

PLAN COMMISSION MINUTES

February 13, 2023 | 4:30 p.m.

The Plan Commission met on the above date in the Council Chambers.

The following members were present: Mayor Emily McFarland (Chair), Jaynellen Holloway PE (Director of Public Works/City Engineer), Brian Zirbes (Zoning), Alyse Talaga (Citizen Member), Brian Konz (Park & Rec. Rep), Melissa Lampe (Citizen Member), Nick Krueger (remote) (Citizen Member), and James Romlein PE (Recording Secretary).

Others Present: Andrew Beyer PE (Assistant City Engineer)

Citizens Present: M. Chellelamke, Noah Schultz, Dean Landowski, Jerimie Sanders, Hanette Wohler.

1. Call to order

Mayor McFarland called the meeting to order at 4:32 p.m. and opened item 2 for questions, comments or a motion.

2. Review and take action: Site Plan Review minutes dated January 23, 2023

Motion by Konz to approve, Second by Holloway

Approved by unanimous voice vote

3. Review and take action: Plan Commission minutes dated January 23, 2023

Mayor McFarland opened and called for comments, discussion or a motion.

Motion to approve by Lampe, Second by Holloway

A correction to the minutes is required to correctly spell Ms. Tolaga in item C.

Unanimous by voice vote to approve as amended

Mayor McFarland explained that the next two items refer to actions on the same property which will consist of a public hearing followed by an item to review and take action. Persons wishing to speak to the issue were invited to speak.

4. Conduct public hearing: 210 S. Water Street– Conditional Use Permit (CUP) request for Indoor commercial entertainment under Section 550-34B(2)(f)

No person spoke and Mayor McFarland closed the public hearing.

5. Review and take action: 210 S. Water Street – Conditional Use Permit (CUP) request for Indoor commercial entertainment under Sections 550-34B(2)(f) – C&J BBQ and Soul Food

Mayor McFarland opened the item and called Mr. Zirbes to present the matter under consideration.

Mr. Zirbes summarized the information shown below on the Site Plan Review/ Plan Commission document.

SITE DETAILS:

Acres: 0.73

Current Zoning: CB Central Business

Existing Land Use: Commercial

Future Land Use Designation: Central Mixed Use. No identified conflicts with Comprehensive Plan.

BACKGROUND AND APPLICATION DESCRIPTION:

Applicant is seeking approval of a conditional use permit to operate a barbeque restaurant within a section of an existing building at 210 South Water Street. The restaurant will operate Monday thru Friday 11am to 10:30pm and will initially be closed Saturdays and Sundays. The operation will offer both indoor and seasonal outdoor seating, with the outdoor seating ending service at 9pm. Live or recorded music may be played on occasion during regular business hours in either indoor or outdoor spaces. No alcoholic

beverages will be served at the restaurant. The barbeque smoker will be operated in the outdoor area between the hours of 2am and 11am. A business operation plan is attached.

STAFF EVALUATION:

Site Plan Review Committee:

See Minutes of February 13, 2023.

Land Use and Zoning:

- Within the Central Business (CB) Zoning District, 'no requirements for on-site landscaping or parking are required' [per § 550-34A].
- Also, within the Central Business (CB) Zoning District 'Indoor Commercial Entertainment' is a principal land use permitted as a Conditional Use [per § 550-34B(2)(f)]. 'Indoor Commercial Entertainment' includes restaurants among the allowed uses [per § 550-52H].

Applicable regulations for 'Indoor Commercial Entertainment' land uses include the following:

- 'If located on the same side of the building as abutting residentially zoned property, no customer entrance of any kind shall be permitted within 150 feet, or as far as possible, of a residentially zoned property' [per § 550-52H(1)(a)].
- The 'facility shall provide a bufferyard with minimum opacity of 0.60 along all borders of the property abutting residentially zoned property' [per § 550-52H(1)(b)].
- Also, within the Central Business (CB) Zoning District, 'Outdoor Commercial Entertainment incidental to Indoor Commercial Entertainment' is an accessory use permitted by right [per § 550-34C(1)(n)]. 'Outdoor Commercial Entertainment' uses include those 'which provide entertainment services partially or wholly outside of an enclosed building' [per § 550-52I].

Applicable regulations for 'Outdoor Commercial Entertainment' land uses include the following:

- The 'activity areas shall not be located closer than 50 feet to a residentially zoned property' [per § 550-52I(1)(a)(1)].
- The 'facility shall provide a bufferyard with minimum opacity of 0.80 along all borders of the property abutting residentially zoned property' [per § 550-52I(1)(b)].

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.

i. 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.

PLAN COMMISSION DECISION:

Indoor Commercial Entertainment Criteria	Applicant Provided Substantial Evidence		Opponent Provided Substantial Evidence		PC Finds Standards Met	
<i>If located on the same side of the building as abutting residentially zoned property, no customer entrance of any kind shall be permitted within 150 feet, or as far as possible, of a residentially zoned property</i>	Yes	No	Yes	No	Yes	No
Indoor Commercial Entertainment Criteria	Applicant Provided Substantial Evidence		Opponent Provided Substantial Evidence		PC Finds Standards Met	
<i>Facility shall provide bufferyard with minimum opacity of 0.60 along all borders of the property abutting residentially zoned property (see § 550-99).</i>	Yes	No	Yes	No	Yes	No
Outdoor Commercial Entertainment Criteria	Applicant Provided Substantial Evidence		Opponent Provided Substantial Evidence		PC Finds Standards Met	
<i>Within the Central Business (CB) Zoning District, outdoor activity areas shall not be located closer than 50 feet to a residentially zoned property.</i>	Yes	No	Yes	No	Yes	No
Outdoor Commercial Entertainment Criteria	Applicant Provided Substantial Evidence		Opponent Provided Substantial Evidence		PC Finds Standards Met	
<i>The outdoor facility shall provide a bufferyard with minimum opacity of 0.80 along all borders of the property abutting residentially zoned property</i>	Yes	No	Yes	No	Yes	No

If Plan Commission answers "no" to any of the questions, above, the CU permit must be denied. Otherwise, proceed to the condition of approval.

i. 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.

ii. 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.

iii. 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.

Recommendation:

These are the following options, but not limited to, for the Plan Commission based on the information received by the City of Watertown Zoning & Floodplain Administrator:

- i. Deny the Conditional Use Permit, based on failure to provide substantial evidence to meet one or more of the regulatory standards.
- ii. Approve the Conditional Use Permit without conditions, based on successfully providing substantial evidence of regulatory compliance.
- iii. Approve the Conditional Use Permit with conditions as identified by the Plan Commission.

Mayor McFarland opened the item for questions, discussion, comments and advised that the owner was present and available.

Opening the discussion, Mayor McFarland observed that there was some concern and discussion warranted on the 50-foot matter.

Applicable regulations for Outdoor Commercial Entertainment land use include the following:

- The activity areas shall not be located closer than 50 feet to a residentially zoned property per Section 550-52I(1)(a)(1).

- The facility shall provide a bufferyard with a minimum opacity of 0.80 along all borders of the property abutting residentially zoned property per Section 550-52I(1)(b)

Mr. Jerimie Sanders, owner, spoke to the question and summarized the physical layout, noting the steel barrier between the entertainment area and the private property, the plans for the entertainment area, and answered many other questions about the specific other elements of the operations.

After some time, the frank and detailed explanation by Mr. Sanders was rewarded by a visible consensus by the members in support of applicants compliance with the regulation.

Mayor McFarland explained that Conditional Use Permits are governed by state law and that, as long as applicant meet the conditions, this body has very little capacity to deny a Conditional Use Permit.

The mayor further explained that City has amended the requirements in the downtown area and now allow outdoor entertainment incidental to indoor entertainment. In the downtown business district, if you have Indoor Entertainment, you also have Outdoor Entertainment by right.

Mayor McFarland opened the graphic of the property and reviewed all the issues and entrances of the site and advised Mr. Sanders to check with us when considering signage.

Members visited issues of cooker-smoke, smell, noise at night, and outdoor music ending at nine. p.m. and Mr. Sanders provided a comprehensive review of their consideration for the neighbors in their operating practices and injected a bit of humor to complete his well-received responses to Commissioners. Mayor McFarland encouraged Mr. Sanders, expressed her strong support and welcomed him to the business community.

Motion for approval, noting the 50-foot and 9 p.m. sound requirements, was made by Jaynellen Holloway and seconded by Melissa Lampe. Unanimous by voice vote.

6. Adjournment

**Motion to Adjourn by Lampe, Second by Holloway
Unanimous approval by Voice Vote**

Meeting closed at 4.52 p.m.

**Respectfully Submitted,
James W. Romlein Sr. PE
Recording Secretary**

Note: These meeting notes are uncorrected, and any corrections made will thereto be noted in the proceedings at which these minutes are approved.