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TO: Plan Commission  
DATE: June 10th, 2024  
SUBJECT: 1034 N Second Street, Conditional Use Permit - CUP

A request by Jerome and Lynn Zastrow for a Conditional Use Permit for more than two accessory structures and for a combination of accessory structures exceeding a total of 1,000 square feet. Parcel PIN(s): 291-0915-3342-013

SITE DETAILS:

Acres: 1.50  
Current Zoning: Two-Family Residential (TR-6)  
Existing Land Use: Single-Family Home  
Future Land Use Designation: Single-Family Residential

BACKGROUND AND APPLICATION DESCRIPTION:

The applicants are seeking approval of a third storage shed on the property. The third shed has already been placed on the property and needs to be brought into compliance with the zoning code. The current location of the third shed places it within the floodplain. The applicants have indicated they are willing to relocate the shed outside the floodplain. The property currently has approximately 1,650 sq ft of existing accessory structures, including the third shed and the attached garage. The maximum area of the lot that can be covered by accessory structures is 10%. The existing residential lot consists of 65,340 sq feet of area of which 10% is 6,534 sq. ft. The applicant is also storing large firewood piles along the north lot line within the floodplain.

STAFF EVALUATION:

Land Use and Zoning:

1. Within the Two-Family Residential (TR-6) Zoning District, a 'Private Residential Garage or Shed' is an accessory land use permitted by right *[per § 550-25C(1)(b)]*.
2. Within the Two-Family Residential (TR-6) Zoning District, the maximum accessory building coverage is 10% of the lot area *[per § 550-25F(1)(b)[5]]*.
3. Within Accessory Land Uses, applicable regulations for a 'Private Residential Garage or Shed' are detailed under 'Detached residential garage, carport, utility shed, play structure, or lawn ornament' *[per § 550-56C]*.

Applicable regulations for a 'Detached residential garage, carport, utility shed, play structure, or lawn ornament' land use include the following:

- One attached or detached garage and two accessory structures shall be permitted by right *[per § 550-56C(1)(a)]*.
- A conditional use permit is required for:

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- A combination of accessory structures exceeding a total of 1,000 square feet *[per § 550-56C(1)(b)(1)]*; or
- More than two accessory structures *[per § 550-56C(1)(b)(2)]*.

4. Section §550-126 establishes the following 'Outdoor Storage of Firewood Standards':

- A. No person shall store firewood in the front yard on residentially zoned property, except that firewood may be temporarily stored in the front yard for a period of 30 days from the date of its delivery.
- B. Firewood should be neatly stacked and may be stacked not closer than three feet to any lot line and not higher than six feet from grade, except adjacent to a fence, where firewood can be stacked against the fence as high as the fence. "Fence," as used in this section, shall not include hedges and other vegetation.
- C. All brush, debris and refuse from processing of firewood shall be promptly and properly disposed of and shall not be allowed to remain on the premises.
- D. Woodpiles that contain diseased wood that is capable of transmitting disease to healthy trees and woodpiles that harbor or are infested or inhabited by rats or other vermin are public nuisances and may be abated pursuant to the provisions of this Code.
- E. Not more than 20% of the side and rear yard may be used for storage of firewood at any one time.

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.*

4. 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.*

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.*

PLAN COMMISSION DECISION:

Private Residential Garage or Shed Criteria	Applicant Provided Substantial Evidence		Opponent Provided Substantial Evidence		PC Finds Standards Met	
Square footage is below the maximum accessory building coverage of 10% of the lot area.	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No
A conditional use permit is required for a combination of accessory structures exceeding a total of 1,000 square feet.	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No
A conditional use permit is required for more than two accessory structures.	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No

*If Plan Commission answers “no” to any of the questions, above, the CUP 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:
  - a. The third shed will be relocated outside the floodplain.
  - b. Firewood will be stacked according to the ‘Outdoor Storage of Firewood Standards’ in §550-126 and secured against entering the river during flooding.

ATTACHMENTS:

- Application materials