

CITY OF CEDARBURG
PLAN COMMISSION

PLN20171106-1
UNAPPROVED MINUTES

November 6, 2017

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, November 6, 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 Burgoyne, Mark Poellot, Greg Zimmerschied, Heather Cain, Daniel von Barga

Also Present - City Planner Jon Censky, City Attorney Tim Schoonenberg, 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 Zimmerschied moved to approve the minutes of October 2, 2017 as presented. The motion was seconded by Mayor Kinzel and carried without a negative vote.

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.

REQUEST FOR CERTIFICATE OF APPROPRIATENESS FOR NEWLY-INSTALLED PURPLE AWNING – PJ PIPER PANCAKE HOUSE/JUDITH FERGADAKIS

Planner Censky reported that Judith Fergadakis is requesting Certificate of Appropriateness (COA) for the replacement awning recently installed over the front of the P.J. Piper Restaurant at W61 N514 Washington Avenue. This awning consists of purple fabric stretched over a metal frame attached to the building and it replaces the faded green awning that was removed. Ms. Fergadakis advises that the color of the awning was chosen because it matches the color of the new interior décor.

Planner Censky noted that this canopy was installed prior to securing the necessary approvals and acquiring the necessary permit. Ms. Fergadakis, however, felt that since this installation was non-structural she did not need approval. Having now been advised of the process, she has appeared before the Landmarks Commission and after two

meetings with them she is now seeking Plan Commission approval. Staff notes that Landmarks Commission struggled with the request fearing that offering approval, after the fact, would set precedent and provide justification for others to skip the required process. Nevertheless, a motion was made to accept the awning as installed, but that motion failed by a tie vote with Commission Architect Tom Kubala and Commissioner Tomi Fay Forbes voting in favor and Chairperson Judy Jepson and Commissioner Robert Ross voting against. Council Member Patricia Thome, and Commissioners Doug Yip and James Pape were excused from the meeting.

Council Member Czarnecki questioned whether or not the Landmarks or Plan Commission are charged to approve colors. Planner Censky advised that structures in the Historic District can be maintained, but if a building were to be painted a new color, it would require approval of the Landmarks Commission.

Commissioner von Barga suggested that a recommendation be made by the Landmarks Commission before the Plan Commissioners take any action. Commissioner Zimmerschied concurred, noting that a full body of Landmarks Commissioners should be in attendance to discuss the new awning. Vice Chairperson Burgoyne also agreed that the Landmarks Commission do a full review.

Commissioner Cain asked if there is a color palette provided by the City that property owners can make their choices. Planner Censky advised that there is not. In fact, Landmarks Commissioner Kubala stated that the State does not regulate colors. Landmarks Commissioner Kubala also stated that the awning color is not permanent; it will fade and will therefore need replacement in five to six years.

Commissioner Zimmerschied opined that exterior colors are not usually chosen based on interior design and that the color chosen should be appropriate for a Historic District.

Ms. Fergadakis responded that she feels it is a beautiful color and knows it will fade.

Commissioner Cain questioned whether the canopy could be treated in place to tone down the purple. Vice Chairperson Burgoyne added that Ms. Fergadakis could bring back options at the next meeting. Commissioner Poellot warned that treatment could produce an unknown color.

Ms. Fergadakis noted that she is exploring options for upgrading the façade of her restaurant, which will be expensive, and is now aware of the approval process.

Mayor Kinzel expressed concern that the Plan Commission and Landmarks Commission are not in the business of forgiving.

City Attorney Schoonenberg was directed to look into the City's Code and determine whether a decision has to be made by the Landmarks Commission before proceeding further.

CONSIDER AMENDMENT TO THE B-4 DISTRICT TO ALLOW WAREHOUSING AS AN ACCESSORY USE – DONALD VOIGT

Planner Censky explained that Donald Voigt, a property owner in the B-4 Office and Service District, is requesting a zoning text amendment to add warehousing to the list of permitted accessory uses in the B-4 District. Accessory uses are defined as uses that are subordinate to the principal use of a structure serving a purpose customarily incidental to the principal use. Accordingly, accessory uses are only permitted if the principal use already exists or is approved in conjunction with the principal use.

Mr. Voigt is requesting this text amendment to legitimize the limited warehousing use of his existing structure. Planner Censky noted that this warehousing use was actually shown on Mr. Voigt's plans back in 1993 when he received approval for an addition that included a loading dock for vans and semi-trucks delivering to an open area identified in the plans as equipment staging and shelving (i.e., warehousing). Mr. Voigt is now trying to sell his property and without this zoning text change, he cannot advertise or use that portion of the building for warehousing. Moreover, enforcement of that restriction going forward would be highly difficult. Accordingly, the intent of this request is to alleviate that problem by listing "limited warehousing" as an accessory use in the B-4 District that would need to be tied to either a use permitted by right or a conditional use. Warehousing as a stand-alone principal use would not be permitted.

The reason this change is needed is that City staff cannot legally respond to potential buyers that, even though the building was approved and ultimately constructed with limited warehousing, the use is permitted. While this change is to accommodate the use of an existing structure in the B-4 District, it is a change that only introduces a supporting use for other principal uses within this District that seems appropriate. After a recommendation by the Plan Commission, an ordinance would be scheduled for a public hearing and action by the Common Council.

Action:

A motion was made by Council Member Czarnecki, seconded by Commissioner von Barga, to recommend a text amendment to allow accessory warehousing in the B-4 Office and Service District. The motion carried without a negative vote.

REQUEST FOR A MOBILE FOOD ESTABLISHMENT LICENSE – THAT TACO GUY, LLC/ELI AND ANDREA ACOSTA

Planner Censky advised that Eli and Andrea Acosta are requesting a Mobile Food Vendors License to be able to park a mobile food truck, on a request basis, on the site of the North 48 Tavern at W62 N599 Washington Avenue in the rear yard adjacent to the outdoor beer garden, on the driveway of Chris Smith's downtown property (Former Classic Traditions) at W63 N671 Washington Avenue and within the parking lot of North Shore Gymnastics at W59 N270 Cardinal Avenue. He reminded Commission members that the Mobile Vendors License Ordinance was adopted earlier in 2017 and serves to restrict where mobile food trucks can be parked. Specifically, **Section 7-18-2 License**

Required states: It shall be unlawful for a person to operate as a Mobile Vendor or Mobile Food Establishment, serve, sell or distribute food from a Mobile Food Establishment or cook, wrap, package, process, serve or portion food in a Mobile Food Establishment in the City of Cedarburg without first having obtained a valid Mobile Vendor or Mobile Food Establishment license from the City of Cedarburg Plan Commission.

According to this Ordinance, anyone wishing to sell from a mobile food truck in the City of Cedarburg must first acquire a Mobile Food Vendors license and then receive Plan Commission approval for each site within the City that they intend to park the truck. As noted above, Mr. and Mrs. Acosta have chosen the three sites listed above for now and if services are requested elsewhere, they understand that they must first receive Plan Commission approval. Upon receipt of this request the information was submitted to the City Police Department for the required background check. This request will be valid for the rest of this year and Mr. and Mrs. Acosta understand that the license will need to be renewed as of the first of next year.

Action:

Council Member Czarnecki moved to approve the request from Eli and Andrea Acosta to park their mobile food vehicle for the three locations as presented.

Continued Discussion:

Planner Censky advised that the request for the license would be considered by the Common Council.

Ann Denk, of W62 N598 Washington Avenue, advises that she lives directly across the street from North 48 and explained that there are already problems with noise after hours with North 48. She questioned whether the license restricted the hours of operation and how many times a year the vehicle could be parked in the approved locations. Ms. Denk also pointed out that the truck is proposed to be located at the end of the driveway at W63 N671 Washington Avenue and thought there might be a problem with congestion at that location.

Commissioner Cain inquired why Ms. Denk would be concerned about a location so far away from her property. Ms. Denk responded that the truck does not meet Sign Code regulations, does not meet Landmark's criteria, and there are other issues that would affect other property owners.

Planner Censky pointed out that the issue of the license would be addressed at the Common Council and encouraged Ms. Denk to present her issues there. Ms. Denk suggested that it would be important for the Plan Commission to hear her comments before it acts on the request. She requested to continue with her comments.

Commissioners directed Ms. Denk to appear before the Common Council when it considers the license for That Taco Guy, LLC.

Final Action:

The motion carried without a negative vote.

**CONSIDER RECOMMENDING SIGN CODE AMENDMENT TO ALLOW
SUBDIVISION IDENTIFICATION SIGNS AND TO PROHIBIT LED SIGNS**

Planner Censky noted that John Wahlen, developer of The Glen at Cedar Creek, was before the Plan Commission in October 2017 requesting concept review of his proposed subdivision identification sign and consultation regarding possibly changing the Sign Code to allow subdivision signage in the City of Cedarburg. Currently, subdivision signs are not permitted in Cedarburg as **Section 15-5-15** of the Sign Code states: **Permanent subdivision identification signs are not allowed.**

During the discussion of that request, Commissioners asked why subdivision identification signage was not allowed by Code but signage for apartment complexes were. The consensus was that if properly designed and appropriately lit, subdivision signs would not be offensive. An ordinance was requested to be drafted that would establish rules governing the height, size and look of these signs and that a limit be placed on the number. Commissioners reviewed the draft Ordinance which establishes that subdivisions signs shall be monument signs not to exceed 7 feet in height, 32 square feet per face in size and limits subdivisions to no more than two identification signs. Furthermore, a 5-foot landscaped area extending out from the base of the sign shall be required.

Also included in the proposed ordinance is a separate change to prohibit LED signs. At the October 30, 2017 Common Council meeting, concerns were discussed about LED-type signs. It was agreed that LED signs are very distracting to motorists and consequently can lead to accidents. Since Commissioners are already considering a Sign Code amendment, prohibiting LED signage was added to the agenda for consideration and recommendation.

If this Ordinance is recommended, it will go on to the Common Council for discussion and final action.

Council Member Czarnecki advised that the brightness of LED lighting was also a problem.

Mayor Kinzel advised that he was uncomfortable with prohibiting all LED lighting as so many devices are now using LED lighting.

Discussion continued that perhaps moving, rolling or jumping displays are a better description of the type of signage to be prohibited.

Action:

A motion was made by Vice Chairperson Burgoyne, seconded by Council Member Czarnecki, to recommend the proposed ordinance to the Common Council without the reference to LED lighting. The motion carried without a negative vote.

Commissioners directed that LED lighting be addressed at a future meeting.

CONSIDER ADJUSTMENTS TO THE SETBACK REQUIREMENTS FOR LOTS 16 AND 19 IN THE GLEN AT CEDAR CREEK – JOHN WAHLEN

Planner Censky reminded Commissioners that John Wahlen, the developer, was before the Plan Commission in September 2017 requesting approval to adjust the side and rear yard setback requirements for four lots within the developing Glen at Cedar Creek Subdivision. Those lots were either irregularly shaped or adjacent to an outlot and because all four lots were internal to the subdivision, that request was processed as a minor change to the original Planned Unit Development (PUD) plan in accordance with Section 13-1-69(o)(3) which states: **Any subsequent change or addition to the plans or use shall first be submitted for approval to the City Plan Commission and if in the opinion City Plan Commission such change or addition constitutes a substantial change to the original plan, a public hearing before the City Council shall be required and notice thereof be given pursuant to the provisions of Section 13-1-229 of the Zoning Code.**

Mr. Wahlen is now asking for setback adjustments for two more lots (#16 and #19) within this subdivision and advises that more setback modifications may be forthcoming depending on the type of structure being requested by their customer.

Planner Censky explained that staff questions if these on-going changes constitute a substantial change to the original PUD which could result in an enforcement nightmare for the tracking of these modifications over time. Of concern is that while this is being treated much like a condominium development, it is a platted subdivision which should have uniform setbacks and offsets. While the initial request could be justified based on irregular lot shapes, it seemed appropriate to process the request as a minor change to the PUD plan. However, Commissioners will need to determine whether this new request and future ones constitute a significant change to the overall PUD plans and would therefore require a public hearing before the Common Council.

Commissioners recognized the difficulty with administering future requests for building modifications if the lots within one subdivision all had different specific setback restrictions. If the developer, Mr. Wahlen, desired to continue to modify setback requirements to the development of future lots, it would be appropriate to either request a public hearing to modify the PUD to reset all setback restrictions, or apply for variances through the Board of Appeals, proving five hardship criteria for each lot to be modified.

Action:

Vice Chairperson Burgoyne moved to deny the request to modify the setback requirements for Lot 16 and Lot 19 in The Glen at Cedar Creek. The motion was seconded by Commissioner Cain and carried without a negative vote.

**CORRECT THE ADDRESS AND TAX KEY NUMBER FOR THE OCTOBER 2, 2017
APPROVAL OF A SECOND DRIVE APPROACH FOR LOT 38 IN THE PRAIRIE VIEW
SUBDIVISION – HOMES BY TOWN/LEE KNUDSVIG**

Planner Censky explained that at the October 2, 2017 meeting, Commissioners were asked to approve a second driveway for Lot 38 in the Prairie View Subdivision. Since this lot is located in a quiet neighborhood with little traffic, permission was granted. Staff has since learned that while the plan that was submitted for this request was accurate, the address and tax key number they provided to us was incorrect. Therefore, the purpose of this request is to simply correct that information. More specifically, the address provided was W80 N375 Prairie View Road with the tax key number of 13-214-0045.00. The correct address is N79 W367 Prairie View Road with the tax key number of 13-214-0038.00.

Action:

A motion was made by Mayor Kinzel, seconded by Council Member Czarnecki, to approve the request to correct the address and tax key number for Lot 38 in the Prairie View Subdivision to N79 W367 Prairie View Road and 13-214-0038.000. The motion carried without a negative vote.

COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS

No comments or announcements were made by Plan Commissioners.

MAYOR'S ANNOUNCEMENTS

Mayor Kinzel offered no announcements.

ADJOURNMENT

Commissioner von Bargen moved to adjourn the meeting at 7:55 p.m. The motion was seconded by Vice Chairperson Burgoyne and carried without a negative vote.

Darla Drumel,
Administrative Secretary