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Department of Community Development
Taped and Televised

PLANNING COMMISSION
Regular Meeting
Monday, March 9, 2020
6:00 PM
Christine Nuernberg Hall

Minutes

1) Call to Order, Roll Call

Mayor Wirth called the meeting to order at 6:00 p.m.

Present:
Chair John Wirth
Alderman Andrew Nerbun
Commissioner James Baka
Commissioner Martin Choren
Commissioner Rick Lemke
Commissioner James Schaefer
Commissioner Rebecca Schaefer
Commissioner John Stoker
Alt. Commissioner Stephanie Hawley
Alternate Greg Bach
Alternate Dan Gentges
Alderman/Vice Chair Robert Strzelczyk - **Excused**

a) Approval of Minutes from February 10, 2020

Motion
Commissioner Stoker made a motion to approve the minutes from February 10, 2020.
Commissioner Lemke seconded the motion.
A voice vote was taken; vote passed (8-0)

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	John Stoker, Commissioner
SECONDER:	Rick Lemke, Commissioner
AYES:	Wirth, Nerbun, Baka, Choren, Lemke, J. Schaefer, R. Schaefer, Stoker

2) Public Hearing

a) GNK Enterprises, LLC for Pet Supplies Plus. The applicant is seeking conditional use grant approval to allow an animal kennel (which by definition allows for boarding, care and grooming of cats and dogs) to be located within a retail establishment for Pet Supplies Plus located at 10968 N. Port Washington Road (The Pavilions).

Motion
Commissioner Stoker made a motion to go into a public hearing.
Commissioner Choren seconded the motion.
A voice vote was taken; vote passed (8-0)

Alana Loman is the front desk associate at Massage Envy and she is opposed. She stated that their customers have been unhappy with the current construction as they are unable to enjoy their services due to the noise. They have incurred a crack in their bathroom wall from the construction. She feels that their members will not be able to continue to enjoy their services in the future if there are dogs barking next door.

Lori Weber is the manager at Massage Envy and she is opposed to this proposed user going in next door to their business. She stated that Massage Envy has an established 12-year business and they provide an average of 1,600 therapeutic massages and facials to 1,500 members and guests monthly. She stated that there is a provision in her lease which does not allow live animals to be kept. She was shocked and surprised that the proposed floorplan has the dog grooming and dog bathing station against their shared wall. She feels that this is not a good plan due to potential smells and dog barking noise. She feels that this is a lack of consideration for Massage Envy's current business and members. She feels that this may lead to a loss of members and loss of wages for their 30 employees. She provided documentation that included a letter from her, the provision from her lease, a picture of the cracked wall and the floorplans of the shared wall between the two businesses.

Mark Haslam – 10900 N. Port Washington Road - he is the owner of The Feedbag and he is opposed. He provided a letter to the Commission last month regarding some of his concerns which was included in the packet. He stated in 2006 he tried to establish his business in the Pavilions, and he provided a packet of information of the plans from 2006, but it was communicated to him that a standalone building was preferred. He explained that everything that he was told about not having his business allowed in the Pavilions goes against this proposed business now being allowed there. He does not feel that there is enough business for both of their businesses to be successful the community.

Jim Glassford – 715 Oak Ridge Drive –he is a member of Massage Envy and he is opposed. He does not feel that this is a compatible business, per the language in the code, and he feels that it should not be allowed. He feels that there will be issues regarding noise that will be detrimental to Massage Envy and their customers.

Motion
Commissioner Stoker made a motion to close the public hearing.
Commissioner Jim Schaefer seconded the motion.
A voice vote was taken; vote passed (8-0)

Mayor Wirth stated that he provided a list of additional conditions that should be considered should the Commission move forward with this item.

Planner Vang stated that a conditional use grant (CUG) is required specifically for grooming, boarding and the care of cats and dogs. It is in conjunction with a permitted retail store; which is a permitted use in B-2 zoning district and does not need approval from the Commission. She reviewed the considerations for analyzing a conditional use grant and noted these specific compatible findings:

- All the activities will take place inside the building.
- There will be no more than 3 groomers at one time.
- Only cats that are up for adoption will be boarded at the premises.

Planner Vang explained that the grooming and pet wash station only consists of 360 sq. ft. of the approximately 7,000 sq. ft. retail establishment. The retail establishment and the accessory grooming do fit the general commercial area type of uses. Per the use, the site is required to have 44 parking stalls. Staff believes the Pavilions has sufficient parking on site to accommodate the proposed use, however staff does recommend a condition that requires the property owner to submit site data to staff for overall analysis of the parking at the Pavilions.

Planner Vang addressed some of the issues in the letter submitted by Mark Haslam, owner of The Feedbag. She stated that no records of a formal application submittal to be located in the Pavilions were found. Regarding the approved CUG for The Feedbag's current location; it includes day care, boarding services, training and grooming services; she commented that no other specific conditions were added at the time of approval except for the hours of operation, although there were conditions regarding the building, site and landscaping plans.

She stated that staff may add additional conditions as deemed necessary, but staff does recommend approval of the conditional use grant per the conditions in the staff report with the additional parking analysis requirement.

The applicant, Dan Karas, stated that they are concerned with being good neighbors to the businesses around them and therefore they are installing a dog curbing area in front of their store; as allowed per their lease with Brixmor. It is specific in their lease that they are responsible to police that area and keep it clean and not create an issue for the neighbors of the shopping center. They want to mitigate any noise from dogs barking and they will research sound proofing materials that can be installed.

Mayor Wirth reminded the Commission that they do not have the ability to deny the request from Pet Supplies Plus tonight as the zoning allows this as a permitted use. The Commission only has the authority to approve whether they can have the grooming and washing stations as part of the CUG.

He further stated that there could be damage regardless of what tenant goes in next to Massage Envy and that they should be working with the landlord regarding any damage or construction issues. He added that the City does not have control over what provisions landlords put in their leases and those issues need to be dealt with directly with Brixmor.

Mayor Wirth stated that he has the same concerns that were raised regarding dogs relieving themselves, boarding overnight and noise. He provided changes to staff report conditions #1 and #2 and added additional language including the parking analysis requirement.

The Planning Commission asked the City Attorney for clarification to the word "adjacent" regarding tenant placement in a multi-tenant complex. City Attorney Sajdak answered that he understands adjacent as "next to". It was explained by Planner Vang, when questioned by the Commission, that the applicant was issued building permits for the retail portion of their site with the understanding that if they do not receive approve for the grooming and washing services from the Commission, those areas will need to be removed from their floorplan prior to final occupancy. There was discussion regarding soundproofing and what qualifies as reasonable

Motion
Commissioner Becky Schafer made a motion to deny based on condition #2 that animals should not be allowed into retail spaces for services that may cause the animals to be agitated for periods of time as this is not fair to adjacent businesses.
Commissioner Jim Schaefer seconded the motion.
A roll call vote was taken; vote failed (5-3) (No votes: Mayor Wirth, Ald. Nerbun, Baka, Choren, Stoker)

Motion
Commissioner Stoker made a motion to table the item based on the submittal of new engineering plans that include sound proofing measures.
Commissioner Ald. Nerbun seconded the motion.
A roll call vote was taken; vote passed (8-0)

RESULT:	**TABLED [8 TO 0]**
MOVER:	John Stoker, Commissioner
SECONDER:	Andrew Nerbun, Alderman
AYES:	Wirth, Nerbun, Baka, Choren, Lemke, J. Schaefer, R. Schaefer, Stoker

3) Regular Business

a) ICAP Development. The applicant is seeking certified survey map for a 4-lot land division and building and site plan of the northeastern most parcel approval for the property located at 10865-10911 N. Port Washington Road.

Asst. Dir. Zader stated that this PUD was approved and amended by the Common Council last month. The site related to this request is the northern most section of the development. He stated that in addition to the building and site plan approval there is also a 2nd phase of the CSM that is on the agenda for approval; both items are related. Regarding the CSM, it will create lots that were approved as part of the Concept Plan.

He explained that the overall site plan does comply with the zoning code with exception of the number of parking stalls. The applicant only shows 19 stalls on the site for this multi-tenant building, but the code requires 27 stalls. Regardless of what specific tenant occupies this space, there is a concern for the low number of stalls proposed. The applicant would need to show either a shared parking agreement with a neighboring site or the ability to expand the parking if needed.

The only other issue with the site plan is the location of the dumpster enclosure. There is green space between the two buildings, and it is not clear where the dumpster would fit. Staff is requesting more details of the exact location of the dumpster enclosure and offers that it may be better suited on the north end of the site. Staff requires this clarification prior to approval of the site plan.

The rendering of the two-tenant building shows burnished concrete, fiber cement panels and aluminum storefront windows. The accents show precast concrete caps and fabric awnings. Staff is not supportive of the design; not the color palette or the materials. There is not much compatibility between the proposed rendering and the Landmark Credit Union building for this site which was recently approved or other buildings along Port Washington Road; which include more brick and stone. Staff does not believe that minor changes would be adequate and recommends tabling the item to allow the applicant a fresh start for a new design.

There are also some minor changes recommended to the lighting and landscape plans, but some of the plans may change with a new building design and final approval can be given when new plans are submitted for final approval.

Staff is supportive of the CSM as it does comply with the concept plan. Staff recommends approval of the CSM and tabling of the building and site plan.

The applicant was represented by Jerad Protasky from ICAP Development and a representative from In Studio Architecture. Mr. Protasky stated that the deviation from the original concept plan; which showed two stand-alone retail buildings; stems from the south building tenant and use unknown at this time. They want to allow for flexibility in that area so as not to impede any progress with that building. He stated that the suggestion from staff to move the trash enclosure to the north side of the site is a reasonable and decent solution. He also added that by moving it to the north side it would eliminate the need for the access road to the south and would allow space for some parking stalls to be added east of the building to increase the parking count; as well as add some parking stalls to the north of the accent road; which will get them close to the required 27 parking stalls. He asked the Commission about the option to reduce the parking stalls to 9 ft as opposed to the standard 10 ft stalls as it will gain them two additional parking stalls.

Mayor Wirth stated that in an effort to be more concise and clearer, the item would be separated into two parts to be voted on separately; site plan and building plan.

<u>Motion</u>
Mayor Wirth made a motion to approval the site plan, with a variance allowing 9 ft parking stalls; to achieve more parking stalls, based on the conditions in the staff report and the dumpster

to be moved to the north portion of the site.
Commissioner Choren seconded the motion.
A voice vote was taken; vote passed (8-0)

Mr. Protasky stated that they met with staff back in the fall regarding building design to learn about the requirements and what type of building plans the Commission would want to see for approval. Landmark Credit Union went before the Commission first and their building was recently approved. They looked to that building and other recently approved buildings in the area as a guideline for their proposed building. They showed pictures of other Mequon buildings and explained that they tried to incorporate elements from neighboring buildings. They feel that they can make some minor material adjustments and design changes to produce a satisfactory product.

The Commission provided feedback that the materials are substandard, the building is too simple, and they would like a more innovative design. The scaling and massing of the building was mentioned as undesirable as well as a suggestion for a different roof design. It was suggested that earth tones and darker brick should be incorporated.

Motion
Commissioner Choren made a motion to table the building plan to give the applicant a chance to submit an updated rendering based on feedback from the Commission along with the offer for the applicant to work with staff and the two Commission architects.
Commissioner J. Schaefer seconded the motion.
A voice vote was taken; vote passed (8-0).

Motion
Commissioner J. Schaefer made a motion to approve the certified survey map.
Commissioner Lemke seconded the motion.
A voice vote was taken; vote passed (8-0).

RESULT:	**TABLED [8 TO 0]**
MOVER:	Martin Choren, Commissioner
SECONDER:	James Schaefer, Commissioner
AYES:	Wirth, Nerbun, Baka, Choren, Lemke, J. Schaefer, R. Schaefer, Stoker

b) East Mequon VIA, LLC & East Mequon IVB, LLC. The applicant is seeking master sign plan approval (including I-43 signage) for the properties located at 12100 & 12200 N. Corporate Parkway (The Pointe).

Planner Vang stated that the Commission approved building and site plan for two new buildings at this site in September 2018. Phase 1 of the project; the building to the north, has been completed and Phase 2 has not started construction yet. Both sites are zoned B-4 which allows for 1 wall sign per building. The sign code does allow for more than 1 wall sign per building subject to Planning Commissioner approval of a master sign plan. Approval of a master sign plan is subject to criteria in the sign code including:

- Placement of all wall signs related only to the first-floor elevation.
- Only tenants that have an exterior entrance on the first floor.

- All wall signs shall relate to the architectural features of the exterior building and create a harmonious aesthetic.

The applicant is proposing 2 west elevation wall signs facing the parking lot, 5 wall signs facing I-43 for each of their tenants as well as one monument sign for each of the buildings. The applicant submitted a floorplan layout showing 5 tenants with only 1 tenant, Tenant A, having a first-floor exterior entrance for public access. This multi-tenant building is unique in that only one tenant has an individual entrance. Due to the request for 2 walls signs per tenant, the applicant is requesting master sign plan approval which staff does support. Staff supports a wall sign for an individual space up to 30 square feet and up to 60 square feet for the entry way sign. Staff believes this will help differentiate between the main entrance and the individual tenant with their own exterior entrance. Staff also recommends they be placed as shown in the master sign plan and not exceed the box areas shown on the elevations.

Planner Vang explained that the applicant is requesting 5 tenant signs facing I-43 which is allowed with Planning Commission approval. The signs will meet all the I-43 facing sign conditions and per code requirement, collectively they will not exceed 195 square feet. Staff recommends these signs also are placed only within the box areas shown on the elevation plans and that they comply with all other conditions of the sign code.

Staff does recommend approval of the master sign plan with the condition that if there are changes to the Phase 2 building plan that staff may amend the master sign plan as needed.

The applicants stated that they agree with staff conditions and recommendations. They stated that they expect to have their first tenant in this summer and that signage is very important.

Motion
Commissioner Baka made a motion to approve the master sign plan subject to the conditions in the staff report.
Commissioner Stoker seconded the motion.
A voice vote was taken; vote passed (8-0)

RESULT:	**APPROVED [8 TO 0]**
MOVER:	James Baka
SECONDER:	John Stoker
AYES:	Wirth, Nerbun, Baka, Choren, Lemke, J. Schaefer, R. Schaefer, Stoker

c) Sari Schiff for Office & Practice Solutions. The applicant is seeking rezoning recommendation from R-3 to B-3 and land use plan from Residential 1-acre to Office approval for a dentist office for the property located at 2505 W. Mequon Road.

Commissioner Jim Schaefer recused himself.

Asst. Dir. Zader stated that this is a rezoning request from R-3 Single Family to B-3 Office zoning for a dental office. He showed a map to give context to the neighborhood. He explained that the land use plan is established in this area with mixed commercial uses; and that a zoning change to B-3 is appropriate as the adjacent property is zoned B-3 and there are not residential uses immediately surrounding this property. In order to keep the site zoned residential another daycare of educational facility would need to occupy it and it may sit vacant.

Staff is supportive of the rezoning and land use plan change approval.

The applicant, Dr. Craig Smith, owner of North Shore Dental, and his agent Sari Schiff stated that this is an opportunity to move his dental office and he is excited about this new location.

Mayor Wirth stated that if this is approved tonight, this will be on the Common Council agenda for a first reading next month and on the Council agenda for approval the following month.

Commissioner Becky Schaefer stated that a few of the Commissioners received a letter regarding the issue of commercial creep along Mequon Road. It was clarified that this is office use and not commercial use.

Motion
Commissioner Stoker made a motion to approve the rezoning recommendation and land use plan.
Commissioner Lemke seconded the motion.
A voice vote was taken; vote passed (8-0)

RESULT:	**APPROVED [8 TO 0]**
MOVER:	John Stoker, Commissioner
SECONDER:	Rick Lemke, Commissioner
AYES:	Wirth, Nerbun, Bach, Baka, Choren, Lemke, R. Schaefer, Stoker
RECUSED:	J. Schaefer

4) Policy

1) An Ordinance to repeal Section 58-42 (g)(3) relating to the re-referral of certain matters before the Common Council to the Planning Commission.

City Attorney Sajdak stated that the three policy items on the agenda stem from the process of the proposed Hemlock subdivision. A few items were identified by some of the Aldermen requesting changes to current policy. These have been vetted through the Welfare Committee and are now before the Planning Commission because there are zoning decisions.

He explained that Section 58-42(g)(3) has not been used and has been mostly overlooked by staff for many years. It requires that all rezoning recommendations that are approved by Planning Commission ("Commission") and denied by the Common Council ("Council") be re-referred to Planning Commission.

His suggestion, which was supported by the Welfare Committee, is to repeal this Section of the

Code and eliminate the referral provision.

Ald. Nerbun stated that he is part of the Welfare Committee and he was 1 or 3 Alderpersons that voted against this proposal. He believes that just because it had been forgotten about, does not deem it sound reason to get rid of it. He believes that the Commission should have the chance to re-evaluate an item, or have an item make changes, that they approved that gets denied by the Council. He encouraged the Commission to discuss this issue and to consider keeping it as is.

The Commissioners discussed the issue of restricting the number of times an item can be re-referred. Mayor Wirth stated he believes that an applicant is not going to apply several times once a clear message is delivered nor spend the time and money to continue to submit the same item. Applicants can make changes to an item based on feedback from the Council to try to get their proposal approved. Overall, the Commissioners believe this is a reasonable policy.

Motion
Commissioner Choren made a motion to recommend to the Council to not approve the proposed Ordinance.
Commissioner Stoker seconded the motion.
A roll call vote was taken; vote passed (8-0)

RESULT:	**APPROVED [8 TO 0]**
MOVER:	Martin Choren, Commissioner
SECONDER:	John Stoker, Commissioner
AYES:	Wirth, Nerbun, Baka, Choren, Lemke, J. Schaefer, R. Schaefer, Stoker

2) An Ordinance creating Section 58-42(k) and amending Section 58-64 relating to the establishment of a local protest petition process for certain zoning applications.

City Attorney Brian Sajdak stated that the state statute changed awhile back and got rid of protest petitions from the state code all together. An alderman made a request to the Welfare Committee to have this item added back into the local municipal code. Upon review, a few issues were discovered regarding the language as it was not clear or easily interpreted. He explained that the proposed ordinance addresses some of the concerns of the Welfare Committee including:

- The issue of 20% or should it be a higher number that triggers a petition.
    - Welfare Committee decided it should be 51%
- The issue of who gets notified.
    - Welfare Committee decided to use the current process the city uses of 1320 feet.
- The difficulty in having a Notary acknowledge all the signatures.
    - Welfare Committee decided to use the same procedure as collecting signatures for an aldermanic race and that the person collecting the signatures can verify that they are valid.

Mr. Sajdak commented that Mayor Wirth has some recommendations that should be included if this ordinance is approved which include:

- The 1320 feet shall be measured from the property line and not from the center of the

property.
- The calculation shall be done utilizing the current version of the city's GIS software that has a feature that does this calculation (buffer feature).
- Implement a deadline to give staff time to vet the petitions to ensure they are applicable.

Mayor Wirth stated that he is not in favor of protest petition ordinances as he feels they subvert representative democracy; the reason the state got rid of them. While the 1320 feet is an improvement from the previous procedure of only a handful of properties noticed, he still feels that this is a relatively small group of landowners deciding for the entire city. The idea is to have a majority vote.

Although Mayor Wirth is not in favor of protest petitions, he stated that if the city is going to allow them that they must be as clear and as tight as possible; the definition of 1320 feet needs to be precise, the language regarding the city's GIS mapping software procedure should be accurate so that there is no room for the process to be challenged afterward and there needs to be a deadline so that staff can review the signatures prior to the meeting.

Most of the feedback from the Commission is that they do not support the proposed ordinance and that this item was taken out at the state level for a reason and we should follow their lead. They also agree with the Mayor that it undermines the elected bodies.

Mayor Wirth recommend that the Commission amend the proposed ordinance whether it gets approved or denied so that better alternatives can be recommended to the Council.

Motion
Commissioner Stoker made a motion to table this item with the request to have the language amended to incorporate the three recommendations from the Mayor.
Commissioner Lemke seconded the motion.
A voice vote was taken, vote passed (8-0)

RESULT:	**TABLED [8 TO 0]**
MOVER:	Martin Choren, Commissioner
SECONDER:	Rick Lemke, John Stoker
AYES:	Wirth, Nerbun, Baka, Choren, Lemke, J. Schaefer, R. Schaefer, Stoker

3) An Ordinance to amend Section 58-42 relating to processing of zoning applications within the City.

City Attorney Brian Sajdak stated that some of the process that was being followed was inconsistent with the code. The proposed ordinance changes the code to reflect the actual process.

Mayor Wirth stated that he is concerned about the ability of an applicant to come before the Commission when staff says the application is incomplete and the applicant believes they have submitted a complete application. He disagrees with the sole discretion of the Community Development Director to make this decision.

Motion
Mayor Wirth made a motion to approve with the condition that the language be modified as noted in (d) of the proposed ordinance.
Commissioner Stoker seconded the motion.

Director Tollefson stated that submittal requirements should not be listed in the zoning code but rather be part of the application form as it is more of an administrative function. She recommends some more time to review all scenarios to ensure a developed list is all inclusive.

Mayor Wirth supports this item being tabled to allow time for some further discussion and refinement as it is too open-ended. He believes there should be some criteria based on city policy and not the sole decision of a staff member.

There was discussion amongst the Commission about the language to use and the process that works best.

Motion
Ald. Nerbun proposed an amendment to the motion to add modified language to include, "if there is a dispute between staff and an applicant regarding the completion status of an application, the chair of the Commission; the Mayor, has final decision on whether the application is complete and in compliance."
Commission Stoker seconded the motion.
A voice vote was taken; vote passed (8-0)

RESULT:	**APPROVED WITH CONDITIONS [8 TO 0]**
MOVER:	Andrew Nerbun, John Stoker
AYES:	Wirth, Nerbun, Baka, Choren, Lemke, J. Schaefer, R. Schaefer, Stoker

5) Announcements

The next meeting is April 13, 2020 at 6:00 p.m.

6) Adjourn

Motion
Commissioner Stoker made a motion to adjourn.
Commissioner Lemke seconded the motion
A voice vote was taken, vote passed (8-0)

The meeting concluded at 8:10 p.m.

Respectfully Submitted,

Jac Zader