

PLAN COMMISSION MEETING SEPTEMBER 28, 2010

The Plan Commission Meeting was called to order at 7:00 p.m. by Chairman Jeff Roth. Members present: Jeff Roth, Alan Theis, Jeff Flaws, John Meyer, Dave Jennings, Patrick Hess, Wilfredo Barreto, Wayne McStrack, Larry Rigden and Wanda Gosa.

Also Present: Deputy Clerk Wigderson; Dale Ruby, 100 S. Cardiff Rd.; Kurt Haefs, W343 S9745 Red Brae Dr., Mukwonago, 53149; Marlene Bandoian, 470 Pebble Creek Pass; Mark Bealhen of Lyons Electric, 75 Enterprise Rd., Delafield; Jay Cavaiani, 823 Brandybrook Road; Diane & Raych Cavaiani of Dousman; Richard Piagentini, 225 Somerset Glen.

Deputy Clerk Wigderson noted that proper notice of this meeting had been posted in accordance with the open meeting laws of the State of Wisconsin.

PUBLIC COMMENT

No public comment.

Plan Commission Members acknowledged receipt of the minutes for the Plan Commission meeting of August 28, 2010. Motion by Wayne McStrack to approve the minutes as amended and waive the requirement of reading same, second by Alan Theis, motion passed. Larry Rigden and Wanda Gosa abstained.

REQUEST FOR APPROVAL EXTERIOR LIGHTING TOWN BANK 511 NORTH WALES ROAD

REQUESTED BY: Mark Bealhen
75 Enterprise Road
Delafield, WI 53018

PRESENTED BY: Mark Bealhen

DISCUSSION: Mr. Bealhen is requesting on behalf of Town Bank to install 5 exterior wall pack lighting fixtures and 6 recessed down-lighting fixtures for the canopy. With the previously approved lighting, the sidewalks and walkways are extremely dark and unsafe. Sheet "ES" shows what the footcandle readings would be with the (11) additional requested light fixtures; they are within the zoning requirements for footcandle readings at the lot lines. The Type K wall packs will be mounted 12 feet off the ground with 100 watt metal halide lamps. The Type J recessed can-lights under the drive-through canopy will have 70 watt metal halide lamps. Both fixtures are full cut-off style. These new light fixtures may remain turned on overnight for security.

MOTION: Motion by Alan Theis to recommend approval of the Exterior Lighting as submitted, second Wanda Gosa. Motion passed unopposed.

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REQUEST FOR APPROVAL AMENDMENTS TO SECTIONS 17.0308A2(a), 17.0309A2(d), & 17.0310A2(d) B1, B2, B3, & I1 AS IT RELATES TO CIVIC, SOCIAL, & FRATERNAL ASSOCIATIONS

DISCUSSION: This change is proposed because it was brought to the Village's attention that while "civic, social, and fraternal association" uses and "churches, synagogues, and other places of worship" uses are very similar in nature, under Chapter 17 of the Municipal Zoning Code, "civic, social and fraternal associations" are permitted in the B1, B2 and B3 Business Districts while "churches, synagogues and other places of worship" are not. Currently the Village does not have any civic, social and fraternal associations that would be affected by the proposed change in the Zoning Code. The Plan Commission members have given considerable thought, time and effort in updating the Zoning Code and adopting both a Master Land Use Plan and a Smart Growth Plan required by the State of Wisconsin. The Zoning Code is an evolving document that requires updating from time to time.

One of the reasons for adopting an I1 Institutional Zoning District was to get away from using Conditional Use Permits which allow for special zoning conditions. Plan Commission member Wanda Gosa asked if rezoning this property in the Business District would cost the Village any money to redo the TIF District. Plan Commission member Jeff Flaws stated that we would not have to redo the TIF District. Plan Commission member Wanda Gosa stated that she did not want to use a Conditional Use Permit when there is Zoning available for this type of use Plan Commission member Alan Theis is in agreement that the civic, social and fraternal associations should be removed from all of the B Districts and placed in the I1 Zoning, because that would be an appropriate use for that Zoning classification and is where they should have been to begin with.

Jay Cavaiani, Pastor of Great Mission Church, stated that he would like to thank everyone for their work on this issue. Mr. Cavaiani is a tenant in the building located at 308 E. Oak Crest Drive and runs the Campus Way Ministries business office out of that building. There are currently 3 other businesses operating out of the same building. The Great Mission Church currently holds their services in at the Kettle Moraine Elementary School. Mr. Cavaiani read a statement about the 10th anniversary of the Religious Land Use and Institutionalized Persons Act (RLUIPA). He passed out a letter stating "At this time we would like to ask for any and all permissions needed by the Village that would allow our church to meet at the building located at 308 E. Oak Crest Drive, once state and/or local building codes are met." Mr. Cavaiani feels that the Village is discriminating against his church by not allowing them to hold services at 308 E. Oak Crest Drive. Mr. Cavaiani offered the following solution: "Allow the Great Mission Church to hold their services at 308 E. Oak Crest Drive and then change the Zoning Code so that no other churches, civic, social, or fraternal associations would be allowed to do anything similar."

If we do not allow Mr. Cavaiani's church to meet at this building he will be contacting the Department of Justice (DOJ) to take the case stating that the DOJ would review the Village's Zoning Code as it relates to religious rights. He states he has approached other organizations whose attorneys are willing to represent the church in this case. Mr. Cavaiani stated that the DOJ would be fighting on his behalf and paying for his attorney fees. He continued that the Village has an opportunity to resolve this before it gets out of

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control by letting the Church come in grandfathered and then change the zoning code to not allow any other civil, social, and fraternal associations in the Business Districts. He said he does not believe that it is worth how loud this could get. He does not believe we can fight it and the church is right in their opinion. If the Plan Commission recommends removing "civic, social and fraternal associations" from the B1, B2 and B3 zoning districts he will contact the DOJ tomorrow and ask them to proceed with an investigation. He stated that the Village is doing this to discriminate against churches. This could quietly go away if the Village let him in and then changed the Zoning Code.

Plan Commission member David Jennings feels that the Zoning Code is not discriminating against churches and does not feel that the Village is trying to keep churches out of Wales. He feels that it is pretty clear what is allowed or not. . Plan Commission member John Meyer suggested that a possible option for the church is to use our Community Building for their services. Plan Commission member Wilfredo Barreto stated that Hwy. 18 is our major business district and feels that a mixed use zoning is not an appropriate use there. Plan Commission member Jeff Flaws stated that if we allowed his church in and then amended the Zoning Code to exclude other churches or religious organizations with similar uses we would be discriminating against future groups.

Plan Commission member Wayne McStrack asked if things had changed from statements made by Mr. Cavaiani at prior Plan Commission meetings that the church would need the existing businesses to stay in the building to afford to purchase the building. Mr. Cavaiani stated that at this time, they are looking at leasing with an option to purchase, but the church would need the other occupants to remain in the building. Plan Commission member Alan Theis recalled that initially Great Mission Church wanted to purchase the building. At that time the Plan Commission told Great Mission to go ahead and buy the building and request a zoning change to I1, but the current approved businesses would not be able to stay in the building, because the Village does not have provisions to allow both businesses and churches in the same building under the current Zoning Code. No member of the Plan Commission is saying that the church cannot be there or that they are not wanted in the Village of Wales, just that they follow the Zoning Code as anyone else would have to. The Great Mission Church could at this time purchase the building and request to have the building rezoned to I1. This is an option at this time. Mr. Cavaiani stated he is disappointed that in these fiscally challenging times that the Village would proceed with possible litigation, and spend his tax dollars on this issue.

MOTION: Motion by Jeff Flaws to adopt one of the options offered by the Village Attorney and remove, "civil, social and fraternal associations" from the B1, B2 and B3 Zoning Districts and place them in the I1 Zoning District, second by Patrick Hess. Motion passed unopposed.

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REQUEST FOR APPROVAL AMENDMENTS TO SECTIONS 17.0707 & 17.0711

DISCUSSION: Wisconsin State Statute 62.23(7)(hg)2 states "Subject to par.(h), an ordinance enacted under this subsection may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance." This means that in the present Sections 17.0707 and 17.0711, the 10-year time limit in which to remove prohibited signs must be omitted. New wording will be provided to review at the next meeting.

MOTION: No motion at this time.

DISCUSSION SMART GROWTH YEARLY REVIEW

DISCUSSION: A new column has been added to the Implementation Action Schedule, and will be called "Status 2010." In that column we state where/what we are doing to review the Smart Growth Plan. The Plan Commission will continue work on the Schedule at the next meeting.

ADJOURNMENT

Motion by Wayne McStrack to adjourn, second by Alan Theis, motion passed, unopposed. This meeting was adjourned at 8:26 p.m.

Submitted by
Pauline Wigderson, Deputy Clerk