

PLAN COMMISSION MINUTES
August 8, 2016

CALL TO ORDER: 6:37 pm

ROLL CALL: Chairman Dean Wolter, Trustee Representative David Baum, Commissioners Mary Ellen Gray, Bill Shadid, Peter Nilles and Tony Laszewski were present. Commissioner Ben Goetter was absent and excused. Also present were Community Development Director/Village Planner Jeff Retzlaff and Planning Assistant Lori Johnson.

PUBLIC INPUT: None

APPROVAL OF MINUTES: ***MOTION Baum second Shadid to Approve the minutes from 7-11-16.***

MOTION carried unanimously.

Charles Rusch – Property owner of a 34.8 acre parcel on Pioneer Road is seeking approval of a 2-lot Certified Survey Map. Planner Retzlaff summarized the proposal.

MOTION Baum second Shadid to Approve the 2-lot Certified Survey Map land division for the 34.8 acre Rusch property located on Pioneer Road subject to the following conditions:

- 1. All technical corrections identified by the Village Surveyor as summarized in the July 27, 2016 memo shall be made prior to recording the CSM by the Village Board.***
- 2. A note shall be added to the CSM indicating that no further land division of or construction of any habitable structure on Lot 2 shall occur until such time as the appropriate soil evaluation indicating Lot 2 can support an on-site septic system is prepared and approved by Washington County and/or the Village.***

MOTION carried unanimously.

Sports Specialists of Milwaukee – N104 W13885 Donges Bay Road & Skyline Development Corp. – Lot 2 of CSM 6684 Spaten Court. Conditional Use Permit Application for revisions to CUP #04-16 for Wetland Setback Encroachment and Revised Site Plan for changes to the driveway and dumpster enclosure. Planner Retzlaff summarized the proposal and staff's recommendations for conditions of approval. Mike Krenz, Skyline Development, said they accept the conditions of approval. He explained it was the owner's personal preference to move the driveway and explained a revised landscape plan showing additional plantings will be submitted in the future. Trustee Baum agreed with Planner Retzlaff that additional mitigation should be required in the off-site mitigation area and asked if there was any mitigation that could be done on the off-site area for a future business locating on the off-site parcels to use. Planner Retzlaff explained the mitigation area and wetland and navigable stream setbacks on the off-site parcel adjacent to Fond du Lac Avenue already create a narrow lot for future development along with an access restriction against access to Fond du Lac Avenue. Discussion followed. Mr. Krenz said that the owner agrees to the condition requiring the same mitigation activities in the off-site mitigation area as proposed for the on-site mitigation area as on the site plan. Planner Retzlaff said the more critical issue is granting an access easement. Discussion continued regarding wetland mitigation and the need to compensate for encroachment into the wetland setback area.

MOTION Baum second Gray to Approve a Revised Conditional Use Permit to allow development within the 25' wetland and 75' navigable water setback areas and proposed compensation as presented in the Wetland Mitigation Plan (dated August 5, 2016) pursuant to Section 24.04 of the Shoreland-Wetland Zoning Code and subject to the following conditions:

- 1. The owner shall prepare and submit an annual monitoring report to the Village and local DNR staff concerning the various management activities proposed in the plan, including the planting/restoration of native vegetation. Said report shall, at a minimum, detail the type and amount of plantings, all activities carried out in the previous year and the observed success of all previous activities, recommendations for new or different activities needed to ensure success of the mitigation measures and management activities to be carried out, and a list of planned activities for the upcoming year. Said report shall be submitted annually at the end of each year beginning in 2017 for a period of three (3) years.**
- 2. The owner/applicant shall prepare an appropriate easement and easement agreement document to be revised and approved by the Village Attorney prior to review and final action by the Village Board. At a minimum, said easement agreement shall address the issue of access to and maintenance of the mitigation areas created on the affected parcels; and the future use and prohibition of development within the mitigation areas.**
- 3. The Mitigation Plan shall be further revised to include the following compensatory mitigation activities within the 27,100 sqft "off-site" mitigation area: (1) invasive species removal and eradication; and (2) the planting of native prairie vegetation comprised of a native prairie seed mix and matting in those portions of the off-site mitigation area where invasive vegetation has been removed. Said revised Mitigation Plan shall be submitted to the Village Planner for approval prior to review and final action by the Village Board.**

MOTION carried unanimously.

MOTION Baum second Gray to Approve the Revised site development plan for the proposed 32,000 sqft warehouse distribution and office building for Sports Specialists of Milwaukee Inc. located at N104 W13885 Donges Bay Road in the Germantown Business Park subject to the following conditions:

- 1. This approval is subject to all of the conditions and requirements set forth herein and adopted by the Plan Commission. Approval is granted for the site development plan (Sheet C1.00) date stamped "received" August 3, 2016 unless superseded by subsequent plan sheets approved by the Village Planner pursuant to revisions required herein and/or by the Plan Commission.**

MOTION to Amend Baum second Shadid to add Condition #2 that the revised landscape plan be approved by Director Retzlaff.

MOTION to Amend carried unanimously.

MOTION to Approve as Amended carried unanimously.

Community Development Department- Proposed Code Amendments to various provisions to Section 17 (Zoning Code). The amendments are proposed in order to bring provisions up-to-date in light of changes to Wisconsin Statutes; reflect recent actions and/or policy decisions by the Village; or clarify and improve staff's ability to administer and enforce these particular regulations. Planner Retzlaff summarized the code amendments.

Amendment #1: The proposed amendment was created to implement the Village Board's direction to create a process by which business owners can apply for a conditional use permit that would enable businesses with a CUP to conduct outdoor entertainment activities from 10:00pm to 12:00 midnight subject to a series of conditions. Discussion followed. Trustee Baum explained the noise ordinance starts at 10pm, so specifically no music could be allowed after 10 pm. He said the Public Safety Committee discussed that you could have dinner outside but you couldn't have music or bands outside. This proposed another problem if someone's bedroom is 10 feet from where people are sitting having dinner. Planner Retzlaff explained the conditional use permit would be a pass to make additional noise. Trustee Baum explained that any business who wants to propose an outdoor use after 10pm would need to apply for a conditional use permit and define and describe what they are proposing to do. The Plan Commission and Public Safety Committee would then decide whether it would be acceptable at their location.

MOTION Gray second Baum to Approve the amendment to Section 17.42(10) as proposed:

17.42(10) LATE-NIGHT OUTDOOR ENTERTAINMENT.

Any restaurant within a B-1, B-2, B-3, B-4, B-5 or HIA Highway Interchange Area Overlay zoning district may apply for a late-night outdoor entertainment conditional use permit under the provisions of this section. A late-night outdoor entertainment conditional use permit shall authorize the restaurant to conduct outdoor activities between 10:00 pm and midnight notwithstanding any other provision of the Municipal Code subject to the following:

- a. The property shall be located a minimum of 200 feet from any residential zoning district;**
- b. The restaurant shall have been in business continuously for not less than 3 months at the time of application; and**
- c. The restaurant shall, at the time of application and annually thereafter submit to the Village documentation showing that more than 50% of the restaurant's gross sales are from the sale of food together with a signed statement from a certified public accountant who has reviewed the data and certifies that it is correct.**
- d. No music shall be allowed after 10:00 pm.**
- e. Any other condition that may be placed upon the permit by the Village Board to ensure compatibility and harmony with surrounding uses.**
- f. Nothing herein shall prohibit the Village from enforcing its code provisions related to those noises which are excessively or unnecessary loud, disorderly, or which otherwise create a nuisance.**

MOTION to Amend Gray second Baum to remove Item d.

MOTION to Amend carried unanimously.

MOTION to Amend Laszewski second Baum to correct Item c. to: ... a signed statement from a Certified Public Accountant and; add ...more than 50% of the restaurant's prior year gross sales. . .

Planner Retzlaff read the definitions in the zoning code for restaurant and tavern. Discussion followed.

MOTION to Amend carried unanimously.

MOTION to Amend Baum second Shadid to eliminate Item c.

MOTION to Amend carried unanimously.

Chairman Wolter questioned why the amendment says any restaurant when late night outdoor entertainment encompasses both a restaurant and tavern. Planner Retzlaff said each application should be considered on its own merits.

MOTION to Amend Baum second Shadid to add: . . . any restaurant or tavern . . . to the ordinance.

MOTION to Amend carried unanimously.

MOTION to Amend Baum second Shadid to change Item b: . . . the Business shall have been in business . . .

MOTION to Amend carried unanimously.

MOTION to Approve as Amended carried unanimously.

Amendment #2: The proposed amendment to the Site Plan approval requirements in the Zoning Code specifically requires a property owner who goes through the site plan approval process to also enter into a "Landscape Maintenance Agreement" with the Village. Staff will also prepare and maintain a model agreement that will be used for all eligible developments after adoption.

MOTION Gray second Baum to Approve the Amendment to the Zoning Code to include Section 17.43(6a):

17.43(6a) Landscape Maintenance Agreement.
Any property owner obtaining approval of a site plan that includes the design and installation of landscaping associated with the development of a property shall enter into a Landscape Maintenance Agreement with the Village. The purpose for the agreement shall be to: ensure the installation of landscaping in accordance with the landscaping plan approved by the Village; require a permanent and perpetual warranty to maintain said landscaping that will run with the property and be binding upon the property owner, successors and assigns. A model agreement shall be prepared by the Village and entered into between the property owner(s) and the Village concurrent with the granting of site and landscaping plan approval by the Village.

MOTION carried unanimously.

Planner Retzlaff said he will bring a draft agreement back to the Plan Commission for their review. The amendment is for all new development moving forward.

Amendment #3: Staff is proposing to amend Section 17.43(7) to specifically provide that, in the course of reviewing and ultimately deciding to approve, approved with some conditions, or deny a particular site plan proposal, the Plan Commission is charged with the responsibility of determining whether or not the development proposal will meet all of the specific items listed in the intent section of the Zoning Code and not just the adequacy of the application forms and utilities. Planner Retzlaff summarized the amendment. He explained the intent of the language is to make it clear that the Plan Commission does have the authority to deny a project or assign specific conditions and limit certain aspects of a development or add additional requirements to ensure the proposal satisfies the provisions of the intent section of the code. Discussion followed.

Commissioner Gray questioned if the Plan Commission needs to point out why a decision is made on a development. Planner Retzlaff said a reason should be given because it could be arbitrary or capricious. Chairman Wolter agreed. Planner Retzlaff said the proposed language also gives the Plan Commission the authority to ask for additional information to further help review a project. Trustee Baum questioned who determines aesthetics. Planner Retzlaff said it falls under Section 17.49 of the Code, Architectural Review Board, which is the Plan Commission. Chairman Wolter said you can't just say you don't like something or don't care for it. You need to say I don't think it will work or I don't approve of it for these reasons and tie it in the zoning or surrounding area and is not be opinion. Commissioner Gray said citing the undue population concentration could be a reason to decide approval of a proposal with no other reason given. Planner Retzlaff said language could also be added to further clarify density qualifiers. Discussion continued. Chairman Wolter said there are always a percentage of people who don't want to see any change and Plan Commission should decide if it's a good development for Germantown and if it fits all the criteria of zoning and aesthetics and is a positive, good development long term. Planner Retzlaff said the Plan Commission plays a big role in what is approved and looking at the big picture.

MOTION Baum second Shadid to Approve the Amendment to Section 17.43(7):

(7) REVIEW PROCEDURE. Upon receipt of the site plan, the Community Development Department and Plan Commission shall review it to determine whether it is in proper form, contains all of the required information, shows that the proposed development, including all buildings, site improvements, land uses and activities subject of said site plan are in compliance with this and other ordinances and plans of the Village, including but not limited to the Village's Comprehensive Plan, and whether or not the proposed development meets the intent of the Village Zoning Code as set forth in 17.04 herein, and demonstrates the adequacy of utility services. Upon demand by the applicant of the site plan, the Plan Commission shall, within sixty (60) 30 days of its initial submittal, approve it, conditionally approve it or deny approval. Subject to the provisions of 17.49 herein (Architectural Review Board), the Plan Commission shall have the authority to: (a) determine if a proposed development meets the intent of this Code as set forth in 17.04 and the requirements of all other applicable codes; (b) deny a proposed development if

the Plan Commission determines the proposed development does not or cannot meet the intent of this Code and/or the requirements of other applicable codes; (c) assign specific conditions or stipulations that may place limitations and/or additional requirements on certain aspects of the proposed development to ensure said development meets the intent of this and other applicable codes initially and on an ongoing basis; and (d) require relevant and adequate studies, analysis or other information deemed necessary in addition to that required under 17.43(3) herein in order to adequately assess and evaluate a proposed development with respect to meeting the intent of this Code and the requirements herein. Denial of approval shall be limited to any defect in form or required information, or any violation of any provision of this chapter or any ordinance, or the inadequacy of any utility. The Plan Commission's action shall be issued in writing by the Plan Commission Secretary stating, in detail, the reasons for the Plan Commission's actions (providing a copy of the meeting minutes shall be deemed sufficient to satisfy this requirement).

MOTION carried unanimously.

ANNOUNCEMENTS: Commissioner Shadid said tomorrow is Election Day. Chairman Wolter said the Vietnam Wall will be in Germantown September 1st through the 5th and will be located across the street from the American Legion Post on the school property. He said several events are planned including a parade on Saturday.

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Lori Johnson
Planning Assistant