

**CITY OF CEDARBURG
PLAN COMMISSION
February 3, 2025**

A regular meeting of the City of Cedarburg Plan Commission was held on Monday, February 3, 2025, at Cedarburg City Hall, W63N645 Washington Avenue, upper level, Council Chambers, and online via the Zoom app. Mayor Patricia Thome called the meeting to order at 7:00 p.m.

Roll Call -Mayor Patricia Thome, Council Member James Fitzpatrick, Adam Voltz, Jack Arnett, Sherry Bubnitz(via Zoom), and Jon Scholz

Excused – Sig Strautmanis

Also Present - City Planner Mary Censky, City Administrator Mikko Hilvo, Administrative Assistant Theresa Hanaman, Applicants Ryan and Sarah Fitting, and Applicant Jamie Bach

STATEMENT OF PUBLIC NOTICE

Administrative Assistant Hanaman 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 Scholz, seconded by Council Member Fitzpatrick, to approve the minutes from January 6, 2025 and January 28, 2025. Meeting minutes from January 28, 2025, page 4 has a spelling correction for Richard Patek. Motion carried without a negative vote. Commissioner Strautmanis excused.

COMMENTS AND SUGGESTIONS FROM CITIZENS

Melissa Bitter, Council Member/Alderpersion of Ward 1- N92 W6217 Arbor Dr.-Expressed her appreciation for the meeting's organization and community's participation in the December 17, 2024 and January 28, 2025 Plan Commission meetings.

PUBLIC HEARING; AND ACTION THEREON

APPLICANT/PROPERTY OWNER RYAN AND SARAH FITTING, D/B/A JH WASHINGTON LLC, REQUEST CONDITIONAL USE PERMIT (CUP) APPROVAL TO UTILIZE THE DWELLING UNIT, LOCATED ON THE SECOND FLOOR OF THEIR BUILDING AT W62 N556-558 WASHINGTON AVENUE, FOR TOURIST ROOMING HOUSE (I.E. SHORT-TERM RENTAL) PURPOSES. THIS 5,400+/- SQ. FT. LOT IS ZONED B-3 CENTRAL BUSINESS DISTRICT WITH HPD HISTORIC PRESERVATION OVERLAY DISTRICT.

A motion was made by Council Member Fitzpatrick, seconded by Commissioner Arnett, to open the Public Hearing at 7:02 p.m. Commissioner Strautmanis excused.

The applicant is seeking Conditional Use Permit (CUP) approval to use his 1-unit, second-floor dwelling unit for a tourist rooming house (i.e., short-term rental) use. The main floor of this building is devoted to commercial/retail type use.

Planner Censky reported: The current Code defines Tourist Rooming Houses as: All lodging places and tourist cabins and cottages, other than hotels and motels, in which sleeping accommodations are offered for pay to tourists or transients as regulated under Wisconsin Chapter DHS 195. In the B-3 Central Business District, Tourist Rooming Homes are listed as a use that can be permitted through the Conditional Use process. This use, as proposed, allows rental periods as short as 1-night stay.

This site does appear to have informal but adequate space at the rear for off-street parking of a few cars. The only way to access this rear area is via an easement along the north side of the neighbor's property to the south. The applicant believes that this easement is indeed for their use and benefit.

The permit would not be transferable and would require the applicants to complete a room tax permit and satisfy building and fire department inspections. The unit layout and outdoor amenities were discussed, with the condition that no picnic tables, grills, or fire pits would be provided. The applicants would also need to store their standard city receptacles out of sight.

A DRAFT CUP document contains the conditions that are recommended to be attached to any approval Plan Commission is inclined to grant in this matter.

Commissioner Scholz questioned the city's tax rate concerning bed and breakfasts. City Administrator Hilvo responded that the room tax rate is 5%.

PUBLIC COMMENT

There being no one wishing to speak, the motion was made by Council Member Fitzpatrick, seconded by Commissioner Arnett to close the Public Hearing at 7:07 p.m. Motion was carried on a roll call vote with Council Member Fitzpatrick, Commissioners Voltz, Arnett, Scholz, Bublitz, and Mayor Thome voting aye. Commissioner Strautmanis excused.

Action: The motion was made by Council Member Fitzpatrick, seconded by Commissioner Arnett, to approve the request for a conditional use permit (cup) to utilize the dwelling unit, located on the second floor of their building at W62 N556-558 Washington Avenue, for tourist rooming house (i.e. Short-term rental) purposes, subject to the conditions set forth in the DRAFT CUP contained in the packet. The motion carried unanimously. Commissioner Strautmanis excused.

REGULAR BUSINESS AND POSSIBLE ACTION THEREON

APPLICANT ROBERT BACH, D/B/A P2 DEVELOPMENT COMPANY, REQUESTS APPROVAL OF BUILDING, SITE, AND USE PLANS TO ADD A FOURTH/FINAL 5-UNIT MULTI-FAMILY RESIDENTIAL BUILDING TO THE EXISTING SITE OF CONCORD APARTMENTS LOCATED N142 W6196-6212 CONCORD STREET. THIS

**2.25-ACRE PROPERTY IS ZONED RM-2 MULTI-FAMILY RESIDENTIAL DISTRICT.
CURRENT PROPERTY OWNER IS CONCORD APARTMENTS LLC.**

Planner Censky reported: 'Multiple-family dwellings with a maximum of eight dwelling units per structure' is listed as a permitted use in the Rm-2 Multi-Family Residential District.

The applicant proposes to fill in the remaining buildable area of this site with a 5-unit multi-family residential building. The units proposed are 3 bedrooms, 2.5 baths with 2-stall attached garages. To prevent garage doors from being blocked by others, the applicant describes the spaces in front of the garages as driveways. These driveways result in the elimination of ~18 existing parking stalls from the site. Overall, based on the total of 29 units on the site, the required number of stalls would be 44. Forty-six stalls are provided. The 3 existing buildings (24 units) must be provided with 36 stalls unto themselves, based on Code. Thirty-six stalls accessible to those units are provided.

Architecturally, the proposed new building is dissimilar to the existing buildings on the site and surrounding sites as to style, materials, and colors. By Code, overall height (TBD), may not exceed 35 feet.

Planner Censky goes onto explain, the required minimum lot area in the Rm-2 District is 10,800 sq. ft. or 3,300 sq. ft. per 2-bedroom dwelling unit, whichever is greater. In this case, with 29 total units (all being 2-bedroom or larger) the required lot size would be 2.12-acres (i.e., $3,300 \times 29 = 95,700 / 43,560 = 2.12$). This lot is 2.24-acres in size. The overall floor area ratio on this site is proposed to be ~39%. The maximum permitted by Code is 75%.

Per Code requirement, a new dumpster storage/screening device is proposed on the site. Detailed plans specifying a suitable location and design are provided.

The plans do comply with the required setbacks from lot lines.

A suitable landscaping plan is presented that treats the outer yard areas with a mixture of deciduous trees over lawn, and the foundation with a variety of perennial plants around the north, east and west sides of the building.

A detailed lighting plan for the building and site is provided. It depicts very low footcandles on the ground at the lot lines while also offering reasonable illumination in the parking and building entry areas. The east and west side walkways do not appear to be illuminated.

Planner Censky recommends the following conditions be considered for attachment to any approval the Planning Commission may be inclined to grant in this matter:

- 1) Building design, color, and material specifications shall be listed and depicted on the attached plans.
- 2) Dumpster enclosure/screening shall be located and constructed in accordance with the site and design plans attached - to be completed not later than 1 month following first occupancy.
- 3) Site landscaping shall be installed in accordance with the plans attached, within 12 months of building occupancy.

- 4) Exterior site and building lighting per the attached plans shall be installed/operational prior to first occupancy.
- 5) City Engineer and/or Cedarburg Light & Water review and approval of the grading, drainage, stormwater management, erosion control, and utility plans prior to issuance of an early start/footings & foundation permit or a building permit.
- 6) Building height may not exceed 35 feet.
- 7) Applicant to comply fully with the Code requirements of the Fire Department including, for instance, but not necessarily limited to, the following preliminary comments received:
 - Separation construction will need to be inspected prior to enclosure to ensure compliance with SPS requirements.
 - Ensure 150' to closest fire department vehicle access is available. Based on rough measurements with available information, this may be non-compliant

The motion was made by Commissioner Arnett, seconded by Council Member Fitzpatrick, to approve the building, site, and use plans to add a fourth/final 5-unit multi-family residential building to the existing site of Concord Apartments located at N142 W6196-6212 Concord Street subject to the Planners recommended conditions. The motion carried unanimously. Commissioner Strautmanis excused.

REVIEW AND DISCUSSION ON THE TOPIC OF SIDEWALK ENCROACHMENTS.

Planner Censky reminded the Commissioners of their recent discussion/action with respect to an encroachment in the sidewalk/right-of-way in the downtown area. From that discussion, a request was made that staff would look into what's currently allowed as far as encroachments and bring some information back for future discussion and consideration. Fair treatment of everyone and some flexibility to use the sidewalks effectively and safely is important. She advised Commissioners of the current code which states; [Section 6-2-5 of the City Code](#) addresses encroachments, obstructions, and encumbrances upon or in any street, alley, sidewalk, public grounds or land dedicated to public use, or any part thereof. It provides as follows:

(a) *Obstructions and encroachments prohibited.* No person shall encroach upon or in any way obstruct or encumber any street, alley, sidewalk, public grounds or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way adjoining the premises of which he is the owner or occupant, except as provided in subsections

(b) and (c).

(b) *Exceptions.* The prohibition of subsection (a) shall not apply to the following:

- (1) Public utility encroachments duly authorized by state law or by the common council.
- (2) Goods, wares, merchandise or fixtures being loaded or unloaded which do not obstruct the width of a sidewalk by more than three feet on a sidewalk, provided such goods, wares, etc., do not remain thereon for more than three hours.
- (3) Temporary encroachments or obstructions authorized by permit under [section 6-2-6 of this section pursuant to Wis. Stats. § 66.045.](#)
- (4) Building materials for the period authorized by the building inspector and city engineer which shall not obstruct more than one-half of the sidewalk or more than one-

third of the traveled portion of the street and which do not interfere with the flow in the gutters.

(5) Excavations and openings permitted under [sections 6-2-3](#) and [6-2-4](#) of this Code.

(c) Issuance of permit.

(1) The building inspector is authorized to issue a temporary permit which allows property owners to place certain fixtures on sidewalks which immediately adjoin their property. In determining if a permit shall be authorized, all of the following requirements must be met:

- a. The property must be located in an area zoned for commercial uses.
- b. The fixture(s) shall not be physically attached to the sidewalk, any street fixture or any adjacent building, and shall be of a temporary design.
- c. The placement of the fixture shall not impede the flow of pedestrian traffic on the sidewalk. In no event shall the fixture reduce the unobstructed sidewalk width to less than five feet at any point.
- d. The property owner shall provide the city with proof of liability insurance coverage. The insurance coverage shall be an amount prescribed by the city's schedule of insurance requirements, and the policy shall specifically state that it includes coverage for the fixtures located on the city sidewalks. In addition, the city shall be identified as a third-party insured.
- e. The fixture(s) shall not be for sale, nor shall the fixture(s) be used for the sale of merchandise. Specifically excluded are all forms of vending machines, vendors' carts or tables, etc.
- f. The property owner whose property adjoins the city sidewalk shall file the permit application or authorize the occupant of the subject property to file the permit application.

(2) Upon reviewing the permit application, if it is determined by the building inspector that all of the above requirements have been met, he shall issue the permit. Said permit may be revoked by the building inspector or any city law enforcement officer ("city enforcement officials") at any time when one or more of the above requirements are not complied with or if he determines that the placement of the fixture(s) endangers the safety of the pedestrians who utilize the sidewalks.

(d) Removal by city for sidewalk obstructions and encroachments. In addition to any other penalty imposed, if any city enforcement official determines that a sidewalk is unlawfully obstructed in violation of this section, he shall issue a written notice to the owner or occupant of the premises which adjoins the obstructed sidewalk, directing that the obstruction be removed within 24 hours.

(e) Removal by city for obstruction and encroachments located in the city streets, alleys, public grounds or lands dedicated for public use. In addition to any other penalty imposed, if any city enforcement official determines that a city street, alley, public grounds or land dedicated for public use is obstructed or encumbered, he shall issue a written notice to the property owner of the premises which adjoin the obstructed public area directing that the obstruction be removed within 30 days.

(f) Failure to remove obstruction.

(1) If the owner or occupant fails to remove the obstruction within the time period established in section (d) or (e) respectively, any city enforcement official shall cause the removal of the obstruction, keeping an account of the expense of the abatement, and

such expenses shall be charged to and paid by such property owner. Notice of the bill for abatement of the obstruction shall be mailed to the owner of the premises and shall be payable within ten calendar days from receipt thereof. Within 60 days after such costs and expenses are incurred and remain unpaid, the city clerk shall enter those charges onto the tax roll as a special tax as provided by the State Statutes.

(2) The failure of the city clerk to record such claim or to mail such notice or the failure of the owner to receive such notice shall not affect the right to place the city expense on the tax rolls for unpaid bills for abating the obstruction as provided for in this section.

Wis Stats 66.045 provides:

66.045 Privileges in streets.

(1) Privilege for an obstruction or excavation beyond the lot line, or within a highway in any town, village, or city, other than by general ordinance affecting the whole public, shall be granted only as provided in this section.

(2) Application therefor shall be made to the board or council, and the privilege shall be granted only on condition that by its acceptance the applicant shall become primarily liable for damages to person or property by reason of the granting of the privilege, be obligated to remove the same upon 10 days' notice by the state or the municipality and waive right to contest in any manner the validity of this section or the amount of compensation charged and that the applicant file such bond as the board or council require, not exceeding \$10,000 running to the town, village, or city, and such third parties as may be injured, to secure the performance of these conditions. But if there is no established lot line and the application is accompanied by a blueprint, the board or council may make such conditions as they deem advisable.

(3) Compensation for the special privilege shall be paid into the general fund and shall be fixed, in towns by the chairperson, in villages by the president, and in cities by a board consisting of the board or commissioner of public works, city attorney and mayor.

(4) The holder of such special privilege shall be entitled to no damages for removal of the obstruction or excavation, and if the holder shall not remove the same upon due notice, it shall be removed at the holder's expense.

(5) Third parties whose rights are interfered with by the granting of such privilege shall have right of action against the holder of the special privilege only.

(6) Subsections (1) to (5) do not apply to telecommunications carriers, as defined in s. 196.01 (8m), telecommunications utilities, as defined in s. 196.01 (10), alternative telecommunications utilities, as defined in s. 196.01 (1d), public service corporations, or to cooperative associations organized under ch. 185 to render or furnish telecommunications service, gas, light, heat or power, but such carriers, utilities, corporations and associations shall secure permit from the proper official for temporary obstructions or excavation in a highway and shall be liable for all injuries to person or property thereby.

(7) This section does not apply to such obstruction or excavation for not longer than 3 months, and as been granted by the proper official.

(8) Obstruction or excavation by a city, village or town in any street, alley, or public place belonging to any other municipality is included in this section.

66.045(9)(9) Anyone causing any obstruction or excavation to be made contrary to subs. (1) to (8) shall be liable to a fine of not less than \$25 and not more than \$500, or to imprisonment in the county jail for not less than 10 days nor more than 6 months, or to both such fine and imprisonment.

Planner Censky explained the existing code regarding temporary encroachments on sidewalks, emphasizing that fixtures cannot be physically attached to the sidewalk, street fixtures, or adjacent buildings. The placement of fixtures must not impede pedestrian traffic, and the sidewalk width must be at least 5 feet at any point. Planner Censky also mentioned the need for proof of liability insurance coverage and that fixtures cannot be for sale or used for the sale of merchandise.

After discussing with the City Engineer, Planner Censky clarified the four sidewalk zones identified in the DOT guide on pedestrian best practices, which recommends the following:

1. Head of curb
2. Terrace zone(trees, benches, lights, receptacles)
3. Walking area (5-foot minimum pedestrian way immediately adjacent to the curb and a 6-foot minimum if there is no terrace)
4. Frontage-walking and property line

Commissioner Arnett proposed that if the Planning Commission and Landmarks Commission agree to approve a particular request, there could be exceptions to the current code, with specific clearance areas prescribed.

Commissioners were hesitant about defining specific rules for terraces and other elements, preferring a more practical approach. It is suggested to allow some room for small businesses to accommodate both their needs and those of their customers. Council Member Fitzpatrick also questioned the current state of affairs, particularly the Stilt House, and asked for guidance on how the City proceeds.

In the meeting, Commissioner Bublitz discussed the potential for signage and small business promotions in the historic district downtown and expressed her preference for maintaining the area's character and agreed to Council Member Fitzpatrick's suggestion to accommodate small businesses and suggested that the business community's opinions should be considered at an upcoming forum.

Plan Commissioners suggested City staff conduct research and measurements of sidewalk widths in downtown Cedarburg, particularly in areas with narrow walkways and gather information on existing encroachments and non-compliant situations in the downtown area.

Planner Censky will revise the proposed sidewalk encroachment rules based on the Plan Commissions discussion and feedback at a future Plan Commission meeting. City Administrator Hilvo will include the topic of sidewalk encroachments in the upcoming business forum for input from local businesses.

If changes to these regulations are considered or desired, the Commission may direct Staff to follow- up with additional information or draft modifications.

Plan Commission agreed to continue discussing these issues to find a balance between accommodating small businesses and maintaining safety and compliance. The need for

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consistency in rules and the potential unintended consequences of stricter enforcement was discussed. Plan Commission agreed to work with staff and revisit the issue after the business forum.

COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS

Commissioner Voltz brought up the topic of painted signs in historic buildings, suggesting that they should be considered for inclusion rather than prohibition. The decision was made to refer this matter to the Landmarks Commission for further discussion.

MAYOR'S ANNOUNCEMENTS - NONE

ADJOURNMENT

A motion was made by Commissioner Arnett, seconded by Commissioner Bubnitz, to adjourn the meeting at 7:55 p.m. The motion carried without a negative vote. Commissioner Strautmanis excused.

Theresa Hanaman
Administrative Assistant

