



Plan & Architectural Review Meeting

Whitewater Municipal Building Community Room,
312 West Whitewater St., Whitewater, WI 53190
*In Person and Virtual

Monday, September 09, 2024 - 6:00 PM

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Plan and Architectural Review Commission
Sep 9, 2024, 6:00 – 8:30 PM (America/Chicago)

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MINUTES

CALL TO ORDER

Meeting called at 6:00 p.m.

ROLL CALL

PRESENT

Chairman, Councilmember Neil Hicks

Board Member Bruce Parker

Vice Chairperson Tom Miller

Board Member Michael Smith

Board Member Marjorie Stoneman

Board Member Carol McCormick

Board Member Lynn Binnie

STAFF PRESENT

Taylor Zeinert, Economic Development Director
Attorney Jonathan McDonell
Llana Dostie, Neighborhood Services Administrative Assistant
Allison Schwark, Zoning Administrator

APPROVAL OF AGENDA

A commission member can choose to remove an item from the agenda or rearrange its order; however, introducing new items to the agenda is not allowed. Any proposed changes require a motion, a second, and approval from the commission to be implemented. The agenda shall be approved at each meeting even if no changes are being made at that meeting.

Motion made by Board Member Binnie, Seconded by Board Member McCormick.

Voting Yea: Chairman, Councilmember Hicks, Board Member Parker, Vice Chairperson Miller, Board Member Smith, Board Member Stoneman, Board Member McCormick, Board Member Binnie

HEARING OF CITIZEN COMMENTS

No formal Plan Commission action will be taken during this meeting although issues raised may become a part of a future agenda. Specific items listed on the agenda may not be discussed at this time; however, citizens are invited to speak to those specific issues at the time the Commission discusses that particular item.

None

CONSENT AGENDA

Items on the Consent Agenda will be approved together unless any commission member requests that an item be removed for individual consideration.

1. Approval of Minutes for August 12, 2024.

Binnie made the following recommendations for changes to the minutes.

- 1) Johnson
- 2) Brock
- 3) \$5.1
- 4) parking spaces
- 5) 30% of median family income.
- 6) "the" rather than "they"
- 7) reevaluation of market demand
- 8) Bluff Road is a collector road which currently...
- 9) Add after the vote - Motion passed.
- 10) statutes

11) Delete last sentence and add something like, "The consensus was to bring back proposed language allowing the city to impose a larger notification buffer on certain applications."

Motion made by Board Member McCormick with Binnie's correction, Seconded by Board Member Binnie.

Voting Yea: Chairman, Councilmember Hicks, Board Member Parker, Vice Chairperson Miller, Board Member Smith, Board Member Stoneman, Board Member McCormick, Board Member Binnie

PUBLIC HEARING FOR REVIEW AND POSSIBLE APPROVAL

2. Discussion and possible approval of a Conditional Use Permit and Site Plan Review for a multifamily development located on vacant land at the corner of Moraine View Parkway and Jakes Way Tax Parcel # /WPB 00044.

Economic Development Director gave a update as to why this was returned to the commission. There were concerns that some of the conditions placed would violate law. We had the City Attorney look at this and also Attorney Rick Manthe, and both presented memos that are in the packet.

Attorney McDonell explained that Wisconsin Fair Housing Act is more stringent than the Federal Fair Housing act. You cannot limit based on lawful sources of income. Both Section 8 and Section 42 are considered lawful sources of income. The conclusion was that having limitations for Section 8 and Section 42 housing would not be enforceable.

Economic Development Director asked Attorney McDonell to make sure everyone understood that it was his legal opinion that the condition was not legal. Attorney McDonell confirmed that was correct.

Attorney Rick Manthe is an attorney with Stafford Rosenbaum and attended the meeting at the request of City Staff. He wanted to make clear that he does work for the CDA but was not attending on their behalf; he was attending on behalf of the request from City Staff. He wanted to explain the Conditional Use Legislative Statutes with the change that occurred in 2017. Basically the legislature took away most of the discretion of local governments. There is a framework that says that the ordinances need to be reasonable and measurable. The legislature has said now there essentially should be a checklist of items so that if the developer can check all the boxes for getting a conditional use the City has to issue the Conditional Use Permit. The applicant has to put forth substantial evidence which is a pretty low bar to meet. Honestly it is basically to present facts or information such that a reasonable person would feel that the applicant has meet the Conditional Use framework. To deny a Conditional Use Permit it has to be supported by facts and information; it can not be denied based on personal preference or speculation. With conditions, they need to be reasonable, measurable and practical based on substantial evidence. Once an applicant meets the zoning ordinance it is very difficult to deny a conditional use permit.

Hicks stated that at the last meeting we technically approved the Conditional Use Permit with the limitation. Would we have to reconsider.

Attorney McDonell stated that it is back to square one where it is back to considering that the initial condition placed on the application is not legally sound.

Economic Development Director Zeinert stated so just the board knows, is there a motion the attorneys can suggest the board make so as the board is not violating the law.

Attorney Manthe stated that he thinks a motion to reconsider would be appropriate. Once that passes then it is back on the table for consideration.

Smith asked if we want to reject the original motion and start over. Would that be an option?

Attorney Manthe stated that basically the motion to reconsider would be that we are reopening it for discussion.

Motion by Stoneman to reconsider approval of the Conditional Use Permit. Motion was seconded by Binnie.

Public Hearing was opened at 6:15 p.m.

Jeff Knight 405 Panther Court, Asked if this is being reconsidered is this the full discussion to the plans as last time. He is on the CDA and he was one of three that voted against this project. He felt that this was rushed and they didn't know the total amount of dollars the City was putting into the project. Which turns out to be \$5.1 million, and when you compare it to a project in Madison where we are paying about \$40,000 per apartment and Madison is paying \$11,000 per apartment. He has no issue with the development but the size of it. There is no discussion about extending the boulevard to Milwaukee. There is no money left to put the infrastructure in the TIF district. He feels the project should be shrunk down.

Economic Development Director Zeinert wanted to make clear again that this body has no authority over TIF funds.

Nancy Boyer 1270 E Jakes Way #9 stated the whole subdivision is against this. She feels that Tom Miller should not be able to vote because his wife Bonnie works for the City and John Weidl.

Brian Zellmer 1270 E Jakes Way #14. He spoke to the state representative office today and they also think it is not a good idea. He doesn't feel that traffic has been considered. He asked the board if any of them had gone out and looked at the area in person. You are going to put off the tax levy for up to 30 years. Guess who is going to be responsible for the additional cost of the police department, fire department and emergency services. You told us you are going to raise the taxes if that is necessary. Why is it the citizens of Whitewater's responsibility to pay for the taxes. The developer should put up this money, make it smaller so the taxes get paid right away. A mixed use apartment complex is going to drag down the property value of my house.

Rosa Awuor 1270 E Jakes Way #4. She has lived here for 20 years. She doesn't like seeing all those apartments and high raises. She thinks this too big for our city. She is worried about the water and sewer. Each unit will have trash bin and recycling -this will be a nightmare on trash day.

Jill Gerber, 234 S Pleasant. Wanted to remind the board we need to think about what is best for the City. As a unit you can reduce the size from 16 to 8 units. Does think that some of the board have a conflicts of interest and have information that the public doesn't have. It will put a burden on our fire and police. There was nothing in the previous housing studies that stated we needed more apartments. The last study did say that more apartments were needed, however if you want to find a company to say what you want you can find that. Doesn't think the salaries in the city will support this complex. She asked that the board go to 8 instead of 16 units.

Amanda Payton 1270 Jakesway #12. Wants to echo the same concerns about the size. I would echo the concerns about traffic and city services. She doesn't feel that these have been properly addressed in these proposals.

Representative Scott Johnson, he is a member of the state Assembly. At the last meeting there were a number of issues brought up related to crime potential. You tried to restrict low income college students and seems to be that to comply with the law you will have to allow that to take place. He's still fascinated by the fact that this community still sees a need to augment the upper 15% of our rental market. If you had the employees already in the community that were without that housing that would be one issue. But I think your public funds would be better rewarded bringing jobs to the community that actually pay the employees that you wish to house instead of housing for employees that may not exist. I think that complying with the law allows the landlord to fill the units with whoever is willing to write the checks. You will end up with populations that would be in conflict with one another. Again, I think that the legislature would see the use of public funds at the high end of the rental market place to be a rather interesting segue way for public housing or public assistance in trying to create less costly housing. People who are earning \$70,000 plus a year usually don't have an issue finding and affording the housing they desire. He finds our targeted marketplace rather unique.

Brian Schanen 441 S Buckingham Boulevard. I served on the PARC from May of 2023 until my election to Common Council in April 2024 and have served as an alternate member since then so that is why I have occasionally ended up on the board for various meetings. The purpose of the PARC functions as a body to look through the specific zoning criteria and making sure that setbacks are met so that private developers can do with private land as they see fit. Make sure to ask Allison on those specifics on those plat lines. I know that this was brought up last time as well as tonight related to the density of units and how those fit within City specific guidelines. That doesn't say that there is not agreement as to where those perimeters are set but that is the code of ordinance that the city is using when developers are looking and setting up their plans.

Public Hearing closed at 6:35 p.m.

Attorney McDonnell reminded the board that there is still a motion on the table to reconsider that has not been voted on.

Motion by Stoneman moved to reconsider the approval of the Conditional Use Permit. Motion was seconded by Binnie.

Yea: Binne, Stoneman, Hicks, McCormick, Miller, Parker, Smith

Motion passed unanimously.

Planner explained that we are essentially back to where we started. Nothing has changed other than we have two legal opinions that state that we cannot place a condition to restrict section 8 and section 42 housing. It is her recommendation tonight that we follow those guidelines and remove that condition from the previously approved Conditional Use Permit. I would recommend that we keep all of the other conditions previously approved in place and just remove the condition as to the housing as it is prohibited by State and Federal guidelines.

Stoneman moved that we approve issuance of the Conditional Use Permit with the same conditions but removing the condition related to section 8 and section 42. Seconded by Binnie.

Hicks requested a list of the same conditions from last time.

Planner Schwark read the conditions as follows:

The project shall be developed in accordance with the plan of operations, and enclosed site plan. Any deviation from the approved plans shall require zoning administrator and/or Plan Commission approval.

All Engineering Memo comments or conditions be addressed or included.

Applicant shall provide reimbursement to the City of Whitewater, all costs incurred by the City for review of this conditional use including but not limited to engineering, legal and planning review that occurred prior to permit issuance and during the implementation of the plans and construction of the improvements.

Project must begin within one year of the date of approval, or applicant will be required to re-apply for both Conditional Use and Site Plan Review.

The applicant must allow any City employees, or contracted firm, or designee unlimited access to the project site at a reasonable time to investigate the project's constructions, operation, or maintenance.

All exterior lighting shall be in compliance with the City of Whitewater Municipal Ordinances.

Any signage shall be reviewed and approved by the Zoning Administrator.

All police comments or concerns be addressed.

All fire department comments or concerns be addressed.

Sidewalks be added to the site for connections to Moraine Parkway, which has been done.

Both phases of the development shall be included in this Conditional Use Permit

Hicks stated that he is looking at the minutes I do see where he brought up the concern about having a gate at the emergency access on Bluff Ridge Drive for fire department access. But it is not listed as one of the recommendations, but he hopefully would like to be able to add that amendment into the recommendations.

Planner Schwark asked if anyone would be willing to make that amendment.

Stoneman stated that she would like to amend her motion to add the emergency gate at Bluff Ridge Road emergency access road. Seconded by Hicks.

Binnie requested an explanation from Hicks where he was going with that amendment. Hicks stated it is simple-Bluff Ridge Drive dead ends just north of the property. However, after talking with the Fire Department this would make an excellent entrance in the case of an emergency when their lines are across Moriane View Parkway. Simply to have the developer add that as an emergency access lane whether it is paved or gravel and then add a gate with a lock and they work out with fire department key access.

Smith asked about where we landed on a traffic study. He wanted to know what the status is with a traffic study as there seems to be some concerns over that. Economic Development Director Zeinert stated that at the last meeting DPW Brad Marquardt gave his professional expertise that the road would be able to accommodate the new visitors and people living within this complex. Smith asked if Marquardt had any data. Zeinert stated that they had previously looked at the Wisconsin Department of Transportation and believed that this is outlined within his memo.

Binnie stated that Stoneman had a motion to add what Hicks requested. He seconded that for discussion. Binnie asked Hicks if his amendment was addressed in some way in the fire department memo. Hicks stated he does not believe that it was which is why he added it last time. Then it seems appropriate to me to change that motion a little bit to say that would be required subject to agreement of the fire department or something like that. Hicks stated that he takes his previous statement back, he is looking at the fire department memo under site access "while the current plan includes two ingress/egress points off of Moraine View Parkway which meet the required width per code, we believe that extending Bluff Ridge Drive to the south would enhance emergency vehicle access" Hicks stated he agrees with that but at the same point he doesn't want to turn this into something that is used daily by commuters. My motion was strictly emergency access only with a gate installed that is locked.

Stoneman asked again for Hicks to clarify what is different from what was shared by fire. They are saying to extend Bluff Ridge Drive to the south which brings it into the development which would simply make it a third access road in and out. And my intention is to put a gate to make it emergency access only for fire and police. Stoneman confirmed that he would like a gate there. Hicks confirmed in the affirmative.

Planner Schwark stated I think what Neil is trying to avoid is people sneaking through there and using that as a regular access point. So I do think that it would not be a bad idea to have a gate there so that we don't have unwanted traffic going through that access point. And of course there would be a key or Knox box for the emergency services to always be able to utilize that entrance.

Public Hearing Reopened at 6:46 p.m.

Nancy Boyer stated she doesn't understand how we can add things to this and take things away. This is not what you voted on to begin with. I think you should vote again on the way you want it now. This is totally unfair and we don't get to have any say in it.

Economic Development Director Zeinert asked Attorney McDonell whether the PARC was in their purview to add conditions.

Attorney McDonell confirmed that the PARC can add conditions, because it has been moved for reconsideration

Jill Gerber wants bring up a point from what Hicks stated if this is going to be a locked gate and separate entrance. What usually happens is you find people parking there, but he wants a access for the fire department. She doesn't know how or if you can restrict parking from that lane to be no parking and if it's enforceable if it is private property.

Bill Zellmer the point of this meeting I thought because there was some discrimination against the section 8 you were going to reconsider this project which means to reconsider whether you are going to say yes or no to it. Not just to add what you want to it as far an addendum goes. This is not fair as all the stuff that people brought that weren't here before make a lot of sense. I think you should reconsider this and take a vote on whether this should pass or not. There are so many things that people brought up I can't see how you can approve this.

Hicks pointed out that we had a first and second to that motion but did we need to take a vote on his amendment to the original motion. Do we need to take a vote on that before the original motion.

Attorney McDonell confirmed that we need to take a vote first on the amendment.

Hick's motion is to include a locked gate at the emergency access point, so that this is not a usable path. Seconded by Binnie.

Yea: Stoneman, Hicks, McCormick, Miller, Parker, Smith, Binnie

McCormick wanted to clarify why, your comments did not fall on deaf ears. I understand your complaints. But according to our commission if those requirements are met then it is our responsibility as a board to pass this CUP.

Binnie clarified that we are just on the amendment right now not on the main motion.

Miller explained that he asked the City Attorney if he felt that Miller had a conflict of interest and he didn't think he did. And just to clarify my wife and I do not discuss City business and besides she doesn't tell me how to vote.

Motion on amendment passed unanimously

Binnie stated that we are now back to the main motion. He stated that he is not insensitive to the comments and concerns that have been raised but the reality is the CDA put us in this situation and there is absolutely nothing we can do about the TIF as has been indicated. It is not true that the public didn't have an opportunity to comment on that, I'm sure it was noticed just like any other decision by the public. It was apparently not noticed by the public but it was legal noticed and consequently the public did have an opportunity to comment on that decision. Secondly, we are also in a position where the state has put us by restricting so highly our ability to oppose a conditional use permit. In spite of the concerns we have heard, I cannot come up with anything that would legally qualify as a reason not to approve this conditional use permit. Because the applicant has

as indicated by the attorney checked the boxes to comply with our current ordinances and among them as the planner indicated the allowance to construct a certain amount of units within this property size and she has indicated that actually they could apply for more units than what they have applied for. My other concern would be in terms of postponing this decision we do have requirements within our ordinances and probably even in state statutes that require us to make a decision within a certain timeframe unless the applicant agrees to allow a postponement of that decision. And I suspect that we are already up against that deadline now since we already dealt with the matter once a month ago. So again I hear and understand the concerns but I do not believe we have a justifiable reason to be able to turn down this application.

Smith stated that he would love a chance to chime in as well. He will throw out there that today he actually called other municipalities and discussed this situation with them and they confirmed what our lawyers here today said. I actually called West Bend, Mukwonago and Oconomowoc and they confirmed it is what it is. I will throw out there that it is an interesting situation that we can't deny lawful payment. The payment would be coming from the federal government. The federal government is printing money like it is going out of style and we can't object to that. By saying in our community we don't want to be a part of that. It is an interesting conversation and specifically with regards to the the TIF I have documented it was passed on a Thursday and on the following Tuesday I specifically asked city administration what the amount of the TIF was. It was very directly not told to me and citizens were not allowed to speak on it and it was voted on that night. Please correct me if I'm wrong. I think it is unfortunate, it's a lot a money. I will say I think I would support the toning down or halving of the units I would say my kids play in that neighborhood; it's a beautiful neighborhood. I think because of the emphasis on the government subsidized housing. I think with the emphasis it is probably going to be there one day or it is likely or a very good chance of it. And I think that would support putting in half. I can tell you despite what we hear it is a congested area there is one road in and out and we are going to multiple the traffic by a factor.

Stoneman stated that she just wanted to thank everyone for coming and talking to us on this. The PARC has limited amount we can do. We have to look at the conditional use and the architectural review of it. She is relieved that we are taking off the section 8 and section 42 part of it because we shouldn't be discriminating against people because of social status or for any reason.

Planner Schwark asked if we had opened public comment.

Attorney McDonell stated he believes we hadn't closed it.

Planner Schwark asked if we were in the middle of a roll call vote or where were we at.

Jeff Knight said he wanted to address Binnie's comment. When the CDA took action on the Thursday night the total amount was never disclosed. So when people asked me how much it was I couldn't share that because it was a closed item from the CDA. When it came to the City they allowed the public to speak and a lot of the people who were there weren't on the CDA and didn't know the number but he was not at liberty to share it. So they went to closed session and there motion came up with the amount when they came out of closed session. I tried to address the city council at that time and come to

the podium and said I would like to address they stated nope you already spoke. I said well I beg your pardon there is new information. The decision was made that I could not speak again because I spoke during the city's open session and up until that point in time nobody in the public knew the total amount of the TIF funding. I think there was an error, a serious error and I will be more vigilant to call people on the carpet and bring legal counsel if I have to. But that was a mistake and I think these people are paying for that mistake. Because they couldn't address the excesses the city put in the funding on this project, when you compare it to a farm or a progressive community like Madison.

Public Hearing was again closed at 7:00 p.m.

Motion Stoneman moved to approve issuance of the conditional Use Permit with the conditions removing the condition related to section 8 and section 42 housing adding a locked gate at emergency access point. Seconded by Binnie.

Yea; McCormick, Miller, Parker, Binnie, Stoneman

Nay Hicks, Smith

Motion passed

3. Consideration to Approve to Recommend to Common Council a change to the City of Whitewater Municipal Code Chapter 19, Specifically Repeal Section 19.51.180 Truck, Trailer, Mobile Home and Equipment Parking Restrictions.

Planner Schwark explained that we currently have two ordinance sections that say the exact same thing. We would like to repeal the section in 19 since the exact same verbiage is also in title 20, to get rid of areas that have repeat items to make it easier to read for the public.

Motion to recommend to the common council to repeal 19.51.180.

Motion made by Board Member Binnie, Seconded by Board Member McCormick.

Voting Yea: Chairman, Councilmember Hicks, Board Member Parker, Vice Chairperson Miller, Board Member Smith, Board Member Stoneman, Board Member McCormick, Board Member Binnie

4. Consideration to Approve and Recommend to Common Council a change to the City of Whitewater Municipal Code Chapter 19, Specifically Section 19.48.020 Institutional District Permitted Uses, adding Libraries, Municipal Buildings, Public and Semi Public Uses.

Planner Schwark stated that we have had discussion on this in the last couple of months at PARC. At last month's meeting we had a great discussion about some final tweaks that the board wanted to see in this ordinance and this is those changes.

Motion to recommend to common council with removing churches.

Binnie stated that his recommendation last time was to remove religious institutions and make it faith based institutions. To him it feels quite redundant the way it is it reading now with both churches and faith based institutions, my preference would be to

eliminate churches and just have cultural centers and faith based institutions but he can live with it.

Motion made by Chairman, Councilmember Hicks, Seconded by Board Member Smith.
Voting Yea: Chairman, Councilmember Hicks, Board Member Parker, Vice Chairperson Miller, Board Member Smith, Board Member Stoneman, Board Member McCormick, Board Member Binnie

5. Consideration to Approve and Recommend to Common Council a change to the City of Whitewater Municipal Code Chapter 19, Specifically Section 19.69.050 Hearing-Notice to Property Owners.

Planner Schwark stated at last month's meeting we had a discussion about this ordinance section about adding in some verbiage that would allow us to have some discretion with the buffer requirement. So if it was a project we felt that we wanted to notify more of the general public or make a larger area informed of the project coming before the PARC we would have the discretion to do so.

Hicks stated he would like to add a stipulation to the motion. At last meeting it was mentioned that you go off the the Walworth County or whatever GIS where they just put a dot in the middle of the property. I would like it to be the border of every lot line. So it would be a square line 300 feet from the property line and not just a circle or radius.

Dostie stated that she has attempted to draw in the property lines and use the border but it is still giving the same circle or blub approximation. She would have to ask our GIS analyst if there is another way to do this.

Hicks stated he would appreciate if we continue looking into how we can do this.

Planner Schwark stated do we want to keep looking into that as a separate discussion item and bring that back to the PARC next month but move forward with the ordinance change itself.

Hicks stated he would be fine with that and bring it up as a future agenda item.

Smith asked about a clarification trying to figure out what is the boundary.

Dostie explained that currently with GIS there is a red dot on each property-some are in the middle some are closer to the street and that is where it is pulling the 300 feet from.

Smith stated so that we have the opportunity to err on the side of caution so that if it is close we send it.

Binne stated that his view is that if it needs to be an ordinance then we need to defer this so that we don't have to go publishing this thing twice since it is a waste of time. But if we are ok with it just being a policy of the department than I think we can proceed.

Planner Schwark stated she would recommend that the buffer itself be a policy and not in the ordinance.

Parker stated that back in the day we did it from the property corners. And depending on the type of project we went out more than 300 feet. We had it as a policy.

Motion to recommend to council.

Motion made by Board Member Binnie, Seconded by Board Member Parker.

Voting Yea: Chairman, Councilmember Hicks, Board Member Parker, Vice Chairperson Miller, Board Member Smith, Board Member Stoneman, Board Member McCormick, Board Member Binnie

UPDATES / REPORTS

None

FUTURE AGENDA ITEMS

McCormick requested updates on the Doggie Daycare and Hawk Arcade.

NEXT MEETING DATE

October 14, 2024

ADJOURNMENT

Meeting adjourned at 7:18 p.m.

Motion made by Board Member Parker, Seconded by Board Member McCormick.

Voting Yea: Chairman, Councilmember Hicks, Board Member Parker, Vice Chairperson Miller, Board Member Smith, Board Member Stoneman, Board Member McCormick, Board Member Binnie

Anyone requiring special arrangements is asked to call the Office of the City Manager / City Clerk (262-473-0102) at least 72 hours prior to the meeting. Those wishing to weigh in on any of the above-mentioned agenda items but unable to attend the meeting are asked to send their comments to:

c/o Neighborhood Services Director
312 W. Whitewater Street
Whitewater, WI 53190
or Idostie@whitewater-wi.gov