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TO: Plan Commission
DATE: February 26th, 2024
SUBJECT: 1722 S Church Street, Conditional Use Permit - CUP

A request by Brooke Oleson, agent for McCon Building Corp., for a Conditional Use Permit (CUP) for 'Indoor Commercial Entertainment'. Parcel PIN(s): 291-0815-0932-011

SITE DETAILS:

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

BACKGROUND AND APPLICATION DESCRIPTION:

Applicant is seeking approval of a conditional use permit for 'Indoor Commercial Entertainment' to bring an existing Culver's Restaurant into conformance with the zoning code, remodel the existing restaurant, and add an addition to the front of the building. The restaurant previously received a CUP to expand the drive-through into a double drive-through.

STAFF EVALUATION:

Site Plan Review Committee:
See Minutes of February 12th, 2024

Land Use and Zoning:

1. Within the General Business (GB) Zoning District, 'Indoor Commercial Entertainment' is a principal land use permitted as a conditional use [per § 550-33B(2)(g)]. '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)].
2. Parking requirements. 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)'. [per § 550-52H(2)] Parking and traffic circulation requirements for the facility will be met by utilizing existing driveways and parking areas.
 3. Lighting requirements. Lighting of structures, parking areas, and traffic circulation areas will utilize existing lighting fixtures as well as additional matching fixtures on the building addition.

- Landscaping requirements. Applicant has not submitted a landscaping plan meeting the point requirements of the zoning ordinance.

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.

- 62.23 (7) (de)(1) In this paragraph:
 - "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.
 - "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.
- 62.23 (7) (de)(2)
 - 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.
 - 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.
- 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.
- 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:

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>	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No
<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>	<u>Yes</u>	No	Yes	<u>No</u>	<u>Yes</u>	No
<i>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).</i>	<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:

- Deny the Conditional Use Permit, based on failure to provide substantial evidence to meet one or more of the regulatory standards.
- Approve the Conditional Use Permit without conditions, based on successfully providing substantial evidence of regulatory compliance.
- Approve the Conditional Use Permit with conditions as identified by the Plan Commission:
 - A Landscaping Plan meeting the requirements of the point requirements of the zoning ordinance be submitted.

ATTACHMENTS:

- Application materials

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Opportunity Runs Through It