

Darla Drumel,
Administrative Secretary

Attachment



John M. Wirth
Direct Telephone: 414-727-6276
Email: jwirth@mzmilw.com

May 1, 2017

VIA EMAIL

City of Cedarburg Plan Commission
c/o Jon Censky, City Planner
P.O. Box 49
W63 N645 Washington Avenue
Cedarburg Wisconsin 53012

Ladies and Gentlemen:

RE: Monopole for Cell Tower Equipment
N49 W6411 Western Road

I represent Jackson Western LLC, the owner of the old Mercury Marine Plant #1 at N49 W6326 Western Road in the City of Cedarburg. This property is located across the Interurban Trail from the proposed monopole.

Except as described below, Jackson Western generally has no objection to the proposed location of the monopole, provided that the monopole will not affect the offsets, setbacks or other requirements of any future redevelopment of Jackson Western's property. I see nothing in the proposed approval or the City's Ordinances that would have such an affect; however, Jackson Western understands that some communities limit construction, parking or other improvements within a certain distance from any monopole.

Jackson Western requests, however, that the Plan Commission table this application until the Commission has answers to some basic questions about this pole. It is our position that the application is incomplete.

My client is very concerned that the staff report and Plan Commission packet fail to provide engineering for the monopole. In every similar private sector application we have seen, the community requires, as allowed by state law, engineering specifying the fall zone for the pole.

The staff report concludes that the City's ordinance limiting height is unenforceable. That is only partially true. State law does allow the City to limit height unless the applicant provides

City of Cedarburg Plan Commission

May 1, 2017

Page 2

“an engineering certification showing that a [pole] is designed to collapse within a smaller area than the setback or fall zone area required in a zoning ordinance.” Wis. Stat. § 66.0404(2)(g). If the City can require such a certificate from another applicant, it certainly should obtain such a certificate for its own pole.

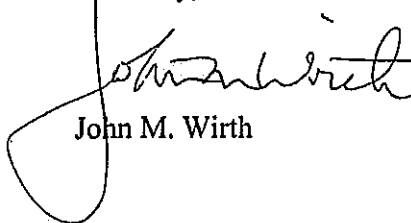
It is important to note that the new state law does not limit or prevent the City from imposing requirements upon itself or the bodies it controls.

Jackson Western and other adjacent neighbors have a direct interest in the fall zone. If the fall zone extends onto Jackson Western's property, it could affect the insurability (and therefore redevelopment) of Jackson Western's property. Other neighbors should have similar concerns.

We also would like some assurance that the City's insurance will cover damage caused by any collapse of the pole. The City and the Plan Commission should have similar concerns. As a public body, the City should take all precautions necessary to ensure that its own improvements do not harm neighbors.

We understand that this new monopole is a financial opportunity for the City. We also understand that adequate cell coverage is important to the City and the region. Jackson Western certainly does not want to stand in the way. However, we would like to know that this new pole will not negatively impact Jackson Western's ability to redevelop its property.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Wirth", with a large, stylized loop at the bottom left.

John M. Wirth

JMW:jd