

PLAN COMMISSION MINUTES
February 12, 2018

CALL TO ORDER: Chairman Wolter called the meeting to order at 6:30 p.m.

ROLL CALL: Chairman Dean Wolter, Trustee Rep David Baum, Commissioners Bob Williams, Peter Nilles, Tony Laszewski, Bill Shadid and Mary Ellen Gray were present. Also present were Community Development Director/Village Planner Jeff Retzlaff and Planning Assistant Lori Johnson.

PUBLIC INPUT:

Bruce Bernarde, N120 W13645 Freistadt Road, said he had given his concerns at the Public Hearing for Top Leaf Development and wanted to see what changes were proposed.

APPROVAL OF MINUTES: ***MOTION Baum second Nilles to Approve the minutes from January 8, 2018.***

MOTION carried unanimously.

Scott & Georgene Sommer – W148 N12696 Pleasant View Drive. The property owners of a 120-acre farm are requesting approval of a Conditional Use Permit to allow the operation of a farm kitchen, brewery and sausage production facility on their property in the A-1 Agricultural Zoning District. Planner Retzlaff summarized the proposal. Scott Sommer said he estimates using approximately 350 gallons of water per day.

MOTION Baum second Shadid to Approve a Conditional Use Permit for Scott & Georgene Sommer to operate a farm kitchen, brewery and sausage production facilities from their 120-acre property located at W148 N12696 Pleasant View Drive subject to the following conditions:

- 1. The uses and activities allowed on the property shall be limited to those uses and activities and relative locations specified in the conditional use permit application (CUP) and supporting materials dated January 8, 2018. The physical facilities from which said uses and activities are permitted include the existing and proposed buildings specified in the CUP application and supporting materials. Days and hours of operation shall be limited to those specified in the CUP application and supporting materials dated January 8, 2018.***
- 2. The brewery operation has been described as and is intended to be a “small batch” operation with production occurring within an approximate 1,100 sqft area located in the proposed “farm market” building. This CUP is granted with the understanding that the brewery will operate as a “nano brewery” and “brewpub” with production not to exceed 1,000 barrels/year with at least 25 percent of the beer produced sold in/from the farm market. The purpose for these limitations is to address concerns regarding water consumption and to ensure the brewery remains an accessory use and integral component to the overall farm market concept. In the event the owner/operator seeks to expand brewery production and/or add or eliminate other uses and activities to the overall farm market business plan for which this CUP has been issued, the owner/operator shall submit an amended plan of operation to the Village for review and consideration as part of an amendment to this CUP to be reviewed and processed following the typical CUP procedures.***
- 3. Site Plan review and approval is required prior to construction of the new 60’ x 100’ (6,000 sqft) building in accordance with Village Zoning Code requirements.***
- 4. A temporary use permit may be required for special events involving attendance by the public depending on the type and extent of activities, days, hours and duration of the event. The owner/operator is responsible for contacting the Community Development Department for information and permitting requirements (if any) prior to scheduling any special events involving special or extraordinary advertising or promotion, events occurring for 2 or more consecutive days, or when the number of visitors for an event is expected to exceed three-hundred (300) persons per day.***

5. ***Building permits are required for all internal and external building renovation and improvements.***
6. ***The No vehicle parking shall be permitted on or along Pleasant View Drive; all parking associated with the operation shall be accommodated on the property.***
7. ***All permanent and temporary exterior signage along or facing Pleasant View Drive requires a sign permit and shall comply with all current sign regulations. Off-premise advertising and directional signage is regulated by the Village and requires a permit if/when allowed.***
8. ***The owner/operator is required to obtain all applicable permits, approvals, licenses, etc. from the Village of Germantown, Washington County, State of Wisconsin and any federal agencies prior to commencing operations of the café/restaurant, meat production, and brewery, including, but not limited to: liquor licenses for the sale and consumption of alcohol; brewery/brewpub licenses for the production and distribution of alcohol; restaurant and food licensing for the production, sale and consumption of retail food products, sausage and other meat production; septic/holding tank and other waste processing permits for the storage, transportation and/or processing of wastewater and other by-products associated with the production of sausage, beer, soda, etc. The owner/operator shall provide copies of all required permits to the Community Development Department.***
9. ***The processing and ultimate disposal of all wastewater and other by-products associated with the production, processing and packaging of meat, beer and other products should occur off-site and in a licensed facility. In the event the processing and/or disposal of wastewater and other by-products associated with meat and beer production is handled on-site, e.g. composting, the owner/operator shall prepare and submit a detailed plan addressing the processes and procedures that will be used, and, that specifies how concerns such as odor control, soil and groundwater contamination will be addressed and mitigated. Said plan shall be submitted to the Village of Germantown and any county and state agencies regulating said waste processing and disposal.***
10. ***All new and renovated buildings shall be designed to meet all fire protection requirements under applicable IBC for A-3 (or applicable) occupancy and use classification.***
11. ***The access driveway and new parking area shall meet NFPA 1 Chapter 18 access requirements.***
12. ***The septic holding tank shall not be installed in a location where fire vehicles might need to drive over for emergency access purposes unless said tank is designed, constructed and approved for heavy vehicle loads.***
13. ***Bi-annual fire safety inspections will be conducted by Germantown Fire Department.***
14. ***If the use, activities and/or operation subject of this permit falls out of conformity with the conditions herein, or where there is a change in the nature, character, intensity or extent of the permitted conditional uses and activities which cause special problems or harmful effects associated with the permitted uses and activities that were not revealed or anticipated at the time this CUP was granted, or, where conditions imposed by this CUP that were anticipated to mitigate or eliminate harmful effects associated with the uses and activities but are subsequently insufficient to do so, or, for similar cause based upon consideration for the public comfort, safety, and welfare, this conditional use permit may be terminated or modified by the Village Board by the amendment to or addition of conditions after public hearing thereon.***

Mr. Sommer indicated he read and will abide by the conditions of approval. Chairman Wolter asked for clarification of Condition #4 stating a temporary use permit may be required for special events. Planner Retzlaff explained a temporary use permit is intended for events that may attract a larger crowd, outside of the usual and customary events. He said the operator should contact the Village before such an event and ask if a permit is needed. Alerting the Village to certain events would allow notification to the Police and Public Works Departments and help with traffic control.

MOTION carried unanimously.

Baudhuin Surveying & Engineering, Agent for Top Leaf Development and Alan & Lynda Luther 107 acres south of Freistadt Road, North of Elm Lane and West of Wasaukee Road.

The request is for approval of a revised rezoning application concept plan for a 107-acre residential subdivision with 47 single-family lots. Planner Retzlaff summarized the proposal.

Pete Baudhuin, Baudhuin Surveying & Engineering, explained the proposed concept plan shows that all the lots on the east side have been moved and meet the 25-foot wetland setback requirement. The plan takes traffic east to Elm Lane and not to Forest Drive. He said there are 4 larger lots on the west side and proposed creating a conservation easement on those parcels to protect the wetlands. He also asked for clarification on the connection to east Elm Lane regarding the cost and asked that something be put in the developers agreement that would indicate the developer is responsible for 16 percent of cost if the road is upgraded in the future.

MOTION Baum second Gray to Approve the proposed concept plan as presented and Approve the rezoning from A-1: Agricultural to the Rs-1 and Rs-3: Residential Single-Family Zoning District.

Planner Retzlaff said he was concerned with the wetland area in the middle of the property and dividing it into 4 lots with private ownership. He said MMSD has expressed interest in acquiring this property, but it's a voluntary program and the developer has concluded they are not interested in selling it. So the burden is now on the Village to ensure that the wetland is protected. He said he appreciates the proposal to create conservation easements to protect the wetland, but an open space outlot would be more reasonable and owned in common by the homeowner's association to ensure the areas aren't incrementally disturbed. He urged that the wetlands be put in separate outlots and not be under private ownership lots and to go back to a plan that has small lots outside of the wetlands and wetland setback areas.

Commissioner Gray said she didn't have a problem with a resident buying, owning and maintaining a property with wetland. She doesn't feel MMSD is the steward of choice to maintain the land. Planner Retzlaff said if the wetland is in common ownership an entire subdivision could enjoy and benefit from it. If the wetland is in private ownership, only a couple people can take advantage of that. Discussion continued.

Mr. Baudhuin said the developer would be willing to not create the 4 lots and leave that part in agriculture rather than hold up the 37-lot subdivision. He presented a new plan showing how the wetlands would be placed into a conservation easement. Planner Retzlaff said the boundary of the lot MMSD could purchase should match the boundary of the wetland. Discussion continued.

Trustee Baum suggested changes to the new plan creating lots without the outlots included on them. Mr. Baudhuin said he could have the outlots taken off and outlot 7 would contain the wetlands that is part of a conservation easement and that could be a separate lot for possible future sale to MMSD. Commissioner Gray asked if MMSD had offered to purchase the lot with the wetlands. Ms. Waggoner said they didn't give a specific number because they would need to have an appraiser come out there. She said they gave a price range for the wetland at about \$3000 an acre. Based on the range they gave, she didn't think it would offset the purchase of the land. She said they are proposing the wetland preservation and if it's split off, will look at MMSD possibly purchasing, but don't want it to hold up the approval process.

Discussion followed. Chairman Wolter said he thought MMSD buying the wetland would have been a favorable solution for what the neighbors wanted and because it wasn't a buildable property, it could

be a monetary solution for the developer. He was hopeful a deal could have been worked out but doesn't want to hold up the development. He likes Trustee Baum's proposal to carve out a separate wetland outlot and is ok with the east side of the plan. But he is looking how best to manage the west side and feels having the wetland in its own area for Greenseams to possibly purchase in the future is best. Planner Retzlaff said the Fire Chief was concerned with the length of the private driveway for the lots on the west and getting emergency vehicles in and out.

MOTION to Amend Baum second Shadid to modify the overall site plan to put the preponderance of the wetland into outlot 7 and create lot 2, which would be the southern half of lot 2 and a lot 2a, which would be the norther half, require the access to lot 2, 2a, 3 and 4 be via a private shared driveway so the fire department can get access through there. The amended plan could be achieved in the Rs-3 zoning district.

Planner Retzlaff said the current plan shows a connection to Elm Lane east to Wasaukee Road and he believes access to the west on Elm Lane should also be required.

MOTION to Amend carried unanimously.

MOTION to Amend Baum second Gray that Elm Lane should continue through and complete the connection on the west.

Trustee Baum said he understands the residents do not want the traffic on Forest Drive, but feels it is needed for connectivity to the park. Ms. Waggoner suggested installing a gravel path as an option for access to the park. She asked for clarification that the remainder of Elm Lane to the east would be put in the Village's 5-year road improvement plan. She was concerned with the financial cost to improve the road. As a side note, Trustee Baum and Chairman Wolter agreed they would not support this development paying for Elm Lane from the east edge of the property to Wasaukee Road but said it wasn't for the Plan Commission to decide. Discussion continued. Chairman Wolter explained the extension of Elm Lane would alleviate congestion coming out of the subdivision and allow access to Mequon Road.

MOTION carried 6-1 (Wolter).

MOTION to Amend Baum second Shadid that the revised concept plan as sketched today be brought to the February 26th Plan Commission meeting for final approval.

MOTION to Amend carried unanimously.

Planner Retzlaff explained the rezoning and concept plan will come back to the Village Board on March 5th. Because a public hearing on the Rs-3 zoning was held on January 15th, another public hearing would not be required, but he will check with the Village Attorney. Chairman Wolter said residents will still be able to speak on the proposal during public input.

MOTION to Approve as Amended carried unanimously.

Zoning Code Amendments – Residential Accessory Uses, Buildings and Structures.

At their January 15, 2018 meeting, the Village Board tabled action on a series of amendments regarding the allowable location for a detached accessory building in the Rs-1: Residential Single-Family District and sent the amendments back to the Plan Commission for further consideration. The

Board struggled with allowing detached buildings in the front yard “by right” without some oversight by the Plan Commission or Board of Zoning Appeals that would consider specific circumstances. Planner Retzlaff discussed Village Board alternatives. He said staff supports the proposed amendment to allow detached accessory buildings in a front yard of Rs-1 District property subject to the setback, visual screening and compatible architecture and exterior material requirements as proposed. Discussion followed.

MOTION Baum second Nilles to Approve the proposed amendment to Section 17.41(3) and Section 17.50(2):

SECTION 5. That Section 17.41(3) (Location Requirements) is revised as follows where words that are *stricken* are deleted and words that are underlined are to be added:

17.41(3) LOCATION REQUIREMENTS.

- (a) In all single-family and 2-family zoning districts except for the Rs-1 District (Rs-2 through Rs-7 and Rd-2), detached accessory buildings shall be in a side or rear yard.**
- (b) In the Rs-1 District, detached accessory buildings may be located in a front/street yard provided that:**
- 1. The minimum street yard building setback distance for the detached accessory building is equal to 50 percent of the actual building setback distance for the principal dwelling, or, 45 feet, whichever is greater; and**
 - 2. A visual buffer of the detached accessory building shall be provided in the form of natural and/or planted vegetation, berms, fencing or a combination thereof as necessary to achieve a height of at least six (6) feet and a minimum twenty-five (25) percent visual opacity within two (2) years of installation from any adjacent public right-of-way and residential dwelling.**
- (c) Except for detached accessory buildings located entirely in the rear yard, all detached accessory buildings and attached garages shall be subject to the same side yard building setback requirements of that apply to the principal building.**

SECTION 6. That Section 17.50 (MODIFICATIONS) is revised as follows where words that are *stricken* are deleted and words that are underlined are to be added:

17.50(2) YARDS.

- ~~(b) Accessory uses and detached accessory structures are permitted in the rear yard only; they shall not be closer than 10 feet to the principal structure; and shall not exceed 15 feet in height.~~**

MOTION to Amend Baum second Laszewski to add #3 to paragraph (b) that the character of the building match the architectural features of the main building.

Discussion continued.

MOTION carried 5-2 (Gray, Williams).

Discussion continued. Chairman Wolter said the Village Board was looking for a way other than just the Planning Department to grant approval. But the cost for a conditional use permit came into play

and they felt it was a heavy burden for a homeowner to bear. Planner Retzlaff staff said he feels with the conditions as listed, the request is common place and insignificant and doesn't need the extra resources from the Plan Commission or Village board for approval. He added that the State recently passed an act affecting the permitting process for conditional use permits. He said municipalities can no longer make a decision based on the public who say they simply don't want something.

Commissioner Laszewski called the question.

MOTION to Approve as Amended carried (Gray, Williams).

ANNOUNCEMENTS: None

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:45 p.m.

Respectfully submitted,

Lori Johnson
Planning Assistant