

**CITY OF CEDARBURG
PLAN COMMISSION**

September 4, 2024

A regular meeting of the Plan Commission of the City of Cedarburg was held on Wednesday, September 4, 2024, at Cedarburg City Hall, W63N645 Washington Avenue, upper level, Council Chambers and online via the zoom app. The meeting was called to order at 7:00 p.m. by Mayor Patricia Thome.

Roll Call - Mayor Patricia Thome, Council Member James Fitzpatrick, Adam Voltz, Jack Arnett, Sig Strautmanis, Sherry Bubnitz, and Jon Scholz

Also Present - City Planner Mary Censky, City Administrator Mikko Hilvo, City Clerk Tracie Sette

STATEMENT OF PUBLIC NOTICE

City Clerk Sette 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 Bubnitz, seconded by Commissioner Arnett, to approve the minutes from August 5, 2024. Motion carried without a negative vote.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

REVIEW, DISCUSSION AND POSSIBLE APPROVAL OF A TEMPORARY USE PERMIT FOR APPLICANT/BUSINESS OWNER GORDON GOGGIN TO INSTALL A TENT IN THE OUTDOOR SEATING AREA FROM 11/4/2024 THROUGH 1/13/2025 FOR THE STILT HOUSE RESTAURANT LOCATED AT W62 N630 WASHINGTON AVENUE. THE OWNER OF THIS PROPERTY IS NICK SCHUH TAVERN, INC. IT IS ZONED B-3 CENTRAL BUSINESS DISTRICT W/ (HPO) HISTORIC PRESERVATION DISTRICT OVERLAY.

A motion was made by Commissioner Voltz, seconded by Commissioner Bubnitz, to move item 7.B. up to the first order of business. Motion carried without a negative vote.

Commissioner Arnett was inclined to approve the tent for two (2) years for the Stilt House since this is an annual occurrence.

A motion was made by Commissioner Arnett, seconded by Commissioner Fitzpatrick, to approve the temporary use permit to install a tent in the outdoor seating area for the Stilt House for (2) consecutive years subject to the yearly inspections done by the City, stated in the Planners' recommendations. Motion carried without a negative vote.

PUBLIC HEARINGS

A motion was made by Commissioner Bubnitz, seconded by Commissioner Scholz, to open the three (3) Public Hearings at 7:05 p.m.

TO CONSIDER AND POSSIBLY APPROVE THE REQUEST OF HIMMAT DHILLON AND BRENT BENJAMIN, D/B/A STATION CEDARBURG LLC, TO HAVE THE EXISTING CONDITIONAL USE GRANT PERMIT AND RELATED LAND COVENANT TRANSFERRED INTO THEIR NAME(S) AS THE PROSPECTIVE NEW OWNERS OF THE GAS STATION, CONVENIENCE STORE, AND CAR WASH USE AND SITE LOCATED AT W62 N174 WASHINGTON AVENUE. THE APPLICANT DOES NOT PLAN TO MAKE ANY CHANGES TO THE STRUCTURES, SITE OR OPERATING PLAN FROM WHAT IS CURRENTLY PERMITTED. THIS PROPERTY IS ZONED B 2 COMMUNITY BUSINESS DISTRICT.

The Planner recommends the following conditions be attached to any approval the Plan Commission may be inclined toward granting in this matter:

- Review and Approval by the City Building Inspector, Police Department, and Fire Inspector of a new occupancy permit.
- Execution and recording of a new Land Covenant and any other related documents as may be required by the City Attorney to attach the existing permissions and conditions to the new owners.

There were no comments from the public.

A motion was made by Commissioner Strautmanis, seconded by Council Member Fitzpatrick, to transfer the Conditional Use permit as noted on the agenda, including the Planners' conditions. Motion carried without a negative vote.

TO CONSIDER AND POSSIBLY APPROVE A CONDITIONAL USE PERMIT FOR APPLICANT/PROPERTY OWNER IS MOFRO LLC IN C/O SETH DEHNE AND D/B/A SIERZANT, FOR BAR USE, INCLUDING OUTDOOR SEATING/CONSUMPTION AREA, AND OUTDOOR RECREATION AND OUTDOOR ENTERTAINMENT, AT N49 W5471 PORTLAND ROAD. THIS PROPERTY IS ZONED B-2 COMMUNITY BUSINESS DISTRICT.

The use *Outdoor dining and non-alcohol beverage service* is listed as an accessory use that may be allowed in the B-3 Central Business District with the following note: Outdoor alcohol beverage services require a premises license approved by the Common Council. The use *Outdoor dining and non-alcohol beverage service* is not listed as a permitted, accessory or conditional use in any other business zoning districts in the City.

If the Plan Commission and Common Council desire to consider permitting a new or expanded area for outdoor seating at this site, the Code must first be amended to list that use as either a permitted, accessory or conditional use in the B-2 District. Once the Code is amended, then the applicant could return with his request for new or expanded outdoor seating space at this site. (Note: In 2023 the Plan Commission worked on reviewing the entire Zoning Code and preparing a comprehensive set of recommended changes. Adding the use “Outdoor beer gardens and food service areas” as a prospective conditional use that could be allowed in the B-2 District, is among them).

Limited information is provided at this time to define the precise physical limits of the proposed alcohol consumption areas on a scaled site plan. There does not appear to be a clear plan for the installation of a perimeter containment boundary – typically fencing of some sort, around the consumption area. Detailed information about the proposed outdoor recreation uses, outdoor lighting, fencing, parking plan, dumpster enclosure plan, hours of operation as to the indoor and outdoor uses, complete descriptions of the outdoor entertainment, is lacking in the applicant’s submittal. The actual distance to the lot lines for certain of the proposed new outdoor features on the site are not clear. No landscaping plan has been provided.

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

1) Use of the indoor spaces for bar and non-ground level apartment are approved subject to issuance of an occupancy permit by the Building Inspector and a liquor license from the Clerk. Note: If the non-ground level apartment is short-term rental, the applicant is reminded that room tax payments to the City are required.

2) Use of the outdoor spaces are not permitted until full site plan details as specified in Section 13-1-124 of the Code are submitted, on deadline, for review and approval by the Plan Commission at a future meeting.

The following public comments were made expressing concerns with decibel levels, lighting, parking, additional traffic on Portland Rd., and behavior concerns from potentially intoxicated patrons outside:

- Michael Kashou and Jacqueline Janz – N47W5450 Spring Ct
- Jerry Anderson – N46W5363 Spring Ct
- John Nelson – W55N470 Spring Ct
- Kevin Curley – N56W5439 Sunnyside Ln
- Jesse Scott – N49W5237 Portland Rd

- Ron Sella – W55N503 Highland Dr
- Lesley Coulter – W55N463 Spring Ct
- Daniel Heyen – N49W5347 Portland Rd
- Harold Wendt – W55N511 Highland Dr
- Jennifer Carlson – N34W7440 Lincoln Blvd
- Kayla Stoflet – W56N487 Highland Dr

The following public comment was made in full support of the outdoor application:

- John Fleming – N39W5578 Burr Lane

A motion was made by Commissioner Bublitz, seconded by Commissioner Arnett, to approve the Conditional Use Permit for Sierzant LLC as an exact replica of the prior Ernie's Wine Bar with fencing approved by Planner Censky and Building Inspector Thoma. Motion carried without a negative vote.

TO CONSIDER AND POSSIBLY RECOMMEND APPROVAL TO THE COMMON COUNCIL OF A DRAFT ORDINANCE CONTAINING UPDATES TO SECTION 13-1-226 OF THE CITY CODE REGARDING 'CONDITIONAL USE PERMIT'.

In previous cases, when there is a change in the business or property ownership attendant to an existing Conditional Use Permit (CUP), the new owner(s) file a request/application to the Plan Commission for transfer of the CUP into the new business or ownership name. This process requires the same procedures as for a new CUP. The same is true when an existing CUP holder requests to amend their CUP in some way – the process requires the same procedures as for a new CUP. The City Code doesn't currently articulate these requirements clearly. The proposed amendments as seen in the attached draft Ordinance would correct that.

There were no comments from the public.

A motion was made by Commissioner Strautmanis, seconded by Commissioner Scholz, to approve the recommended updates to City Code Section 13-1-226 as presented. Motion carried without a negative vote.

A motion was made by Commissioner Fitzpatrick, seconded by Commissioner Voltz, to close the Public Hearing at 8:45 p.m. Motion carried on a roll call vote with Commissioners Arnett, Voltz, Strautmanis, Bublitz, Scholz, Fitzpatrick and Mayor Thome voting aye.

REGULAR BUSINESS

REVIEW, DISCUSSION AND POSSIBLE ACTION/RECOMMENDATION TO THE COMMON COUNCIL IN FAVOR OF ACQUIRING A ~.66-ACRE PARCEL OF LAND

LOCATED AT W63 N530 HANOVER AVENUE FOR FUTURE PUBLIC PARK PURPOSES.

The City is proposing to acquire a 0.66-acre parcel of land with existing driveway and structural improvements located at W63 N530 Hanover Avenue. The future plans are to use this site for public park purposes.

A motion was made by Council Member Fitzpatrick, seconded by Commissioner Voltz, to approve of the City acquiring a 0.66 acre parcel of land located at W63 N530 Hanover Avenue for future public park purposes. Motion carried without a negative vote.

REVIEW DISCUSSION AND POSSIBLE ACTION/RECOMMENDATION TO THE COMMON COUNCIL ON THE OUTDOOR ALCOHOL BEVERAGE LICENSE APPLICATION SUBMITTED TO THE CITY CLERK'S OFFICE FOR THE PREMISES LOCATED AT N49 W5471 PORTLAND ROAD. THE APPLICANT IS SIERZANT LLC IN C/O SETH DEHNE. THIS PROPERTY IS ZONED B-2 COMMUNITY BUSINESS DISTRICT.

In connection with his request for an outdoor seating, outdoor recreation and outdoor entertainment conditional use permit (CUP), the applicant has also submitted a request to permit outdoor alcohol consumption throughout the seating, recreation, entertainment and yard areas. The use *Outdoor dining and non-alcohol beverage service* is listed as an accessory use that may be allowed in the B-3 Central Business District with the following note: outdoor alcohol beverage services require a premises license approved by the common council. The use *Outdoor dining and non-alcohol beverage service* is not listed as a permitted, accessory or conditional use in any other business zoning district in the City.

A motion was made by Commissioner Bublitz, seconded by Council Member Fitzpatrick, to approve the outdoor alcohol beverage license application submitted by Sierzant LLC, for the following location N49 W5471 Portland Road, subject to staying within the footprint of the prior Ernie's Wine Bar. Motion carried without a negative vote.

The Plan Commission may consider amending the Code for the current B2 district, changing the outdoor component, at a future meeting.

REVIEW, DISCUSSION AND POSSIBLE ACTION ON THE REQUEST OF APPLICANTS/PROPERTY OWNERS PETER AND LAURIE WEGNER TO ADD A THIRD DETACHED ACCESSORY STRUCTURE TO THEIR RESIDENTIAL ZONED PROPERTY BRINGING THEIR TOTAL DETACHED ACCESSORY STRUCTURE SQUARE FOOTAGE TO ~1,340 SQUARE FEET WHERE SECTION 13-1-101(G) OF THE CITY CODE PROVIDES THAT THE MAXIMUM TOTAL SQUARE FOOTAGE OF

DETACHED ACCESSORY STRUCTURES ON A LOT MAY NOT EXCEED 720. THE CODE GOES ON TO SAY THAT APPEALS FOR A WAIVER TO THE RESTRICTION ON THE SIZE OF ACCESSORY STRUCTURES SHALL BE MADE TO THE CEDARBURG PLAN COMMISSION. THIS .96-ACRE (41,817 SQ. FT.) PROPERTY, LOCATED AT W71 N1046 WASHINGTON AVENUE, IS ZONED RS-4 SINGLE-FAMILY RESIDENTIAL.

The applicants currently have approximately 1,200 sq. ft. of accessory structures located on this site. They are requesting to add one additional structure, 10' x 14', adding 140 sq. ft. to their existing overage. The new total square footage in detached accessory structures would be 1,340. The applicant provided a very detailed narrative explaining how they use the current square footage and why additional space is needed. Letters from neighbors lending support to the proposal were also submitted with the request. In the Rs-4 District, the minimum required lot size is 10,000 square feet. The applicant's lot is 41,817 sq. ft. in area. Even with the additional 140 square feet of detached accessory storage building space, the site would be well within the maximum limits of 30% total lot coverage and 36% total floor area.

The Planner recommends the following conditions be attached to any approval the Plan Commission may be inclined toward granting in this matter:

- Applicant to receive a variance approval from the City Board of Appeals as to adding a third detached accessory storage structure to this site where a maximum quantity of two is permitted by Code.
- Issuance of a building permit if/as may be required from the City Building Inspector prior to placement of the structure at this site.
- The structure, if ultimately permitted, must comply in all other respects, such as building height, setbacks, and separations as set forth in Section 13-1-101(g) of the City Zoning Code.

A motion was made by Council Member Fitzpatrick, seconded by Commissioner Voltz, to approve the additional square footage for the current accessory structure which would place the maximum allowable square footage to exceed 720 square feet to include the Planners' recommendations (listed above). Motion carried without a negative vote.

REVIEW, DISCUSSION AND POSSIBLE ACTION ON THE SIGN CODE WAIVER REQUEST OF APPLICANT JEFFREY STOEGER (D/B/A COLD COUNTY VINES AND WINES LLC AT W61 N517 WASHINGTON AVENUE), TO CLEAN-UP AND PLACE CONTENT ON A PRE-EXISTING, CONTENT-FREE, PYLON SIGN LOCATED AT W61 N513 WASHINGTON AVENUE.

An existing, albeit ‘abandoned’, pylon sign is located on W61 N513 Washington Avenue, the site where the off-street parking is located in support of not only the Cold Country Vines & Wines business but also for Real Fitness.

According to [Section 15-5-10 of the City Code](#), it appears that this sign meets the definition of an abandoned sign and could have been ordered removed some time ago. The City has never pursued enforcement to that effect. In its current condition, this sign is legal nonconforming as to type because [Section 15-5-14 of the Code](#) does not list pylon signs as a permitted sign-type in the B-3 Community Business District. Section 15-5-15 of the Code states that ‘legal nonconforming signs may continue unless among other things possibly] a building or place of business is occupied by a new tenant or owner of the business’

On August 22, 2024, the Landmarks Commission recommended that this request to continue use of this sign as an off-premises, parking lot directional sign be approved by the Plan Commission subject to the following provisions/conditions:

- 1) The Commission recommends approval of the sign and considers it to be legal nonconforming at this time.
- 2) Applicant to provide confirmation that this sign is indeed located on the property located at W61 N513 Washington Avenue, prior to issuance of a sign permit.
- 3) This sign shall not be internally illuminated. If the sign is to be externally illuminated, the details of this proposed lighting solution shall be presented to the Landmarks Commission for review and approval prior to lighting the sign.
- 4) Applicant to secure his Sign Permit from the Building Inspector prior to any work toward adding content to his sign.

A motion was made by Commissioner Bubnitz, seconded by Council Member Fitzpatrick, to approve continued usage of the pylon sign at W61 N517 Washington Avenue, to be a directional sign primarily with graphics to be approved by the Planner, also subject to Landmarks and Plan Commission recommendation. Motion carried without a negative vote.

REVIEW AND DISCUSSION ON MATTERS RELATED TO THE COMPREHENSIVE PLAN UPDATE

A discussion ensued regarding potential updates to the City’s Comprehensive Plan as it relates to Housing and Land Use. The Land Use Element divided the Smart Growth areas into those north and south of Bridge Rd. Also included in the packet was a tentative schedule. The areas discussed were Smart Growth areas 1-9. Any contaminated areas will need to have DNR involvement as

development takes place. The Plan Commission suggested having additional meetings per month as necessary to discuss the Comprehensive Plan; and requested more staff recommendations.

COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS - None

MAYOR'S ANNOUNCEMENTS - None

ADJOURNMENT

A motion was made by Commissioner Arnett, seconded by Council Member Fitzpatrick to adjourn the meeting at 9:45 p.m. The motion carried without a negative vote.

Tracie Sette
City Clerk