



## BUILDING, SAFETY & ZONING DEPARTMENT

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TO: Plan Commission  
DATE: April 24, 2023  
SUBJECT: 107 S Fifth Street, Conditional Use Permit - CUP

A request by Steven Hill, owner of That Guy Fabrication, for a Conditional Use Permit (CUP) for Light Industrial Incidental to Indoor Sales. Parcel PIN: 28-291-0815-0412-216

### SITE DETAILS:

Acres: 0.17  
Current Zoning: Central Business  
Existing Land Use: Commercial with Residential Apartments above.  
Future Land Use Designation: Central Mixed Use

### BACKGROUND AND APPLICATION DESCRIPTION:

The applicant is seeking approval of a conditional use permit for 'Light Industrial Incidental to Indoor Sales' for a artisan metal fabrication shop associated with a retail business. The retail portion of the business shares space with Budget Print at the front of the building. The metal fabrication area is located in the rear of the building, utilizing approximately 1,800 sq. ft. of the approximately 6,000 sq ft total in the building. The applicant is working with an architect to design appropriate fire walls and ceiling protection for the fabrication area. The business sells some pre-made items in the retail space as well as commissions custom work orders.

### STAFF EVALUATION:

Site Plan Review Committee:  
See Minutes of April 10, 2023.

### Land Use and Zoning:

1. Within the Central Business (CB) Zoning District 'Light Industrial Incidental to Indoor Sales' is a principal land use permitted as a Conditional Use *[per § 550-34C(2)(c)]*. 'Light Industrial Incidental to Indoor Sales' includes any light industrial activity conducted exclusively indoors which is incidental to a principal land use such as indoor sales or service on the same site *[per § 550-56I]*.

Applicable regulations for "Light Industrial Incidental to Indoor Sales" land uses include the following: *[per § 550-52D(1)]*

1. The total area devoted to light industrial activity shall not exceed 15% of the total area of the buildings on the property or 5,000 square feet, whichever is less. Areas devoted to artisan studio uses, such as custom ceramics, glass, wood, paper, fabric and similar crafts, may exceed 5,000 square feet with the granting of a conditional use permit for such use.
2. Production area shall be physically separated by a wall from other activity areas and shall be soundproofed to the level required by § **550-112** for all adjacent properties.

2. Noise Standards in the Central Business Zoning District *[per § 550-112C(1)]* allow for a maximum increase in noise level over ambient levels at the property line to be at plus 5 dba. The zoning code also allows for an additional adjustment factor for noise sources that do not operate continuously *[per § 550-112C(2)]*.

<b>Table 550-112C(2): Adjustment Factors for Maximum Noise Levels</b>	
<b>Type of Operation in Character of Noise</b>	<b>Correction in Decibels</b>
Daytime operation only	Plus 5
Noise source operates less than 20% of any one-hour period	Plus 5*
Noise source operates less than 5% of any one-hour period	Plus 10*
Noise source operates less than 1% of any one-hour period	Plus 15*
Noise of impulsive character (hammering, etc.)	Minus 5
Noise of periodic character (hum, speech, etc.)	Minus 5
* Apply only one of these corrections	

3. Within the Central Business (CB) Zoning District, 'no requirements for on-site landscaping or parking are required' *[per § 550-34A]*.

#### 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.*

PLAN COMMISSION DECISIONS:

Light Industrial Incidental to Indoor Sales Land Use Criteria	Applicant Provided Substantial Evidence		Opponent Provided Substantial Evidence		PC Finds Standards Met	
	Yes	No	Yes	No	Yes	No
1. The total area devoted to light industrial activity shall not exceed 15% of the total area of the buildings on the property or 5,000 square feet, whichever is less. Areas devoted to artisan studio uses, such as custom ceramics, glass, wood, paper, fabric and similar crafts, may exceed 5,000 square feet with the granting of a conditional use permit for such use.						
2. Production area shall be physically separated by a wall from other activity areas and shall be soundproofed to the level required by § <u>550-112</u> for all adjacent properties.						

*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