



## BUILDING, SAFETY & ZONING DEPARTMENT

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TO: Plan Commission  
DATE: May 22<sup>nd</sup>, 2023  
SUBJECT: 1722 S Church Street, Conditional Use Permit - CUP

A request by Brooke Oleson, agent for Culver's of Watertown, for a Conditional Use Permit (CUP) for an accessory use of 'In-Vehicle Sales and Service'. Parcel PIN: 291-0815-0932-011

### SITE DETAILS:

Acres: 1.14  
Current Zoning: General Business  
Existing Land Use: Restaurant  
Future Land Use Designation: Planned Mixed Use

### BACKGROUND AND APPLICATION DESCRIPTION:

The applicant is seeking approval of a conditional use permit for 'In-Vehicle Sales and Service' to expand an existing single lane drive-through into a double lane drive-through. The expanded drive-through will eliminate seven existing parking stalls. The existing drive-through lane will remain in operation while the new lane is constructed to the west. New drive-through ordering kiosks and menu boards are also proposed to be installed. The proposed menu boards exceed the size allowed in the Zoning Code for drive-through signs.

### STAFF EVALUATION:

Site Plan Review Committee:  
See Minutes of May 8<sup>th</sup>, 2023.

### Land Use and Zoning:

1. Within the General Business (GB) Zoning District 'In-Vehicle Sales and Service' is an accessory land use to 'Indoor Commercial Entertainment' and is permitted as a Conditional Use *[per § 550-33C(2)(d)]*. 'In-Vehicle Sales and Service' includes all land uses which perform sales and/or services to persons in vehicles. Examples of such land uses include drive-in, drive-up, and drive-through facilities. *[per § 550-52G]*.

Applicable regulations for 'In-Vehicle Sales and Service' land uses include the following: *[per § 550-52G(1) & 550-52G(2)]*

- Clearly marked pedestrian crosswalks shall be provided for each walk-in customer access to the facility adjacent to the drive-through lane(s).
- The drive-through facility shall be designed so as to not impede or impair vehicular and pedestrian traffic movement or exacerbate the potential for pedestrian/vehicular conflicts.
- In no instance shall a drive-through facility be permitted to operate which endangers the public safety, even if such land use has been permitted under the provisions of this section.
- The setback of any overhead canopy or similar structure shall be a minimum of 10 feet from all street right-of-way lines, a minimum of 20 feet from all residentially zoned property lines, and shall be a minimum of five feet from all other property lines. The total height of any overhead canopy or similar

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structure shall not exceed 20 feet as measured to highest part of structure.

- All vehicular areas of the facility shall provide a surface paved with concrete or bituminous material which is designed to meet the requirements of a minimum four-ton axle load.
- Facility shall provide a bufferyard with a minimum opacity of 0.60 along all property borders abutting residentially zoned property (§ 550-99).
- Interior curbs shall be used to separate driving areas from exterior fixtures such as fuel pumps, vacuums, menu boards, canopy supports and landscaped islands. Said curbs shall be a minimum of six inches high and be of a nonmountable design. No curb protecting an exterior fixture shall be located closer than 25 feet to all property lines.
- Each drive-up lane shall have a minimum stacking length of 100 feet behind the pass-through window and 40 feet beyond the pass-through window.

Applicable regulations for 'Indoor Commercial Entertainment' land uses include the following: [per § 550-52H(2)]

- Parking requirements. One space per every three patron seats or lockers (whichever is greater) or one space per three persons at the maximum capacity of the establishment (whichever is greater).
2. Within the Permitted Sign Rules in the Zoning Code drive-through signs are permitted under the 'Permanent Changeable Sign Category'. [per § 550-132A(1)] A maximum of 24 square feet in area per sign and a maximum of 8 feet in height is allowed.

#### WISCONSIN STATUTES:

All Conditional Use Permits are subject to the requirements of Wisconsin Act 67.

*Under 2017 Wisconsin Act 67: Section 16. 62.23 (7) (de) Conditional Use Permits.*

1. 62.23 (7) (de)(1) *In this paragraph:*

- a. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.
- b. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

2. 62.23 (7) (de)(2)

- a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.
- b. The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.

3. 62.23 (7) (de)(3)

*Upon receipt of a conditional use permit application and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.*

3. 62.23 (7) (de)(4)

*Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the city may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the city zoning board.*

4. 62.23 (7) (de)(5)

*If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10.*

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PLAN COMMISSION DECISIONS:

In-Vehicle Sales and Service Land Use Criteria	Applicant Provided Substantial Evidence		Opponent Provided Substantial Evidence		PC Finds Standards Met	
	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No
1. Clearly marked pedestrian crosswalks shall be provided for each walk-in customer access to the facility adjacent to the drive-through lane(s).	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No
2. The drive-through facility shall be designed so as to not impede or impair vehicular and pedestrian traffic movement or exacerbate the potential for pedestrian/vehicular conflicts.	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No
3. In no instance shall a drive-through facility be permitted to operate which endangers the public safety, even if such land use has been permitted under the provisions of this section.	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No
4. The setback of any overhead canopy or similar structure shall be a minimum of 10 feet from all street right-of-way lines, a minimum of 20 feet from all residentially zoned property lines, and shall be a minimum of five feet from all other property lines. The total height of any overhead canopy or similar structure shall not exceed 20 feet as measured to highest part of structure.	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No
5. All vehicular areas of the facility shall provide a surface paved with concrete or bituminous material which is designed to meet the requirements of a minimum four-ton axle load.	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No
6. Facility shall provide a bufferyard with a minimum opacity of 0.60 along all property borders abutting residentially zoned property (§ 550-99).	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No
7. Interior curbs shall be used to separate driving areas from exterior fixtures such as fuel pumps, vacuums, menu boards, canopy supports and landscaped islands. Said curbs shall be a minimum of six inches high and be of a nonmountable design. No curb protecting an exterior fixture shall be located closer than 25 feet to all property lines.	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No
8. Each drive-up lane shall have a minimum stacking length of 100 feet behind the pass-through window and 40 feet beyond the pass-through window.	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No

Indoor Commercial Entertainment Land Use Criteria	Applicant Provided Substantial Evidence		Opponent Provided Substantial Evidence		PC Finds Standards Met	
1. Parking requirements. One space per every three patron seats or lockers (whichever is greater) or one space per three persons at the maximum capacity of the establishment (whichever is greater).	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No

*If Plan Commission answers “no” to any of the questions, above, the CU permit must be denied. Otherwise, proceed to the conditions of approval.*

#### PLAN COMMISSION OPTIONS:

The following are possible options for the Plan Commission:

1. Deny the Conditional Use Permit, based on failure to provide substantial evidence to meet one or more of the regulatory standards.
2. Approve the Conditional Use Permit without conditions, based on successfully providing substantial evidence of regulatory compliance.
3. Approve the Conditional Use Permit with conditions identified by the Plan Commission:
  - a. Obtain menu board sign compliance by altering design, by variance, or by Zoning Ordinance text amendment.

#### ATTACHMENTS:

- Application materials