

CITY OF WASHBURN
119 Washington Avenue
P.O. Box 638
Washburn, WI 54891



715-373-6160
715-373-6161
FAX 715-373-6148

NOTICE OF PLAN COMMISSION MEETING

DATE: Thursday, July 19, 2018
TIME: 5:30 P.M
PLACE: Washburn City Hall

AGENDA:

- Call to Order
- Roll Call
- Approval of Minutes – June 21, 2018
- Public Hearing
 - Discussion and Recommendation on Conditional Use Request for Tourist Rooming House to Operate a Tourist Rooming House out of the Property Located at 505 West 3rd Street. Timothy Hay, Petitioner, property is zoned R-6, Mixed Residential
- Discussion on Site Plan, Architectural Review, and Downtown Design Overlay District Standards of the City's Zoning Code for a Potential Ordinance Changes
- Adjourn

June 21, 2018
5:30pm Washburn City Hall

CITY OF WASHBURN PLAN COMMISSION MEETING

COMMISSION MEMBERS: Dave Anderson, Richard Avol, John Baregi, John Gray, Leo Ketchum-Fish (late), Jeremy Oswald, Adeline Swiston

ABSENT:

MUNICIPAL PERSONNEL: Scott Kluver-City Administrator, Tammy DeMars-City Treasurer/Deputy Clerk, City Attorney Max Lindsey via phone

Meeting called to order at 5:30PM by Avol attendance as recorded above.

Approval of Minutes – May 17, 2018 – Moved by Baregi to approve minutes as presented, second by Swiston. Motion carried unanimously.

Ketchum-Fish arrives at 5:32pm.

Avol announced that the Architectural Review and Façade Loan Application of Nate Swiston would be moved further down the agenda to allow time for Mr. Swiston to attend the meeting as he is currently on his way back from taking care of some business out of town.

Discussion & Recommendation on Request to Vacate the Entire Alley in Block 23 of the Hillside Addition to the City of Washburn along with the area adjacent to the Vacated North Fourth Avenue East – Jim Bodin Petitioner - Petitioner not present. Kluver gives brief over view of request and has no objection to the request. Moved by Baregi to recommend approval to Vacate the entire Alley in Block 23 along with the area adjacent to the vacated North Fourth Ave. East of the Hillside Addition to the City of Washburn, second by Gray. Motion carried 7 to 0.

Discussion and Action on Architectural Review of Façade Renovations to 122 W. Bayfield Street – Spears, Carlson, & Coleman S.C., Petitioner – Motion by Ketchum-Fish to approve the façade renovations to 122 W. Bayfield St., as they meet all the criteria listed in article 7-18 for approval second by Anderson. Motion carried 7 to 0

Avol introduced newest member of the Commission John Gray. Since we have a new member, he also read statement reminding Commission Members of the role of Plan Commission, referring to Wis. State Statute 19.59 & 946.13 and reminding that decision the members make must be based on predetermined standards found in state statutes, case law or local ordinance, not based on their personal feelings.

Discussion and Action on Revised Site Plan and Architectural Review Plans for Washburn Family Dollar, 406 W. Bayfield Street – Sorenson Development, Inc., Petitioner– Mountain Engineering representative Myron Berry present to answer any questions, along with Anthony Baez of Sorenson Development. Ketchum-Fish moves to decline site plan for the Washburn Family Dollar, based on a number of zoning code inconsistencies with the code as written; significant problems that do not fit and cannot fit with the size of the building. second by Anderson. Ketchum-Fish then handed out three-page summary referencing 8-66 (B), 8-163(4), 8-183 (4) (7), 8-68 (B), 19-2-3, 8-126, 18-10 (a) and 8-183 (1). Lengthy discussion, 8-66 side yard set back does not apply, since this is a corner lot there are two front yards they meet this requirement. 8-163 – Docking area it was suggested that fence could be used to screen from view, this was not acceptable to Ketchum-Fish or Anderson, 8-183 (4) & (7) Berry felt they could work with this by adding the brick around the back side of the building and the section facing the post office is going to be screened with trees, 8-68 (B) was determined not an issue because for building purpose it can be considered as one lot. 8-126 Stormwater control – discussed and is not an issue. 19-2-3 Lighting; petitioner is willing to add the signs to the total lumens and make adjustments necessary. 18-10(A) (2) Petitioner willing to put brick around the base to comply. 8-183 Scale of the building, discussed at length with, Ketchum-Fish questions the use of the T distribution used by Berry, they are flawed and he has someone in the audience that can attest to this. Moved by Ketchum-Fish to open floor, second by Anderson. Motion carried unanimously. Jody Supanich, Mathematics/Statistical Professor at Northland College came forward speaking on T values explaining were she sees fault

in the accuracy of the figures provided by Family Dollar. Moved by Oswald to close floor, second by Baregi. Motion carried unanimously. Oswald question Attorney Lindsey if after hearing tonight's meeting if he still feels this would be a undefendable? Lindsey states he feel the size issue is defendable and reminds the Commission that all items, included anything that was on a computer will need to obtained for the records. After further discussion Ketchum-Fish stated he stands by his motion, there are significant problems that do not fit, and cannot fit with the size of the building the only way this will ever work is if the building is made smaller and the front of the building faces Bayfield Street. Roll call vote on original motion: Yes - Anderson, Ketchum, Oswald, Swiston, No - Gray, Avol, Baregi. Motion passes 4 to 3

Swiston recuses herself from the next agenda item and leaves the table.

Discussion and Action on Architectural Review and Façade Loan Application for 114 W. Bayfield Street (Brownstone Pharmacy) – Nate Swiston, Petitioner – Gray, moves to approve the Façade Loan Application of Nate Swiston for 114 W. Bayfield Street in the amount of Five Thousand One Hundred Fifty-One Dollars (\$5,151.00) and authorizes the City Administrator and City Attorney to draw up papers, and Façade renovations as they meet all the criteria listed in article 7-18 for approval second by Anderson. Discussion. Motion carried 6 to 0

Swiston rejoins the Commission as a voting member.

Review of Formula Business Ordinance/Architectural Standards as Directed by Common Council – Discussion. Anderson, we need to decide what the theme or look of the City should be and then develop standards needed to keep that look, he would like to see an Architectural Review Board that would be able to review these before they come to the Commission. Other members feel the Zoning code is a working document and maybe we should be working on getting the bugs out of it. We need to start in one place and go on from there. Anderson ask if the Mayor would look into Orton Family Foundation out of VT, this is a foundation that helps towns to re-invent them self's and work together. Avol, suggest that anyone of the members could look into getting additional information.

Presentation of 2019 Budget Timeline - Reviewed

Adjourn - Moved by Swiston to adjourn @ 7:45pm, second by Baregi. Motion carried unanimously.

Respectfully Submitted,
Tammy L. DeMars
Treasurer/Deputy Clerk

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To: Plan Commission Members
From: Scott J. Kluver, ^{SSK} Administrator
Re: Hay CUP – Tourist Rooming
Date: July 13, 2018

Enclosed you will find the application materials from Timothy Hay for a Tourist Rooming Conditional Use Permit (CUP) for the property located at 505 West 3rd Street. The property is in the R-6, Mixed Residential, District.

Tourist Rooming Houses are conditionally allowable in this district. A copy of the health permit will also be needed for the CUP to be valid. There are four rooms in the house; however, there are only three off-street parking spaces with the garage and space behind the garage. I recommend that a condition be placed that only one family is allowed to rent the home at a time (or some limitation on the number of individuals) in order to alleviate the limitation with parking.

No architectural changes or site modifications are planned for this property.

Please let me know if you have any questions on this application.

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**CITY OF WASHBURN
NOTICE OF PUBLIC HEARING**

A Public Hearing will be held by the Plan Commission on, Thursday, July 19, 2018, at 5:30 P.M. at City Hall, 119 Washington Avenue, for public comment on the following issue:

Conditional Use Permit Application:

Request for Tourist Rooming House -- Operate a tourist rooming house out of the property located at 505 West 3rd Street. Timothy Hay, Petitioner

The property is zoned R-6, Mixed Residential. Residents unable to attend the public hearing may provide written comment to the Zoning Administrator prior to the hearing.

Scott J. Kluver
Zoning Administrator

publ.: Class 2 – June 23 and 30, 2018
Daily Press Box Ad

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The property is zoned R-6, Mixed Residential. Residents unable to attend the public hearing may provide written comment to the Zoning Administrator prior to the hearing.

Scott J. Kluver
Zoning Administrator

As required by ordinance, copy mailed to property owners within 150 feet of the subject property.

NOTICES MAILED FIRST CLASS MAIL 06/20/2018

DANIEL R. HUDSON
6445 HODGSON RD.
LINO LAKES, MN 55014

MARY L. McPHETRIDGE
P.O. BOX 456
WASHBURN, WI 54891

MELINDA SUELFLOW
432 W. 4TH ST.
WASHBURN, WI 54891

GORDON & CINDY HEGLUND
P.O. BOX 114
WASHBURN, WI 54891

KWICK STOP INC.
41421 S. PARK ST.
MADISON, WI 53715-2178

JUSTIN ROODE
85045 FIREPLACE RD.
HERBSTER, WI 54844

KATHRYN WEISTER
509 W. 3RD ST.
WASHBURN, WI 54891

KEVIN L. KARABA
P.O. BOX 221
ASHLAND, WI 54806

**JOSEPH LeBOUTON &
ARIADNA CHEDIACK**
P.O. BOX 1255
WASHBURN WI 54891

WILLIAM & LINDA OVASKA
P.O. BOX 122
WASHBURN, WI 54891

KAREN & JEFFERY McCREARY
508 W. 4TH ST.
WASHBURN, WI 54891

CITY OF WASHBURN CONDITIONAL USE PERMIT

A Conditional Use Permit is hereby granted, pursuant to Title 13, Chapter 1, Article 7, Division 3 of the City of Washburn Zoning Ordinance to Timothy Hay (hereinafter User), in respect to property currently zoned R-6 Mixed Residential District, herein referred to as Subject Property, described as:

Street Address: 505 West 3rd Street

Legal Description: ORIG TOWNSITE OF WASHBURN LOT 10 BLOCK 24 IN DOC 2018R-572394 247

Tax ID: 33058 **PIN:** 04-291-2-48-04-05-2 00-312-14100

This Conditional Use Permit is granted for the purpose of permitting the User, and only the User, to engage in the permitted use set forth immediately below:

1. To operate a tourist rooming house in accordance with Section 13-1-8-294 of the City of Washburn Zoning Code.

This Conditional Use Permit is subject to the following special conditions:

1. This Conditional Use Permit is issued exclusively to the User, does not run with the land for which it is issued, and may not be sold, conveyed, assigned or otherwise transferred to any other person or entity. This permit will be effective once all conditions are complied with as specified in ordinance.
2. Issuance of a Conditional Use Permit does not indicate that the City of Washburn has certified the above referenced dwelling nor has it inspected the building, nor does it ensure that it meets local, state, federal, or professional requirements or standards related to the subject use.
3. All waste container facilities on the Subject Property shall be screened from view (from adjacent streets).
4. User shall construct a sign upon the property; identifying the User's business and the property address. A sign permit is required prior to constructing the sign, and the sign must conform to the City's Sign Ordinance.
5. User shall provide onsite parking for employees and all other visitors to the Subject Property and concrete, bituminous concrete pavement, or gravel shall be required for all driveways and parking areas in accordance with 13-1-17-5.04 of the City of Washburn Zoning Code. At the time of issuance of this permit, four spaces are required. This provision needs to be complied with before the permit is valid.

6. All conditional uses referred to above may be carried out upon the Subject Property twenty-four (24) hours per day, seven (7) days a week.
7. The Common Council for the City of Washburn may at some future date require regular review and renewal of Conditional Use Permits or otherwise change the Conditional Use Permit Ordinances. The holder of the permit may be subject to permit termination and/or renewal at the discretion of the Common Council or its designee. Holder of the permit may be subject to additional ordinance requirements and expense in that event.
8. Nona DeMars shall be listed as the agent for this tourist rooming house.

Statement on the nature of the approval:

In approving this Conditional Use Permit, the Plan Commission confirmed the size of the parcel was not an issue, the use is compatible, the location of the use on the property is not a concern, traffic safety should not be a problem, it is a suitable additional use, there are no negative impacts on the environment known of, concerns with impacts on the neighbors were discussed and guest rules will be posted to help address these concerns, and it would not impede the normal development. The Common Council adopts these findings.

Appeal rights for applicant and other aggrieved persons:

Within 30 days of the decision date, a written appeal, including the reasons for the appeal, must be received by the City Clerk. The appeal process will follow the procedure outlined in 13-1-7-23 of the zoning ordinance.

Timothy Hay

Date

Personally came before me this ____ day of _____, 2018, the above-named Timothy Hay, to me known to be the person who executed for the foregoing instrument and acknowledge the same.

Notary Public, Bayfield County, Wisconsin

My commission expires: _____

Richard Avol, Mayor
City of Washburn

Date

Personally came before me this ____ day of _____, 2018, the above-named Richard Avol, known to be the person who executed for the foregoing instrument and acknowledge the same.

Notary Public, Bayfield County, Wisconsin

My commission expires: _____

Scott J. Kluver, Zoning Administrator
City of Washburn

Date

Personally came before me this ____ day of _____, 2018, the above-named Scott J. Kluver, known to be the person who executed for the foregoing instrument and acknowledge the same.

Notary Public, Bayfield County, Wisconsin

My commission expires: _____



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APPLICATION FOR CONDITIONAL USE PERMIT

(Zoning Code 13-7-51 through 62)

Name: Tim Hay Initial Application Amendment/Renewal

Physical and Mailing Address of Applicant: 1308 Rust St Eau Claire, WI 5470

Telephone Number: 715-271-3146 E-mail: timhay67@hotmail.com

Address/Description of Permit Property: 505 W. 3RD St Washburn, WI 548

Requested Conditional Use: VACATION RENTAL HOME Zoning District: R-6

Applicant shall submit a letter detailing the desired use, along with a scaled site plan of the property if new construction is involved.

It is the responsibility of the applicant to provide the name and address (both physical and mailing) of property owners within a 150 foot radius the permit property. Please use attachments for longer lists.

1. 503 1/2 W. 3RD Emily Martha Evenson
503 W. 3RD Neil Jackson
2. 504 W. 3RD Brenda Sue Dagsgard
3. 515 W 3RD Dee E. Kittleson
4. 524 W. 3RD Heidi Hegstrom
5. 520 W 3RD Kevin Karaba

APPLICATION FOR CONDITIONAL USE PERMIT --- Page 2

I have read municipal code 13-7-52 through 62 as presented to me upon application and understand the process related to the issuance of a Conditional Use Permit. I also understand that I may be required to submit supplemental information as may be required elsewhere in the zoning code for my particular request.

Application Signature:  Date: 6/10/18

Filing Fee: *A \$150 filing fee is due at the time of submitting the application. A receipt of the fee payment shall be attached to this application form and shall serve as the application submission date.*

OFFICE USE ONLY

Date of Review Completed by Zoning Administrator: _____

Date of Public Hearing: July 19, 2018

Dates of Publication/Mailing: _____

Recommendation of Plan Commission: _____

Approval by Council: _____

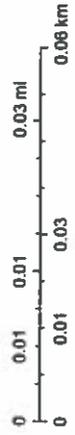
Bayfield County Web AppBuilder



6/15/2018, 4:14:03 PM

- Ashland Co Parcels
- Douglas Co Parcels
- Rivers
- Lakes
- Tie Lines
- Meander Lines
- Approximate Parcel Boundary
- Section Lines
- Government Lot
- Municipal Boundary
- Red Cliff Reservation Boundary
- All Roads
- Federal Survey Maps
- State
- County
- Town
- CFR
- Private
- UnRecorded Map
- Recorded Map
- Corner Tie Sheets
- Section Corner Monument on File
- Section Corner Monument Referenced on Survey
- Building Footprint Outline 2008-2015
- Changed
- Demolished
- Existing
- New
- Unknown

1:783



Bayfield County, Bayfield County Land Records

CITY OF WASHBURN

PO BOX 638

WASHBURN, WI 54891

Receipt Nbr: 26554

Date: 6/15/2018

Check

RECEIVED
FROM

TIMOTHY HAY

\$150.00

<u>Type of Payment</u>	<u>Description</u>	<u>Amount</u>
Accounting	Account Nbr: 100-00-44400-000-000 ZONING PERMITS T HAY - CONDITIONAL USE PERMIT	150.00
<hr/> TOTAL RECEIVED		150.00
<hr/> Receipt Memo: CONDITIONAL USE PERMIT		

exceed 4 years. In the event the Common Council rescinds an approval, the Common Council shall at that time reclassify undeveloped lands in the district based on the zoning regulations in effect at that time. Developed portions of the planned development district may either be allowed to retain the planned development district designation or reclassified based on the zoning regulations in effect at that time.

7-38 to 7-50 Reserved

**DIVISION 3
CONDITIONAL USE**

Sections

7-51	Generally	7-58	Staff report content
7-52	Applicability	7-59	Content of decision document
7-53	Initiation	7-60	Effect of approval
7-54	Review procedure	7-61	Expiration of an approval
7-55	Basis of decision	7-62	Amendment of an approved conditional use
7-56	Imposition of conditions		
7-57	Application form and content		

7-51 Generally

Although each zoning district is primarily intended for a predominant type of land use, there are a number of uses that may be appropriate under certain conditions. These are referred to as conditional uses. This division describes the requirements and procedures for reviewing a conditional use, including an amendment of an approved conditional use.

7-52 Applicability

Those land uses designated as conditional uses in the land-use matrix (Exhibit 8-1) must comply with the requirements in this division.

7-53 Initiation

The owner of the subject property may submit an application for the establishment of a conditional use.

7-54 Review procedure

The general steps outlined below shall be used in the review of an application for a conditional use.

- (1) **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent shall meet with the zoning administrator to review (i) applicable regulations and procedures, (ii) applicable sections of the City's comprehensive plan, and (iii) the proposal. Upon request, the zoning administrator may waive the requirement to hold a pre-submittal meeting when he or she determines such meeting is not necessary given the nature of the project and/or the extent to which the applicant understands the City's zoning requirements.
- (2) **Submittal of application materials.** The applicant shall submit a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Common Council.
- (3) **Staff review.** Within 30 calendar days of submittal, the zoning administrator shall either schedule a date for the public hearing with the Plan Commission allowing for proper public notice or make a determination that the application is incomplete and notify the applicant of any deficiencies. If the application is incomplete, the applicant has 3 months to complete the application or forfeit the application fee. The zoning administrator shall take no further steps to process the application until the deficiencies are remedied. The incomplete application shall be retained as a public record.

- (4) **Special notice to Department of Natural Resources.** If the application relates to the floodplain regulations in this chapter, the zoning administrator shall send a copy of the application and public hearing notice to the regional office of the Wisconsin Department of Natural Resources at least 10 calendar days before the date of the public hearing.
- (5) **General notice.** Consistent with Division 2 of Article 6, the zoning administrator shall provide for a class 2 public notice, property owner notice, and meeting agenda notice.
- (6) **Staff report preparation and distribution.** The zoning administrator shall prepare a written staff report as described in this division and provide a copy of it to each member of the Plan Commission, the applicant, and any other interested person upon request.
- (7) **Public hearing.** Allowing for proper notice, the Plan Commission shall conduct a public hearing to review the application consistent with Division 3 of Article 6. Prior to the close of the public hearing, the applicant or the Plan Commission may request a continuance consistent with Division 3 of Article 6. If a continuance is granted, the Plan Commission may direct the zoning administrator to conduct additional research.
- (8) **Staff follow-up.** If the Plan Commission does not render a decision immediately following the public hearing, the Plan Commission may direct the zoning administrator to prepare a preliminary decision document.
- (9) **Recommendation.** After considering all of the information submitted by the applicant, public comments received at the public hearing, and the staff report, the Plan Commission, no more than 40 calendar days after the public hearing, shall make a recommendation to the Common Council based on the decision criteria contained in this division to (i) approve the conditional use, (ii) approve the conditional use with conditions, or (iii) deny the conditional use.
- (10) **Transmittal of recommendation.** If the Plan Commission action is favorable, the zoning administrator shall prepare a draft decision document effectuating its determination. If the Plan Commission action is not favorable, the Plan Commission shall report its determination to the Common Council including its reasons for denial.
- (11) **General notice.** Consistent with Division 2 of Article 6, the zoning administrator shall place the matter on the meeting agenda of the Common Council.
- (12) **Common Council meeting.** Allowing for proper notice, the Common Council shall consider the application at a regular or special meeting.
- (13) **Decision.** After considering all of the information submitted by the applicant, public comments received at the public hearing, the staff report, and the Plan Commission's recommendation, the Common Council shall make a decision based on the decision criteria contained in this division to (i) approve the conditional use, (ii) approve the conditional use with conditions, or (iii) deny the conditional use. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in this chapter or imposed by the city, the city shall grant the conditional use permit. The applicant must demonstrate by substantial evidence that the application and all requirements and conditions established by the city are or shall be satisfied. The decision to approve or deny the permit must be based on substantial evidence.
- (14) **Preparation of final decision document.** Based on the action of the Common Council, the zoning administrator shall prepare a final decision document consistent with this division.
- (15) **Applicant notification.** Within a reasonable time following the Common Council's decision, the zoning administrator shall mail the decision document to the applicant by regular mail.
- (16) **Notification to Department of Natural Resources.** If the application relates to the floodplain regulations in this chapter, the zoning administrator shall mail a copy of the decision document to the regional office of the Wisconsin Department of Natural Resources within 10 calendar days of the date of decision.
- (17) **Acceptance by property owner.** If the application is approved, the property owner shall sign the decision document to acknowledge the terms of the approval and return the same to the zoning administrator within 6 months of the decision. Prior to the expiration of the previously specified time period, the property owner may submit a petition to the City Clerk requesting an extension and the Common Council may, with cause, extend the period within which the decision document must be signed. If the signed decision document is not returned within the initial or extended time period, if any, the decision shall become null and void without any further action by the City. The decision document

shall only become effective when all required signatures have been obtained and the original signature copy is returned to the zoning administrator.

- (18) **Public record copy.** A duplicate copy of the decision document shall be retained as a public record.
- (19) **Recording of decision document.** If the property owner returns the decision document within the required time period with the required signatures, the zoning administrator shall record the decision document against the subject property in the office of the Bayfield County register of deeds.
- (20) **Administrative steps.** If the conditional use is approved and the zoning administrator has created a map showing conditional uses, the zoning administrator shall add the conditional use to that map.

Amendment(s):

1. Ordinance 18-001, adopted April 9, 2018

7-55 Basis of decision

(a) **Generally.** When reviewing conditional uses other than nonconforming conditional uses, the Plan Commission in making its recommendation and the Common Council in making its decision shall consider the following factors:

- (1) the size of the parcel on which the proposed use will occur;
- (2) the presence of and compatibility with other uses on the subject property, if any;
- (3) the location of the proposed use on the subject property (e.g., proximity of the proposed use to other existing or potential land uses);
- (4) effects of the proposed use on traffic safety and efficiency and pedestrian circulation, both on-site and off-site;
- (5) the suitability of the subject property for the proposed use;
- (6) effects of the proposed use on the natural environment;
- (7) effects of the proposed use on surrounding properties, including operational considerations relating to hours of operation and creation of potential nuisances;
- (8) effects of the proposed use on the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district and adjoining districts; and
- (9) any other factor that relates to the purposes of this chapter set forth in s. 1-5 or as allowed by state law.

(b) **Nonconforming conditional uses.** When reviewing nonconforming conditional uses, the Plan Commission in making its recommendation and the Common Council in making its decision shall make the following determinations:

- (1) The nonconforming use will not be adverse to the public health, safety, or welfare.
- (2) The nonconforming use is in keeping with the spirit and intent of this chapter.
- (3) The nonconforming use would not be otherwise detrimental to the area and in particular the surrounding properties.

The Common Council shall grant approval for a nonconforming conditional use only if the council can make an affirmative finding for all of the criteria listed in this subsection.

(c) "Substantial evidence" as used in this Article means facts and information, other than mere 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.

Amendment(s):

1. Ordinance 18-001, adopted April 9, 2018

7-56 Imposition of conditions

(a) **Generally.** The Plan Commission may recommend and the Common Council may impose one or more conditions of approval as may be necessary to grant approval. Such conditions and restrictions may relate to the establishment, location, construction, maintenance, operation of the use, off-site impacts, and any other aspect of the use that impacts the public health, safety, or general welfare. Conditions as to the permit's duration, transfer, or renewal may also be included. All conditions must be reasonable and, to the extent practicable, measurable. Any condition imposed must be related to the purpose of the evidence and be based on substantial evidence.

(b) **Condition may not lessen any requirement.** A condition of approval shall not lessen a development standard or other requirement contained in this chapter.

(c) **Special consideration for solar panels.** In those instances where a solar panel is classified as a conditional use, the reviewing authority may impose one or more conditions of approval, provided the condition satisfies one of the following:

- (1) The condition serves to preserve or protect the public health or safety.
- (2) The condition does not significantly increase the cost of the system or significantly decrease its efficiency.
- (3) The condition allows for an alternative system of comparable cost and efficiency.⁶

(d) **Effect on contracts with another party.** The Common Council shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.⁷

(e) **Special condition for business as property owner.** As a condition of approval of a conditional use, the property owner if it is a business entity, such as a limited liability company or a corporation, shall for the life of the conditional use continuously maintain a registered office and registered agent in the state of Wisconsin as evidenced by registration with the Wisconsin Department of Financial Institutions.

Amendment(s):

1. Ordinance 18-001, adopted April 9, 2018

7-57 Application form and content

The application submittal shall include an application form as may be used by the City and a project map prepared at an appropriate scale depicting the information listed in Appendix A.

7-58 Staff report content

The staff report shall contain preliminary findings for the decision criteria listed in this division and other information deemed appropriate.

7-59 Content of decision document

(a) **Approval.** If the application for a conditional use is approved, the decision document shall include the following:

- (1) a statement that the application is approved,
- (2) a description of the conditional use,
- (3) a description of where the conditional use will occur on the property,
- (4) reasons for the decision based on the criteria listed in this division,
- (5) a list of conditions of approval that must be satisfied prior to the establishment of the conditional use or complied with during the life of the conditional use, or both,

⁶ Commentary: See s. 66.0401(1m), Wis. Stats.

⁷ Commentary: See s. 62.23(7)(gm), Wis. Stats. The City, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

- (6) a statement indicating that the property owner must sign the decision document and return it to the zoning administrator to acknowledge acceptance of the same,
 - (7) a statement that the applicant may appeal the decision to the Zoning Board of Appeals,
 - (8) a statement that an aggrieved person, other than the applicant, may appeal the decision and that any work done by the applicant as authorized by the approval is done at the applicant's risk,
 - (9) a statement indicating the nature of the approval (i.e., personal to the property owner or runs with the land),
 - (10) other information the Common Council or zoning administrator deems appropriate,
 - (11) the signature of the zoning administrator on behalf of the Common Council, and
 - (12) the date of the decision.
- (b) **Denial.** If the application for a conditional use is denied, the decision document shall include the following:
- (1) a statement that the application is denied,
 - (2) a description of the project, including acreage and proposed use characteristics,
 - (3) reasons for the decision based on the criteria listed in this division,
 - (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
 - (5) a statement that the decision may be appealed as provided for in this division,
 - (6) other information the Common Council or zoning administrator deems appropriate,
 - (7) the signature of the zoning administrator on behalf of the Common Council, and
 - (8) the date of the decision.

7-60 Effect of approval

Unless otherwise specified in the conditional use order, approvals are personal to the property owner meaning the approval automatically lapses when the property owner ceases to own the property.

7-61 Expiration of an approval

(a) **Non-establishment of use.** If the zoning administrator determines that substantial work as authorized by a conditional use approval did not commence within 12 months of the date of approval or if substantial work did commence within 12 months of the date of approval but has not continued in good faith to completion, he or she shall initiate the process to terminate the approval pursuant to Division 18 of this article. Upon written petition and with cause, the zoning administrator may grant a one-time extension not to exceed 6 months provided (i) the permit holder requests the extension prior to the expiration of the approval, (ii) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (iii) the project complies with this chapter in effect at the time the extension is granted.

(b) **Cessation of use.** If the zoning administrator determines that a conditional use has ceased to operate for any reason, whether intentional or otherwise, for more than 12 continuous months, he or she shall initiate the process to terminate the approval pursuant to Division 18 of this article.

7-62 Amendment of an approved conditional use

Following approval of a conditional use, the Plan Commission shall review all proposed changes to the approval. If in the opinion of the Plan Commission, the proposed change constitutes a minor alteration, the Plan Commission may approve the requested change in writing at a regular or special meeting of the Plan Commission without following the review procedure in this division. If the proposed change constitutes a major alteration, the review procedure in effect at the time of submittal shall be followed.

7-63 to 7-70 Reserved

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MATTHEW F. ANICH
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MAX T. LINDSEY

TO: Mayor and Members of the Washburn Plan Commission
FROM: Max Lindsey, City Attorney
RE: Zoning Code Amendments
DATE: July 12, 2018

At a recent conference of municipal attorneys that I attended, one of the main topics of discussion was revising sections of zoning codes to remove subjective conditions for zoning permit applications. The concern over these subjective standards have received increased attention since the Wisconsin Legislature amended the requirements for granting or denying zoning permits in November of 2017. This new statute requires any decision to be supported by "substantial evidence," which specifically excludes personal preference or speculation, and also requires any conditions to be, "to the extent practicable, measurable." Wis. Stats. 62.23(7)

While there has been little guidance or caselaw decisions interpreting the new requirements, the prevailing thought is that any ambiguous zoning requirements should be revised to have set standards in order to limit potential liability for the City. Thus, I recommend that the Plan Commission consider amendments to the zoning code to eliminate or revise several sections that could lead to potential legal battles in the future. The main provisions that should be addressed are any conditions that do not have measurable criteria, i.e. that the appearance of each side of a building must be "similar"; that the mass of a building has to be "compatible" to "adjacent" buildings; conditions if a portion of a building is "readily visible." An example of how these provisions may be revised is by stating a set distance for what is deemed to be "adjacent," or by setting a percentage value for what may be deemed "similar."

Below are a few examples of code provisions that I would recommend revising with examples of how they could be changed. Recommended deletions are in ~~strikeout~~, recommended additions are in red.

Article 8, Section 8-66

(e) **Setback averaging for front-yard setback**

In those areas of the city where the majority of principal buildings along **the same side of a street within 300 feet of the subject property and in the same zoning district** have less than the required front-yard setback, the setback for any new building or addition to an

existing building is determined by averaging the setbacks for buildings within 300 feet on the same side of the street and in the same zoning district that are closer than the established setback.

In those areas of the city where the majority of principal buildings along the same side of a street within 300 feet of the subject property and in the same zoning district have significantly greater than fifty-percent (50%) more than the required front-yard setback, the setback for a new building or an addition to an existing building is determined by averaging the setbacks for those buildings within 300 feet on the same side of the street and in the same zoning district that have greater than fifty-percent more than the required front-yard setback.

Article 8, Section 8-163

(4) A docking or loading area for a commercial, institutional, or industrial building shall be easily accessible to service vehicles, separated from the on-site parking area or protected from such on-site parking area by a physical barrier, and designed to serve multiple establishments and tenants, when possible. Such docking or loading area shall not be readily visible be screened from view from a public street, an on-site customer parking area, or an abutting property in a commercial or residential district or a planned development district that allows residential uses. Screening from view may be accomplished by (a) integrating such area into the overall design of the building (e.g., inside of the building or use of architectural extension of a building wall), (b) using a fence; a berm; landscaping, above what is otherwise required in this chapter; or other suitable feature; or (c) any combination thereof.

Article 8, Section 8-183

~~(1) The scale of a building shall be compatible with the overall massing and the individual parts of adjacent buildings, especially existing and anticipated residential buildings in a residential zoning district or a planned development district that allows residential uses.~~ **Suggested to remove this provision. In the alternative, amend as follows to address concerns of oversized residential buildings, which was the initial concern that prompted this restriction:**

The overall mass of a building in a residential zoning district or a planned development district that allows residential uses, measured by its above-ground square footage, shall not be greater than 175% of the largest building within 1000 feet and in the same zoning district.¹

¹ Pursuant to the procedures and requirements in Article 7, the Plan Commission may approve a special exception to allow an increase of allowable square footage of no more than 200% of the largest building within 1000 feet and within the same zoning district.

~~(2) Windows, doors, and other openings must form a unified composition in proportion to the building elevation. Suggest removal of this provision as it is unquantifiable.~~

~~(3) On any new building constructed for business or manufacturing use~~ All building exteriors, ~~excluding residential and industrial buildings,~~ facing a street or approved way shall have ~~at least~~ 50 percent of the street face constructed with brick, decorative masonry, glass panel, or other appropriate similar finished façade as may be approved by the Plan Commission. Such brick, masonry, glass or other decorative facing shall extend for a distance of at least 25 feet along the sides of the structure ~~that do not face a street or approved way~~ or at least 25 percent of the that side wall distance, whichever is greater.

~~(7) The appearance of a side or rear of a commercial or institutional building shall be the same as or similar to the front of such building when it is readily visible from a public street or an abutting property in a commercial or residential zoning district or a planned development district that allows commercial and/or residential uses. Suggest removal of this provision as it can be covered by 8-183(3) as amended above.~~

Article 14, Section 14-7

(2) **Building mass.** ~~The mass of a building (i.e., relationship between a façade height and width) shall be compatible with existing buildings in the immediate area. Suggest removal of this provision. The limit on building height in § 14-7(1) and the Special Requirements for large buildings in § 14-7(3) cover the concerns addressed by this provision.~~

**DIVISION 8
SITE DESIGN**

Sections

8-161	Legislative findings	8-163	General site design principles
8-162	Applicability	8-164	Specific design principles

8-161 Legislative findings

The Common Council makes the following legislative findings regarding the site design requirements in this chapter:

- (1) The design and layout of a site, including principal and accessory buildings, pedestrian routes, parking areas, access drives, building service areas, docking and loading areas, outdoor lighting, signage, stormwater management facilities, and other site features, can have a substantial and long-lasting effect on the utility of the subject property and on surrounding properties and the overall character of a community.
- (2) The requirements in this section are intended to provide meaningful guidance to applicants, design professionals, and public officials.
- (3) The requirements in this section are intended to promote the public health, safety, and welfare and are reasonably related to the public purpose of achieving an attractive, functional, and prosperous community.

8-162 Applicability

Those land uses designated as requiring site plan review in the land-use matrix (Exhibit 8-1) must comply with the requirements in this division.

8-163 General site design principles

Development subject to review under this division shall adhere to the following design principles along with other requirements that may apply:

- (1) A building shall be arranged on the site so as to not impede traffic accessibility and circulation to or from adjacent streets and adjoining sites developed with similar nonresidential uses.
- (2) The front of the building shall be generally parallel to the street or a public area, such as a courtyard, plaza, or the like.
- (3) Cross accesses shall be provided between adjoining commercial parcels whenever it is feasible to do so.
- (4) A docking or loading area for a commercial, institutional, or industrial building shall be easily accessible to service vehicles, separated from the on-site parking area, and designed to serve multiple establishments and tenants, when possible. Such docking or loading area shall not be readily visible from a public street, an on-site customer parking area, or an abutting property in a commercial or residential district or a planned development district that allows residential uses. Screening from view may be accomplished by (a) integrating such area into the overall design of the building (e.g., inside of the building or use of architectural extension of a building wall), (b) using a fence; a berm; landscaping, above what is otherwise required in this chapter; other suitable feature; or (c) any combination thereof.
- (5) Existing natural resources and topographic features on the site shall be preserved to the greatest extent possible while affording a reasonable use of the property.
- (6) The project shall not create any hazard.
- (7) The project shall be designed to avoid existing hazards, whether manmade or natural, and if avoidance is not possible, to mitigate the effects of the hazard to a satisfactory level necessary to protect the public health, safety, and welfare.
- (8) Parking areas and pedestrian routes located on the site shall be designed to promote safety and efficient traffic flow.

8-164 Specific design requirements

In addition to the principles enumerated in this division, projects shall be designed to comply with all other development standards in this chapter that may apply.

8-165 to 8-180 Reserved

**DIVISION 9
GENERAL ARCHITECTURAL STANDARDS**

Sections

<p>8-181 Legislative findings</p> <p>8-182 Applicability</p>	<p>8-183 Architectural standards</p> <p>8-184 Additional standards in the Downtown Design Overlay district</p>
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8-181 Legislative findings

The Common Council makes the following legislative findings regarding the architectural requirements in this article:

- (1) The outward design appearance of a building can have a substantial and long-lasting effect on surrounding properties and the overall character of a community.
- (2) Buildings and especially those within a largely developed area should fit into the context in which they occur.
- (3) Architectural design standards should allow for a variety architectural styles and be flexible to the greatest extent possible.
- (4) The standards in this section are intended to provide meaningful guidance to applicants, design professionals, and public officials.
- (5) This section is not intended to limit or infringe upon reasonable accommodations to afford a person with disabilities equal opportunity to use and enjoy a building.
- (6) The standards in this section are intended to promote the public health, safety, and welfare and are reasonably related to the public purpose of achieving an attractive, functional, and prosperous community.

8-182 Applicability

Those land uses designated as requiring architectural review in the land-use matrix (Exhibit 8-1) must comply with the requirements in this division.

8-183 Architectural standards

Buildings subject to review under this division shall comply with the following architectural standards:

- (1) The scale of the building shall be compatible with the overall massing and the individual parts of adjacent buildings, especially existing and anticipated residential buildings in a residential zoning district or a planned development district that allows residential uses.
- (2) Windows, doors, and other openings must form a unified composition in proportion to the building elevation.
- (3) On any new building constructed for business or manufacturing use, all building exteriors facing a street or approved way shall have 50 percent of the street face constructed with brick, decorative masonry, glass panel, or other appropriate similar finished façade as may be approved by the Plan Commission. Such brick, masonry, glass, or other decorative facing shall extend for a distance of at least 25 feet along the sides of the structure or at least 25 percent of the that side wall distance, whichever is greater.
- (4) Principal buildings with a front elevation of more than 750 square feet in area shall be divided into distinct planes of 500 square feet or less. The following design features can be used to meet this provision (1) canopies or awnings; (2) arcades; (3) porches; (4) vertical wall offsets having a minimum

- depth of 8 inches and a minimum width of 10 feet; (5) horizontal offsets having a minimum depth of 2 feet; (6) pilasters having a minimum depth of 8 inches, a minimum width of 12 inches, and a minimum height of 80 percent of the wall height; (7) recessed areas for entryways and the like having a minimum depth of 8 inches; and (8) other suitable multidimensional design features.
- (5) Oversized fenestration elements which tend to create a monumental scale shall not be used unless specifically required by the type of building or relationship to its surroundings.
 - (6) Building entrances must be clearly recognizable from parking lots and pedestrian circulation routes.
 - (7) The appearance of a side or rear of a commercial or institutional building shall be the same as or similar to the front of such building when it is readily visible from a public street or an abutting property in a commercial or residential zoning district or a planned development district that allows commercial and/or residential uses.
 - (8) Rooftop mechanical equipment shall be positioned so it is not readily visible from a public street or an abutting property in a residential zoning district or in a planned development district that allows residential uses. Rooftop mechanical equipment may be placed in an enclosure or screened from view provided such enclosure or screening is used as an element of the building's architecture.
 - (9) Fencing shall complement the appearance of buildings onsite.
 - (10) The exterior building materials of an accessory building shall be the same as or similar to those used on the principal building.
 - (11) Overhead doors shall not face a public street. The Plan Commission may permit overhead doors to face a public street, but only when it has made a finding that there is no feasible alternative location for such doors. Consistent with the requirements in Article 7, the Plan Commission may approve a special exception to allow an overhead door to face a public street when there is no feasible alternative.
 - (12) HVAC (heating, ventilating, air conditioning) equipment shall be screened from view. No HVAC shall create a noise level of more than 50 decibels as measured on a dB(A) scale at the nearest existing adjacent residence.
 - (13) When trash, garbage and recyclable materials are stored out-of-doors, such materials shall be concealed or suitably screened from public view. A brick or stone wall, wood fence, chain-link fence with slats, and/or landscaping shall be used to totally obstruct vision into the storage areas. Any wall, fence and gate, and/or vegetative screening shall be installed or erected to a height at least 1'- 6" above the highest point of the dumpster as generally depicted below.

8-184 Additional standards in the downtown design overlay district

Buildings located in the downtown design overlay district must comply with the requirements in Article 14.

8-185 to 8-200 Reserved

**DIVISION 10
RESERVED**

8-201 to 8-230 Reserved

**TITLE 13
CHAPTER 1 - ZONING CODE**

**ARTICLE 14
DOWNTOWN DESIGN OVERLAY DISTRICT**

Sections

14-1	Legislative findings	14-7	Building design
14-2	Purpose	14-8	Off-street parking and access
14-3	District boundaries	14-9	Landscaping
14-4	General compliance	14-10	Service areas and similar
14-5	Project review procedures	14-11	Signs
14-6	Building setbacks	14-12	Utilities

14-1 Legislative findings

The Common Council makes the following legislative findings:

- (1) Washburn's downtown area contains a variety of building types, many of which represent an architectural style characterized by attached storefronts.
- (2) Given the close proximity of buildings in the downtown, special rules and regulations are needed to protect and perpetuate the existing character of the area.
- (3) The standards in this article are not intended to discourage development but to encourage development that is functional, attractive, and context sensitive.

14-2 Purpose

This article is established to promote the public health, safety, and welfare and is intended to protect and perpetuate the general architectural style within the overlay district.

14-3 District boundaries

The location of the downtown design overlay district is depicted on the zoning map described in s. 8-25.

14-4 General compliance

Given the pattern of existing development in this overlay district and the size and configuration of the existing parcels, it may not be feasible for all new development or redevelopment in the district to be consistent with all of the design standards specified in this article. Therefore, prior to any major work (herein described) the appropriate reviewing authority shall ensure that the proposed work is consistent with the intent of the design standards when considered as a whole.

14-5 Project review procedures

(a) **Minor work without prior approval.** The following work may proceed without prior approval, provided a building permit is issued if required:

- (1) residing with appropriate materials;
- (2) repair or replacement of windows, trim, and doors if new materials match existing;
- (3) installation or removal of door and window openings not visible from Bayfield Street;
- (4) chimney reconstruction if completed with similar materials;
- (5) exterior cleaning, refinishing, and tuck-pointing; and
- (6) any other similar work as determined by the zoning administrator.

Prior to the commencement of any work, a property owner may ask the zoning administrator to review the proposed work to determine if it is classified as minor work and/or otherwise complies with the standards in this article.

(b) **Major work.** Any work not classified as minor work in this section shall be reviewed using the procedures specified below.

- (1) buildings - architectural review
- (2) site work - site plan
- (3) signs - sign permit

Examples of major work includes relocation of an existing building, construction of a new building, addition to an existing building, alteration of a building elevation, alterations to windows, siding, entries, and trim, erection of new signs or modification of existing signs, changes to the site including parking, pedestrian circulation, and the like.

14-6 Building setbacks

The setback of buildings from street-yard and side-yard lot lines shall be compatible with existing buildings in the immediate area.

14-7 Building design

In addition to meeting the standards in Division 9 of Article 8, buildings shall comply with each of the following:

- (1) **Building height.** The height of a building shall not be more than one story taller or shorter than the height of the adjoining building. In no event, shall the height of a building exceed the maximum building height established for the base zoning district.
- (2) **Building mass.** The mass of a building (i.e., relationship between façade height and width) shall be compatible with existing buildings in the immediate area.
- (3) **Special requirements for large buildings.** A building façade fronting on a public street with a frontage of 150 feet or more shall be designed to look like two or more individual building fronts. This may be achieved by using different building materials, facade articulations, or other design approach that gives the appearance of separate, but attached buildings.
- (4) **Horizontal rhythms.** The horizontal pattern of exterior building elements formed by patterns of building openings for windows and doors, and related elements such as piers and columns shall be spaced at regular intervals across all visible façades of the building.
- (5) **Vertical rhythms.** The floor heights on main façades shall complement those of adjoining buildings. The rhythm of the ground floor shall harmonize with the rhythm of upper floors. The vertical pattern of exterior building elements formed by patterns of building openings for windows and doors, and related elements such as sills, headers, transoms, cornices, and sign bands shall be compatible in design and elevation with adjoining buildings in immediate area.
- (6) **Roof forms.** Flat or gently sloping roofs which are not visible from the street grade shall generally be used. Mansards or other exotic roof shapes are not characteristic of the district's character and are prohibited.
- (7) **Awnings.** The size, color, placement, and design of an awning should be complement the architectural character of the building on which it is located. Soft, weather-treated canvas or vinyl materials which allow for flexible or fixed installation shall be used. Awnings covered with shingles, metal roofing, or the like are prohibited. Backlit awnings are prohibited.
- (8) **Building materials.** Selected building materials shall be compatible with those of existing buildings in the immediate area which generally consist of natural materials such as stone, brick, and wood. Concrete masonry units, corrugated metal, half-log siding, and vinyl siding are prohibited.

14-8 Off-street parking and access

(a) **Placement.** Off-street parking should be located to the rear of the principal building, or on the side as a less preferable alternative.

(b) **Paving.** New parking lots that are located to the side of a building shall be hard surfaced (e.g., interlocking pavers, asphalt, or concrete).

(c) **New curb-cuts.** New curb-cuts shall occur on the side streets rather than on Bayfield Street.

(d) **Screening.** Parking lots that are located on the side of a building should incorporate a screen to block the view of parked cars as generally depicted in Exhibit 14-1.

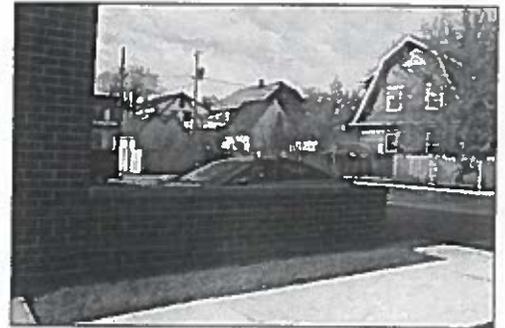
14-9 Landscaping

Landscaping as described in Article 16 is not required. If provided, landscaping should complement street trees and other streetscape elements in the public right-of-way.

14-10 Service areas and similar

Service areas, refuse collection areas, storage areas, and loading areas shall be located away from or screened from public view, especially from Bayfield Street.

Exhibit 14-1. An example of a parking lot screen



14-11 Signs

- (a) **Generally.** Signs should enhance the visual appeal of the district and its ability to attract the traveling public.
- (b) **Wall signs.** Wall signs should be designed to fit within the architectural space intended for signage.
- (c) **Compatibility.** Signs should be compatible with signs on adjoining buildings with respect to location, shape, style, graphics, size, material, illumination, and color, while allowing individual expression and identification.

14-12 Utilities

Utility lines, such as telephone, electric, and cable, shall be installed underground, where feasible. Ground-mounted utility components, such as switch boxes and transformers, shall be screened by landscaping or a decorative wall and/or be located away from public view, especially from Bayfield Street.