

**TOWN OF CEDARBURG
PLAN COMMISSION MEETING MINUTES
July 21, 2010**

Present: Chairman David Valentine, David Flowers (via phone), Ralph Luedtke, William Henke, Edward Downey, Paul Waldo

Excused: Mark Brunner

Also Present: Jim Culotta, Town Administrator, Brad Hoeft, Town Attorney, Eric Ryer, Director of Recreation & Planning

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Chairman Valentine called the meeting to order at 7:00 p.m. The meeting began with the Pledge of Allegiance.

2. MINUTES OF PREVIOUS MEETINGS:

Paul Waldo moved and Ralph Luedtke seconded a motion to approve the minutes of the regular meeting on May 19, 2010. The motion carried unanimously.

3. PUBLIC HEARING

a. Public hearing to take comment on a conditional use permit application by Lars Neske for the property located at 12302 Pioneer Road to construct a garage in the conservancy district [3 acres, zoned C-1 Conservancy District, SW ¼ of Sec.31]

Lars Neske would like to construct a new 24' x 36' detached garage (864 square feet) at 12302 Pioneer Road. Construction of such a building on his property requires a conditional use permit because his entire property is zoned C-1 Conservancy, and all accessory structures are allowed only by conditional use permit.

Lars Neske explained to the Plan Commission that he would use the building for storage. With no further comment from the public, Paul Waldo moved to close the public hearing. William Henke seconded, and the motion passed unanimously.

b. Public hearing to take comment on proposed Ordinance 2010-13, "An ordinance to amend two sections of the Town of Cedarburg Code of Ordinances, Ozaukee County, Wisconsin: firstly Section 320-19. B-1 Neighborhood Business District, particularly with respect to allowing, as a conditional use, "banquet facility" in the B-1 district; secondly to amend Section 320-137. Definitions and word usage, particularly with respect to the addition of a definition for the term "banquet facility"

In the aftermath of the fire that gutted the Country Keg (1814 Washington Avenue) earlier this year, owner Judith Lieven has been working to reopen her business. Town staff has worked with Ms. Lieven to ensure the use of her property is consistent with the Town Code. Currently, there is no conditional use permit for the Country Keg. Two of the three uses she is requesting are currently allowed in the B-1 district as conditional uses (bars & restaurants), while the third use "banquet facility" is not allowed as a principal or conditional use in the Town Code. Ms. Lieven has submitted a letter requesting a text amendment to the Zoning Code, which is allowed in ARTICLE XIII. Changes and Amendments of the Town Code. As the letter indicates, Ms. Lieven is asking that the Town consider adding banquet facility as a conditional use (amending Section 320-19), and defining it in Section 320-137 (thus amending Section 320-137). If the Board approves these amendments, Ms. Lieven would then be able to apply for a conditional use permit to operate a bar, restaurant, and banquet facility.

Mary Kay Buratto (planning consultant representing Judith Lieven) reiterated the situation summarized above. Jim Culotta then read a comment written by Stephen Castner of 8707 Kaehlers Mill Road:

“The Horns Corners neighborhood is made up of farms, residences and limited commercial uses. It is essential to the preservation of the rural qualities of the Town that the commercial uses continue to be limited.

A proposal is before you tonight for a text amendment to the B-1 Neighborhood Business District that would allow a new “banquet facility” use. The use would be conditional. The Town Board would have the authority to grant or refuse to grant a conditional use permit for any particular parcel in the B-1 District. If granted, the permit would impose specific conditions of use on that parcel.

The proposed definition has two undesirable effects:

First, it contains a catch all provision. In addition to specific uses, it would allow “other social events and activities related to the use of the restaurant and bar.” That catch all provision delegates to the owner the decision about what events and activities are “related” to those of a restaurant and bar. Zoning authorities should never cede to others the determinations of land uses. In fact, such a provision is contrary to Wisconsin zoning enabling laws because it fails to conform to comprehensive land use planning. Therefore, I ask that you recommend that the phrase be deleted,

Secondly, it allows the “banquet facility” to be used for “additional restaurant seating.” Use as a restaurant is an existing and separate conditional use in the B-1 Neighborhood Zoning District. Therefore, the number of seats must be controlled by a conditional use permit for a restaurant. Tacking a “banquet facility” of undefined size merely allows the owner to avoid the seating restriction in the restaurant conditional use permit. Therefore, I ask that the phrase “additional restaurant seating” be deleted.

I also understand that the Town staff has recommended that the statement of purpose language for the B-1 Neighborhood Zoning District be amended to read the same as for the B-3 Business District. Combining the definitions of the B-1 District with those of the highway-oriented use section of the zoning ordinance could merge the two zoning districts. It would not be appropriate, for example, to permit locker plants or auto body shops in B-1 District areas such as the Horns Corners or Decker’s Corners neighborhoods.

Please note that the agenda for tonight’s meeting that is posted on the Town web site makes no provision for consideration or discussion of the staff proposal. To take the proposal up tonight would violate the Wisconsin open meeting law.

The B-1 Neighborhood Business District is a product of actions taken long ago by the Town Board that are contrary to present day land use planning concepts and law. For example, combining the definitions of the B-1 District with those of the highway-oriented use section of the zoning ordinance could arguably permit a convenience store/gasoline station at Decker’s Corners or Horns Corners. I urge the plan commission to thoroughly review the B-1 Neighborhood Business District text and recommend amendments that will bring it within the character of the Town of Cedarburg.”

Administrator Culotta then read letters of support from JoEllen Wichman of 1572 Sherwood Drive, Matt Schwab of 2444 Hannemann Road, Lisa Schwab of 2444 Hannemann Road, Brian Wichman of 1572 Sherwood Drive, all four being residents of the Town of Cedarburg, as well as a letter of support from Theresa Stay of 1522 Indian Hill Drive (Grafton, WI).

Mary Kay Buratto then noted that she appreciates Mr. Castner's comments, but stressed that, to her knowledge, there have been no problems at the property over the years. She also noted, regarding Mr. Castner's comment on the "catchall wording" that would cover "other social events and activities related to the use of the restaurant and bar," that the Plan Commission (and Town Board) ultimately have the authority to deny inappropriate uses. She also stressed that it is nice for people to have a local small restaurant, as there are not many in the area. Lastly, Ms. Buratto said they would be willing to hold the number of seats to the number as regulated by the Fire Department.

Carrie Jones of 1113 Sunset Court of Grafton said they have enjoyed eating at the establishment over the years, and that she has not witnessed any problems since she has been eating there. Judith Lieven then said she thought the use of the property has been the same since it opened. She would like to simply continue on operating as she had in the past.

With no further comment from the public, Paul Waldo moved to close the public hearing. William Henke seconded, and the motion passed unanimously.

4. OLD BUSINESS

a. Discussion and possible recommendation on a "sign holiday" policy for Town businesses

Staff had requested the Plan Commission consider "loosening" the Town Code limitations on temporary signage for Town businesses. Several Town businesses are required by their corporate offices or manufacturers to display certain types and quantities of promotional materials throughout the year for special sale events. These requirements often put these businesses at odds with the Town Code. In order to assist local businesses and address this conflict, the sign code could be amended to allow businesses to use some of the restricted activities for a limited period of time – in essence take a holiday from certain elements of the sign code. The Town could set a certain number of holidays for each year and the business can determine when to use their holiday. Staff solicited feedback from several businesses on this concept and invited them to attend the meeting for comment.

Administrator Culotta explained that sufficient feedback had not yet been gathered from local businesses, and it may be worth while tabling the item for one month. Paul Waldo then moved to table the item until sufficient feedback has been gathered from which to draw informed conclusions. Dave Flowers seconded. The motion was passed unanimously, and the item was tabled.

5. NEW BUSINESS

a. Discussion and possible recommendation on a conditional use permit application by Lars Neske for the property located at 12302 Pioneer Road to construct a garage in the conservancy district [3 acres, zoned C-1 Conservancy District, SW ¼ of Sec.31]*

This item is related to item 3a. Ralph Ludtke said he visited the property, spoke with Mr. Neske, and felt it would be a great addition. William Henke agreed with this feeling. Chairman Valentine then noted that, when discussing the motion, the Plan Commission must see the findings below were present:

- (1) Welfare. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

(2) Compatible with adjacent land. The uses, values and enjoyment of other Town property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.

(3) Not impede surrounding property development and improvement. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding Town property for uses permitted in the district.

(4) Adequate infrastructure. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.

(5) Ingress and egress. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

(6) Conform to zoning district regulations. The conditional use application shall conform to all applicable regulations of the district in which it is located.

Paul Waldo did not see any issues with the draft conditional use permit, and asked Mr. Neske if he understood the proposed conditions of the permit. Mr. Neske noted that he agreed with the draft conditions aside from condition #4, which stated, "Mr. Neske must obtain any and all permits as dictated by Ozaukee County, WDNR or any other applicable government agency before commencing construction." Mr. Neske felt he did not need a WDNR permit; although he noted he did not yet speak with the WDNR (staff notified Mr. Neske to speak with WDNR before construction).

The Plan Commission discussed the conditions of the permit. Following discussion, William Henke moved that the findings listed above are present, and the Plan Commission recommend the Town Board approve on a conditional use permit application by Lars Neske to construct a garage in the C-1 Conservancy district on his property located at 12302 Pioneer Road, with the building not exceeding 864 square feet nor 20 feet in height, along with other conditions as proposed. Paul Waldo seconded, and the motion passed unanimously.

b. Discussion and possible recommendation on proposed Ordinance 2010-13, "An ordinance to amend two sections of the Town of Cedarburg Code of Ordinances, Ozaukee County, Wisconsin: firstly Section 320-19. B-1 Neighborhood Business District, particularly with respect to allowing, as a conditional use, "banquet facility" in the B-1 district; secondly to amend Section 320-137. Definitions and word usage, particularly with respect to the addition of a definition for the term "banquet facility"

This item continues from item 3b. Paul Waldo confirmed with Judith Lieven that the use on the property located at 1814 Washington Avenue would not change from that which was previously carried on. Also, that no new buildings would be constructed. Ms. Lieven confirmed these statements. Paul Waldo also asked about Mr. Castner's comment stating, "Please note that the agenda for tonight's meeting that is posted on the Town web site makes no provision for consideration or discussion of the staff proposal. To take the proposal up tonight would violate the Wisconsin open meeting law," regarding the staff proposal to amend the B-1 District to allow for "any other use that is in substantial conformity with the expressed intention of this district may be made a conditional use when recommended by the Plan Commission of the Town of Cedarburg and approved by the Town Board." This specific issue was not publicly noticed. Attorney Hoefl agreed that since this was not particularly noticed, it should not be up for discussion by the Plan Commission. There was no further discussion on this issue.

At this point, Chairman Valentine referred to Mr. Castner's comment as follows: "The B-1 Neighborhood Business District is a product of actions taken long ago by the Town Board that are contrary to present day land use planning concepts and law. For example, combining the definitions of the B-1 District with those of the highway-oriented use section of the zoning ordinance could arguably permit a convenience store/gasoline station at Decker's Corners or Horns Corners." Chairman Valentine expressed that he did not agree with Mr. Castner's comment, and felt a convenience store at Decker's Corners would be useful and popular.

Paul Waldo had no problem changing the language so that Ms. Lieven could operate her business as she had in past. Ralph Luedtke enjoyed the small town feel of the business and would like to see it stay in operation. Ed Downey did not have a problem with the proposed text amendment, nor did William Henke. David Flowers then pointed out that he wanted to make sure that the parking provided was sufficient for the business. Chairman Valentine stated parking is strictly regulated by Code. Administrator Culotta then suggested amending the Article XV. Definitions portion of the proposed ordinance allowing banquet facilities that are not attached to also be permitted as a conditional use in the B-1 district, as this could be beneficial. This would mark a change from the original proposed ordinance language, as can be seen below (underlined text is new; text with a strikethrough would be removed).

ARTICLE XV. Definitions

§ 320-137. Definitions and word usage.

Editor's Note: The definitions of "lot, corner," "nonconforming uses" and "use, accessory" which appeared in this section were deleted 10-4-2006 by Ord. No. 2006-11. For the purposes of this chapter, the following definitions shall be used, unless a different definition is specifically provided for a section. Words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. The word "shall" is mandatory and not permissive.

BANQUET FACILITY

A building or room attached to, and made a part of, an existing bar-restaurant for the purpose of hosting and catering of parties, banquets, weddings and other receptions, meetings, additional restaurant seating or other social events and activities subject to the terms of a conditional use permit related to the use of the restaurant and bar.

The Plan Commission was in favor of this amendment. At this point, Paul Waldo moved that the Plan Commission recommend the Town Board approve the text amendment via Ordinance 2010-13, as amended above. William Henke seconded, and the motion passed unanimously.

c. Update on Wisconsin planning legislation

Director of Recreation & Planning Ryer summarized that the Plan Commission had been supplied with a synopsis of recent planning legislation for their review.

6. ADJOURNMENT

William Henke then moved to adjourn the meeting. Paul Waldo seconded, the motion carried unanimously and the meeting was adjourned at 7:36 p.m.

Respectfully Submitted,

Eric Ryer
Director of Recreation & Planning