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TO: Plan Commission
DATE: May 8, 2023
SUBJECT: 1309 River Drive, Conditional Use Permit - CUP

A request by John Songhorst for a Conditional Use Permit (CUP) for an Accessory Dwelling Unit within the Two-Family Residential Zoning District. Parcel PIN: 28-291-0815-0921-069

SITE DETAILS:

Acres: 0.30
Current Zoning: Two-Family Residential
Existing Land Use: Vacant Lot
Future Land Use Designation: Single Family

BACKGROUND AND APPLICATION DESCRIPTION:

The applicant is seeking approval of a conditional use permit for an 'Accessory Dwelling Unit' within the Two-Family Residential Zoning District. The 'Accessory Dwelling Unit' would be located above a detached garage behind the primary residential structure. The 'Accessory Dwelling Unit' will be approximately 657 sq. ft. with stairs to the upper unit located inside the garage. The height of both the proposed house and garage will be 32.5 ft.

STAFF EVALUATION:

Site Plan Review Committee:
See Minutes of April 24, 2023.

Land Use and Zoning:

1. Within the Two-Family (TR-6) Zoning District an 'Accessory Dwelling Unit' is a principal land use permitted as a Conditional Use *[per § 550-25C(2)(b)]*. An 'Accessory Dwelling Unit' includes a dwelling unit that is located on the same lot as a principal residential structure to which it is accessory, and that is subordinate in area to the principal dwelling, *[per § 550-56AA]*.
2. Applicable requirements for all accessory dwelling units include the following: *[per § 550-56AA]*
 - a) No more than one accessory dwelling unit shall be allowed on a parcel.
 - b) Rooftop decks shall not be allowed.
 - c) The minimum gross floor area of accessory dwelling units shall be 300 square feet.
 - d) Under no circumstance shall an accessory dwelling unit's square footage exceed the first habitable floor of the principal structure.
 - e) An owner of the property must occupy at least one dwelling unit on the parcel as their primary place of residence.
 - f) Accessory dwelling units shall not be used for short-term rentals under § 550-56Y.

3. Applicable requirements for detached accessory dwelling units include the following: [per § 550-56AA(9)]

- a) A detached accessory dwelling unit shall not exceed the height of the principal residential structure. In no case shall the highest point of the roof of the detached accessory dwelling unit exceed the highest point of the roof of the principal residential structure.
- b) The floor area of a detached accessory dwelling unit shall not exceed 1,000 square feet, including any areas designed or intended to be used for the parking of vehicles and any half-story floor area.
 - i. Upper story detached accessory dwelling units may be built above an accessory structure, including, but not limited to, a detached garage, so long as the accessory structure's footprint does not exceed 1,000 square feet.
- c) A detached accessory dwelling shall comply with the required setbacks and maximum building coverage for an accessory structure within that zoning district.
- d) The distance between the detached accessory dwelling unit and the principal structure shall be a minimum of 12 feet.
- e) Not less than 10% of the total area of the facade of a detached accessory dwelling unit facing an alley or public street shall be windows.
- f) Exterior stairways shall be allowed, provided that the finish of the railing matches the finish or trim of the detached accessory dwelling unit. Raw or unfinished lumber shall not be permitted on an exterior stairway.
- g) A detached accessory dwelling unit shall be located entirely to the rear of the principal residential structure.

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:

Accessory Dwelling Unit (<u>All</u>) Land Use Criteria	Applicant Provided Substantial Evidence		Opponent Provided Substantial Evidence		PC Finds Standards Met	
1. No more than one accessory dwelling unit shall be allowed on a parcel.	<u>Yes</u>	No	Yes	<u>No</u>	Yes	No
2. Rooftop decks shall not be allowed.	<u>Yes</u>	No	Yes	<u>No</u>	Yes	No
3. The minimum gross floor area of accessory dwelling units shall be 300 square feet.	<u>Yes</u>	No	Yes	<u>No</u>	Yes	No
4. Under no circumstance shall an accessory dwelling unit's square footage exceed the first habitable floor of the principal structure.	<u>Yes</u>	No	Yes	<u>No</u>	Yes	No
5. An owner of the property must occupy at least one dwelling unit on the parcel as their primary place of residence.	<u>Yes</u>	No	Yes	<u>No</u>	Yes	No
6. Accessory dwelling units shall not be used for short-term rentals under § <u>550-56Y</u> .	<u>Yes</u>	No	Yes	<u>No</u>	Yes	No

Accessory Dwelling Unit (<u>Detached</u>) Land Use Criteria	Applicant Provided Substantial Evidence		Opponent Provided Substantial Evidence		PC Finds Standards Met	
1. A detached accessory dwelling unit shall not exceed the height of the principal residential structure. In no case shall the highest point of the roof of the detached accessory dwelling unit exceed the highest point of the roof of the principal residential structure.	<u>Yes</u>	No	Yes	<u>No</u>	Yes	No
2. The floor area of a detached accessory dwelling unit shall not exceed 1,000 square feet, including any areas designed or intended to be used for the parking of vehicles and any half-story floor area. Upper story detached accessory dwelling units may be built above an accessory structure, including, but not limited to, a detached garage, so long as the accessory structure's footprint does not exceed 1,000 square feet.	<u>Yes</u>	No	Yes	<u>No</u>	Yes	No

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3. A detached accessory dwelling shall comply with the required setbacks and maximum building coverage for an accessory structure within that zoning district.	<u>Yes</u>	No	Yes	<u>No</u>	Yes	No
4. The distance between the detached accessory dwelling unit and the principal structure shall be a minimum of 12 feet.	<u>Yes</u>	No	Yes	<u>No</u>	Yes	No
5. Not less than 10% of the total area of the facade of a detached accessory dwelling unit facing an alley or public street shall be windows.	<u>Yes</u>	No	Yes	<u>No</u>	Yes	No
6. Exterior stairways shall be allowed, provided that the finish of the railing matches the finish or trim of the detached accessory dwelling unit. Raw or unfinished lumber shall not be permitted on an exterior stairway.	<u>Yes</u>	No	Yes	<u>No</u>	Yes	No
7. A detached accessory dwelling unit shall be located entirely to the rear of the principal residential structure.	<u>Yes</u>	No	Yes	<u>No</u>	Yes	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 as identified by the Plan Commission.

ATTACHMENTS:

- Application materials