

**CITY OF MEQUON
WISCONSIN
PLANNING COMMISSION MINUTES
December 7, 2015**

Commissioners present: Mayor Dan Abendroth, Ald. Rob Strzelczyk Becky Schaefer, James Schaefer, Brian Parrish, John Stoker, John Mason, David Fuchs, LeRoy Bessler

Staff members present: Kim Tollefson, Director of Community Development
Jac Zader, Asst. Director of Community Development
James Keegan, Engineering Services Manager

Minutes of the meeting held on Monday, December 7, 2015 at 7:00 p.m. in the Common Council Chambers, Mequon City Hall, 11333 N. Cedarburg Road. [Note: Planning Commission meeting was audiotaped.]

1. a. Call to Order, Roll Call
- b. Approval of the November 11, 2015 Planning Commission meeting minutes.

Action:

Commissioner Mason moved to approve the November 11, 2015 minutes.

Commissioner Fuchs seconded the motion to approve the minutes.

A voice vote was called. All voted aye, 8-0.

Consent

2. Concord Development Company for Mark and Lynn Leonard

District: #5 Zoning: B-3

Address: 11409 N. Port Washington Road Tax Key: #15-019-13-014.00

11421 N. Port Washington Road Tax Key: #15-019-13-013.00

- Request:**
1. Building/Site Plan Extension
 2. Certified Survey Map Extension

Briefing: The applicant is seeking one-year extension of certified survey map and building/site plan approvals that were originally granted on December 8, 2014 for the Leonard Development project to be constructed at 11409-11421 N. Port Washington Road.

3. Walter Buildings for John Dobberfuhl

Address: 13235 N. Granville Road Tax Key: #14-007-03-000.00 District: #5 Zoning: R-1/OA, C-2/OA

- Request:**
1. Minor Request – Agricultural Structure >1,000 sq. ft.

Briefing: The applicant is seeking approval to allow for a new machine shed (60' x 120') at the property located at 13235 N. Granville Road.

4. Andrew Petzold for Lakeside Commons Condominiums

District: #5 Zoning: B-3

Address: 11715 N. Port Washington Road (Unit1) Tax Key: #15-176-0001.000

Address: 11725 N. Port Washington Road (Unit 2) Tax Key: #15-176-0002.000

Request: 1. Final Condominium Plat Amendment

Briefing: The applicant is seeking approval to re-plat the condominium to reconfigure unit areas and common elements located at the property at 11715–11731 N. Port Washington Road.

Action:

Ald. Strzelczyk made a motion to approve consent agenda items #2, #3 and #4.
Commissioner Fuchs seconded the motion.

Commissioner Becky Schaefer asked for additional information regarding item #2 requests for extension.

Asst. Dir. Zader answered that the applicant is still working on details on the architecture and wants to secure more tenants before starting construction on the building.

*A voice vote was called. All voted aye, 8-0.
Consent items #2, #3 and #4 are adopted.*

Mayor Abendroth moved item #8

8. Dan Mikolajczak

Address: 8677 W. Freistadt Road Tax Key: #14-021-06-009.00 District: #3
Zoning: R-1/OA, C-1/FW

Request: 1. Reconsideration of approval for agricultural building in excess of 1,000 square feet

Briefing: Based on a memo from the City Attorney, the Planning Commission may reconsider the approval for an agricultural building at 8677 W. Freistadt Road

Action:

Ald. Strzelczyk made a motion to reconsider this item.
Commissioner Fuchs seconded the motion.

A voice vote was called. All voted aye, 8-0.

Asst. Dir. Zader stated that he added a memo from the City Attorney dated November 30, 2015, regarding the use of the agricultural building. There was much discussion last month regarding how much of the building could be used for personal use. After that meeting, Asst. Dir. Zader asked the City Attorney for his opinion regarding this issue. His opinion is that this building needs to be solely for agricultural use. This is in conflict with the motion and approval from last month's Planning Commission (PC) meeting.

The applicant Dan Mikolajczak asked what is being changed from last month's approval.

Mayor Abendroth stated that the language used for the approval was *primarily* used for agriculture but it needs to be exclusively used for agricultural use.

Asst. Dir. Zader stated the reason for this item being before the PC is because the code states that an agriculture building in excess of 1,000 sq. ft. requires PC approval. Personal use buildings would not come before PC, they would be handled before the Architecture Review Board. The personal use building has limits to the size allowed. In this case it would be limited to 2,170 sq. ft. He suggested that if the applicant is looking for additional space for personal items, the best solution would be to build a 2,170 sq. ft. detached building. If the applicant needs more space for agricultural equipment, he should build a separate building for those purposes at a size necessary to accommodate the equipment. This would require that the existing 8 x10 shed on the property to be removed.

Commissioner Mason asked if there is a tax difference depending on the type/use of building.

Asst. Dir. Zader stated that he believes agriculture has its own tax structure for land which may also apply to the building.

He added that the existing building is 2,268 sq. ft. and is considered non-conforming. The applicant was advised that he would be allowed to rebuild the same size building if that was desired. The applicant stated that it was not large enough. Even though it is not in the code language, staff would allow the same foot print and same size building to be rebuilt or remodeled. Both of the buildings on the property were present when the applicant bought the property.

Mayor Abendroth questioned if the applicant could remodel the building and add an addition.

Asst. Dir. Zader answered that they would need to be two separate buildings, separated by a fire wall with no openings. They are attached but separate.

Commissioner Fuchs asked for clarification on what the applicant is allowed to build on his property.

Asst. Dir. Zader stated that the applicant currently has two detached structures on the property (including the barn). For personal use, the applicant would need to remove the existing 8 x10 shed and the barn and then construct a new structure from scratch. Or he could remodel the existing structure and use it for personal use if it is the same shape and size. If the applicant wants a larger structure, it would be only allowed to be used for agricultural uses and the zoning code caps the size for detached structures for residential use at 2,178 sq. ft. This is the limit regardless of the size of the lot.

Mayor Abendroth stated that the applicant is allowed to remodel the current building for personal use and he could add an agricultural building or expand the current building for agricultural use only.

Mr. Mikolajczak stated that the building is made of field stone with cinderblock walls which are difficult to take down. He stated that he wants to add 1,929 sq. ft. in the back of the building. He stated that building a wall to separate the two sides would be a better solution.

Commissioner Becky Schaefer asked if the additional 1,921 sq. ft. would be enough space to be used for personal use. Mr. Mikolajczak answered yes.

Ald. Strzelczyk stated that the intent is to allow the applicant some flexibility to be able to enjoy his property. He thinks it is important for the PC to respect the zoning code that is in place and to also be consistent.

Asst. Dir. Zader stated that based on the acreage, 2,178 sq. ft. is 1% of 5 acre zoning. The applicant would be allowed to use that for personal use. The proposed building was presented as an agricultural building but it is now being discussed to be used for personal ATV's, snowmobiles and a RV. The PC is approving the agricultural portion, not the personal portion. This is a unique situation because the applicant is reconstructing the front portion of the building for personal use that is physically attached to the building to the back which is the agricultural portion. It would require a two or three hour rated wall that would need to separate the two portions to legitimately call it a separate building.

Commissioner Stoker asked whether the personal use portion would need to go through the Architecture Board (AB) review. If it is required, he asked how it would work to have that piece work with the piece that PC has to approve.

Asst. Dir. Zader answered that the personal piece would need to go before AB. He stated that this is a new path and the reason it is before PC. PC may approve a portion that later comes into conflict from the review of the AB. Due to this, he prefers that each portion is handled as separate portions with 5 feet of space between them. This would ensure each portion gets handled specifically.

Mayor Abendroth stated that the applicant is allowed to remodel the existing building for personal use as long as it is the same size and shape as its current condition. Anything added to the existing building, either attached or detached, would need to be used for agricultural use only. The applicant needs to figure out exactly what he wants to do and submit a plan. He suggested that this be tabled and the applicant should work with staff.

Action:

Commissioner Parrish moved to table this item.
Commissioner Fuchs seconded the motion.
A voice vote was called. All voted aye, 8-0.

Public Hearing

5. Dermond Property Investments, Inc.

Address: 11130 N. Buntrock Avenue Tax Key: #14-027-02-010.00 District # 4 Zoning: TC

Request:

1. Conditional Use Grant
2. Building/Site Plan Approval
3. Specimen Tree Removal

Briefing: The applicant is seeking conditional use grant, building/site plan and specimen tree removal approval to allow for a 3-story, 33 unit multiple family residential development located at 11130 Buntrock Avenue in the Town Center.

Action:

Commissioner Stoker made a motion to go into public hearing.
Ald. Strzelczyk seconded the motion.
A voice vote was called. All voted aye, 8-0.

Action:

Commissioner Stoker made a motion to close the public hearing.
Ald. Strzelczyk seconded the motion.
A voice vote was called. All voted aye, 8-0.

Asst. Dir Zader stated that the applicant was before the PC in October for rezoning and concept plan approval. It then was approved by the Common Council (CC) in November. There are a few changes since the last time but the site plan is pretty much the same. The PUD concept plan did allow for a number of waivers; 30% of the units are smaller than the 1,000 sq. ft. but no less than 821 sq. ft., the FAR is allowed at 116% and the number of guest parking stalls was reduced to 8. The average sq. ft. of the units is 1,231 and the breakdown of types of units is the same (17-1 bedrooms, 12-2 bedrooms and 4- 3bedrooms). The plan now shows a storm water plan in the middle of the site. Due to a significant grade change from the front to the back, there is a retaining wall with a fence that will need to be approved. There is a potential to do some public improvements with the sidewalk and streetscaping. These will need to be approved per the TC guidelines. The Commissioners had some previous concerns regarding the elevations of the building and there has been some changes. The updated renderings show changed elevations on the building. The color pallet has also been changed and is richer in tone than shown last time. Staff does support the changes to the building. The only concern is the elevation to the East. Staff would like to see some more prominent articulation to the wall there or some features added to break up the massing of that wall.

There are two specimen trees that they are asking to have removed. The City Forester has approved the removal in accordance with the tree preservation policy.

The conditional use grant was required for any building over 2 & ½ stories. The shadow line study shows that there is very little impact to the building on adjacent properties in terms of shadow.

The landscaping and lighting plans are in the packet. The comments from the landscaping consultant are included. Staff has received an updated lighting plan. There are still a few minor issues to work out.

The applicant stated that they do not have any objections to the conditions in the staff report.

Commissioner Jim Schaeffer asked whether the brick sticks out from the fiber siding. He also asked about the large east side wall, he thinks the windows are different on that side. He feels there needs to be improvement there.

Commissioner Stoker asked about the limited number of guest parking stalls. He asked if this is sufficient. He stated

that he favors the improvements on the East side.

The applicant answered that most of their experience is in urban areas. She stated that there is a lot of parking underneath and they are also hoping there may be some street parking available.

Ald, Strzelczyk also questioned whether there is enough guest parking. He suggests that the east elevation still needs work and he would like to see it be brick. He said this building will be a show piece in the TC and he would like for all 4 sides to be more attractive.

Commissioner Becky Schaeffer asked if the two specimen trees are removed would they be replaced on the property. She asked about the trees/screening on the east side to shield the bus company.

The applicant answered that they would be replaced on the property.

Action:

Ald. Strzelczyk made a motion to approve this item with the stipulation that the applicant work with staff on the east side of the building to improve the elevation and appearance of that side.

Commissioner Stoker seconded the motion.

A voice vote was called. All voted aye, 8-0

Regular Business

6. Forward Dental

Address: 6048 W. Mequon Road Tax Key: #14-050-02-04-000 District: #2 Zoning: TC

Request: 1. Building/Site Plan Amendment

Briefing: The applicant is seeking building/site plan amendment approval to allow for opaque window coverings at the property located at 6048 W. Mequon Road in the Town Center.

Asst. Dir. Zader stated that this is a request to cover up the entire 1st floor south and west window area with an opaque frosted window covering. There is also signage on the west elevation that exceeds the 25% window coverage. Back in March there was an extension discussion and PC allowed Elements Massage to cover some of their window on Cedarburg Road. The PC stated that individual requests needed to be made. Staff is not supportive of covering the windows and stresses the importance of natural surveillance. There were numerous conversations with the developer and it was also stated on their occupancy permit that the windows need to remain from obstructions and window coverings at all times. It was known during the construction phase that this was the requirement and there were no indications that there would be any issues. It is unfortunate that the City is being put in a position of possibly abandoning one of the primary goals of the TC.

Asst. Dir. Zader showed examples of windows that are open and acceptable and examples that are covered and not acceptable in the TC.

Staff recommends denial of the request.

Peter Young, Director of Regional Operations for Forward Dental, stated that they are mandated by the federal law to protect the privacy of their patients. They are working on solutions to manage their risk. They do not get to decide what is a violation; the patient decides if they feel they have been violated and they can file a complaint with the federal government.

Ald. Strzelczyk stated that he struggles with this request because he agrees with the HIPA request and patient privacy and the solution suggested is the best solution, but it was a known fact that the location is next to a sidewalk and the TC zoning was a known fact. He is not supportive of changing the TC zoning. Although he agrees with what Mr. Young is saying, the space was leased and it was known to the developer and the tenant what the zoning code requirements were.

Commissioner Mason asked if the applicant considered going up to the second floor and if they would have the same issues on a second level.

Mr. Young answered that there would not be concerns about patients being seen from the public on the second floor but the expense of reconfiguring and moving all the equipment to the second floor would be very expensive to do. They have been in operation since June. He stated that the windows are not currently covered.

Commissioner Becky Schaeffer asked why the developer was not present at this meeting. She stated that he should be present to discuss this issue since he was aware of this open concept and leased the space to this tenant. She stated the memo from the developer missed the mark that this is already a slippery slope. She is struggling with this issue because she feels that the developer is not explaining the intent and the zoning code of the TC to his tenants.

Mr. Young stated that he was not aware of the negotiations to lease the space. He stated that the window skins have become more important to their business at other locations as well. They like the windows for the natural light but have used the window skins to provide the patient privacy at other locations.

Commissioner Stoker asked about the hours of operation and stated that he feels the screening is more impactful at night. He asked if they could do a retractable screening for during the day when needed. He said that they have ½ the building and their vitality there is crucial.

Ald. Strzelczyk stated that the product the applicant suggested to use is a great product. He does not have another one to suggest that would work for the TC zoning code.

Commissioner Parrish asked if there are interior exam rooms. He inquired if their floorplan could be adjusted. He asked about using blinds.

The applicant stated that they are using a retractable blind. These are problematic as they need to be wiped down after each patient.

Asst. Dir. Zader stated that the idea of flipping the floorplan around was discussed at time of planning. He stated this is a tough situation because many different solutions could have been changed along the way.

Commissioner Fuchs stated that he does not feel that this is a City issue but it is an issue that should be handled between the tenant and developer. He stated that the rules were made clear. He does not agree that the ordinances should be changed because there is now a problem that should have been known in the beginning.

Commissioner Mason stated that he is disappointed in Mr. Williams for putting the applicant in this position. There was a lengthy discussion regarding this issue and he should have advised the applicant about the window treatment restrictions.

Commissioner Stoker asked if staff is supportive of blinds being used by the applicant.

Asst. Dir. Zader answered that staff is not supportive because the blinds will always be down.

Mr. Young disagreed with that statement and stated that the blinds are only down if a patient requested them to be or if the sun is too bright and the data on the computer cannot be read.

Asst. Dir. Zader answered that this would be a staff enforcement nightmare and that the applicant could claim that every patient wants the blinds down.

Commissioner Stoker stated that he too struggles with this issue. Because this business faces south the blinds are necessary in the afternoon sun. He thinks the blinds may need to be an answer. He does not agree with the windows being covered. He struggles that this was a known issue and now months later this issue is before PC.

Ms. Tollefson added that all tenants on Cedarburg Road will have to deal with the sun at some point during the day. They should have reversed their floorplan like Elements Massage did to solve this issue. Staff has stressed all along that the priority is on the public street and not on the parking lot.

Mayor Abendroth asked if just viewing a patient from the street is against HIPA law.

Mr. Young answered that it is a patient's choice whether they feel violated and they could report it. They want to make sure they take every measure to be in compliance.

Ald. Strzelczyk asked how many of the windows are in patient rooms.

Mr. Young answered that there are 6 windows.

Ald. Strzelczyk stated that the precedent of TC is to invite traffic and closing off those windows goes against that intent. He agreed that this is not a City issue but it is a tenant/developer issue. He stated that the integrity of the TC zoning is important but it is also new and it is also important to work with the businesses in the city. He said the applicant should work with the developer to make it work.

Commissioner Mason asked if glass block would be allowed.

Asst. Dir. Zader answered that it is suppose to be clear glass and allow for the natural surveillance. Since a few businesses have opened there has been a lot more activity there. Having this business look vacant or empty would deter from bringing people to the site.

Action:

Commissioner Parrish made a motion to deny the request.

Commissioner Jim Schaeffer seconded the motion to deny.

A roll vote was called. All voted aye, 8-0

Mayor Abendroth stated that he agrees that at certain times the blinds would be useful. The blinds should be used by request only. He said the blinds should be left up at night.

Ald. Strzelczyk asked if it is better to table the item rather than deny it.

Commissioner Becky Schaeffer stated that she really feels that the developer should be present to discuss this issue if it going to be tabled. There is no reason that he is not present to discuss this issue.

7. Veridian Homes

Zoning: R- 3/CGO District: #4 Tax Key: # 14-028-03-006.00

Address: 10729 N. Wauwatosa Road Tax Key: # 14-028-13-007.00

Address: 10701 N. Wauwatosa Road Tax Key: # 14-028-13-008.00

Address: 10839 N. Wauwatosa Road Tax Key: # 14-028-04-012.00

Request: 1. Development Agreement Amendment

Briefing: The applicant is seeking development agreement amendment approval for the property located at 10729 - 10839 N. Wauwatosa Road for the proposed Enclave at Mequon Preserve subdivision.

Asst. Dir. Zader stated that this request is an amendment to the development agreement to allow for additional homes to be built prior to final plat. The current development agreement allows for the construction of 2 homes to be built prior to final plat approval. The applicant is requesting this be modified to allow for 10 additional dwellings be built prior to final plat. He is also requesting that the requirement for having the binder course complete prior to issuing permits for the dwellings be waived. The permitted access point has not yet been installed and the applicant has been using a temporary access for their construction traffic. This would be the same access that is requested to be used to build the model homes. The model homes are allowed to be built prior to final plat to give the developer some exposure. Two homes has been the maximum allowed thus far. Staff feels that the requested 10 is too many and will set a precedent for all other developers. There are other concerns about having a substandard road for all contractors, City officials, inspectors and others will have to access the site without a binder course down. If there is an emergency on site the Fire and EMS would need to be able to access the property. The ability to monitor the road is

difficult and having 10 model homes requires too much additional traffic on a less than standard road base.

Staff did offer the applicant 4 model homes could be built prior to final plat. They would need to be located in a designated area that is closest to Wauwatosa Road to limit the length of the temporary road. If the PC is willing to waive the requirement to have the binder course installed, the Engineering department has suggested several conditions in the staff report.

Staff does approve up to four model homes to be constructed prior to final plat and the condition of the road will be according the engineering report suggestions.

The applicant, Matt Cudney from Veridian Homes, stated that he appreciates Staff's willingness to allow four homes and the work that was done to find a solution to the road issue. They are in agreement with all of the recommendations in the staff report except for the number of allowed model homes and the limiting of the location of the model homes. They propose a compromise of 6 model homes be allowed and they would like the ability to build on lots 4 and 9 to the west. They currently have lot reservations for 4 and 9 and these will not be model homes but homes for specific homeowners. He stated that it will take 4-7 weeks to construct the binder course in the Spring, depending on weather conditions. Due to the schedule, it is important to have the houses ready for families to move in before school resumes in September. It is important to them that the road be maintained as they have heavy construction trucks traveling on it. They feel that there is little risk to the City. The site improvements have not been accepted so any damage done would be addressed by them.

Asst. Dir. Zader stated that the weight of the emergency vehicles is not the issue but that they have a low profile off the ground. The smoothness of the road is the concern. There could be worker injuries on site.

Engineering Manager, James Keegan, stated that the temporary road is 12 feet wide, so it is one way traffic in and one way traffic out. It is not going to be easy to use if it gets too busy.

Mayor Abendroth asked about parking areas off the work site.

Mr. Cudney answered that they park off the site and due to the cold weather there should not be any issues.

Commissioner Parrish offered a compromise of 5 model homes be allowed.

Commissioner Fuchs asked about the reason for expanding the number of allowed model homes. He does not think the City should have to solve the problems with the road.

Asst. Dir. Zader stated that back in June or July it was known that the road was going to be difficult to get in due to scheduling. It is precedent. He added that although there is not a lot of risk to the City, there is still some risk. There are reasons that there are agreements in place to protect the City. It is a very conservative and risk-adverse process in place regarding development.

Mr. Cudney offered to give an indemnity or any agreement the City Attorney wanted to put in place.

Commissioner Fuchs stated the he supports the staff recommendation of allowing 4 houses.

Mr. Keegan stated the line drawn by staff west of lots of 2 and 11 is due to a public safety issue of keeping the building sites as far east and as close to Wauwatosa Road as possible. The intersection on site could be used as an intersection for staging emergency equipment if necessary.

Mr. Keegan stated that the applicant started in late Fall constructing the road and due to the wet weather the subgrade did not dry and the road base was not strong enough to hold the paving equipment. They now need to wait for warmer and drier weather in the Spring to build the road.

Action:

Commissioner Mason moved to approve the item as recommended by staff.

Commissioner Fuchs seconded the motion.

Mayor Abendroth offered an amendment to allow the applicant to use the lots 4 and 9 as part of the allowed 4 homes to be built.

Commissioner Mason accepted the amendment.

Commissioner Fuchs seconded it.

A roll vote was called. Vote passed 8-0

9. Announcements

Development Inquiry

2016 Planning Commission Meeting Schedule

Next Meeting is Monday, January 11, 2016

10. Adjourn

The meeting adjourned at 9:00 pm

Ald. Strzelczyk moved to adjourn.

Commissioner Mason seconded the motion.

All voted aye. Vote passed 8-0