

CITY OF WHITEWATER  
PLAN AND ARCHITECTURAL REVIEW COMMISSION  
Whitewater Municipal Building Community Room  
February 13, 2012

**ABSTRACTS/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL  
ACTIONS OF THE PLAN AND ARCHITECTURAL REVIEW COMMISSION**

**Call to order and roll call.**

Chairperson Greg Meyer called the meeting of the Plan and Architectural Review Commission to order at 6:00 p.m.

Present: Meyer, Binnie, Parker, Coburn, Miller, Henley, Henry (Alternate).

Absent: Dalee.

Others: Wallace McDonell (City Attorney), Latisha Birkeland (Neighborhood Services Manager/City Planner).

**Hearing of Citizen Comments.** No formal Plan Commission action will be taken during this meeting ON CITIZEN COMMENTS although issues raised may become a part of a future agenda. Items on the agenda may not be discussed at this time.

There were no citizen comments.

**Approval of the minutes of January 9, 2012.**

Moved by Binnie and seconded by Miller to approve the Plan Commission minutes of January 9, 2012. Motion approved by unanimous voice vote.

**Public hearing for consideration of a conditional use permit for a “Class B” Beer and Liquor License for Alejandro R. Meza and Alfredo G. Camerena, to serve beer and liquor by the bottle or glass at 1155 W. Main Street, Whitewater, Wisconsin.** Chairperson Meyer opened the public hearing for consideration of a conditional use permit for a “Class B” Beer and Liquor License for Alejandro R. Meza and Alfredo G. Camerena, to serve beer and liquor by the bottle or glass at 1155 W. Main Street, Whitewater, Wisconsin.

City Planner Latisha Birkeland explained that Mr. Meza is requesting a conditional use permit for a “Class B” Beer and Liquor License, to serve beer and liquor by the bottle or glass at 1155 W. Main Street. Birkeland gave a little history of the project. In 2003, Sugar Bay Floral and Gifts applied for a conditional use permit to sell bottles of wine, champagne and specialty beer in gourmet gift baskets. The application was denied. In 2004, this property expanded into a café and applied for a conditional use permit to “offer wine, beer, and small amounts of liquor, with the majority being served with meals.” A conditional use permit was approved. The applicant applied and received a “Class B” Beer and Liquor License to serve beer and liquor by the bottle or glass for the Greenhouse Café. In January 2012, Mr. Meza applied for a conditional use permit for the sale of alcoholic beverages by the bottle or glass at a new business proposed as Cube Sports Bar and Grill. This application was unanimously denied by the Plan Commission. Mr. Meza has now submitted a new conditional use permit application to sell alcohol beverages

by the bottle or glass at an establishment to be called “Cube’s Restaurant”. It is to be an American Continental style restaurant. Mr. Meza has expanded his menu. The interior layout is different from the Greenhouse Café, but similar to what was proposed in January. The business would be required to have 14 parking stalls per the Zoning Code according to the primary floor square footage. There will be signage for the entrance and exit and the arrows will be repainted on the driveway. The existing sign for the business will remain the same except for the name “Cube’s Restaurant”.

Attorney Ben Penwell is representing Mr. Meza and his uncle for the conditional use permit for Cube’s Restaurant. He stated that the concerns of the public should be addressed and assuaged. The change in the business plan was done due to the concerns. The current business plan is for a family restaurant serving American style food. They would like the license to serve beer and alcohol. There is no question of the zoning. It is business zoning and this business is compatible with other business hours and restaurants in the neighborhood and could enhance the neighboring properties in a positive manner. Vacant buildings affect neighboring properties in a negative manner. The plans answer the code requirements satisfactorily which include zoning, parking, green space, fire & health law. Mr. Meza has run businesses in the past and has a good reputation. The way to deal with the neighbors’ concerns of noise and lawlessness and being able to have quiet enjoyment of their proximity is by law enforcement. There are ordinances and state law to take care of individuals. The Fiedlers have never had a complaint for noise, lawlessness, or property damage on their property. The City Council and Plan Commission had concerns of garbage disposal and distributors. The Fiedlers have had an informal agreement with Whitewater Plaza to have their garbage picked up once a week from the Whitewater Plaza parking area. As a matter of convenience, the distributors who also distributed to the Whitewater Plaza businesses also delivered to the Greenhouse café. The Fiedlers have also allowed the snow from the Whitewater Plaza parking area to be pushed onto the Greenhouse Café property. It is unfortunate that there is disagreement now, but it does not stop the use of the property. The business will employ people, pay taxes and add value to our community. The City Council and the Plan Commission can grant and take away. What the City doesn’t grant, the City cannot reap the value.

Pete Weston, Architect, explained that the building requires 14 parking stalls for the maximum occupancy of 99 persons. The building is not a sprinklered building and is limited by the Commercial Building Code. The trucks and deliveries are not ideal, but manageable. They have been manageable for 45 to 50 years.

Gary Fiedler, owner of the property, explained that when they started their business, they had deliveries on site. They have had live music, open mic nights. They have a sound system that is adequate for the size of the building. As a coffee shop, their customers were mostly college students. As a family restaurant, it would draw a variety of customers. As far as the parking, the majority of people, who come from campus, walk. Fiedler also noted that they looked for a business to fill the lease that would bring something new to the community to enhance it.

Attorney Penwell explained that parking is not an issue at this time. Businesses like to plan out for 5 years at least. They will continue to look for parking available in the area. Mr. Meza

would make sure the patrons park in the parking area provided to them. He respects the property owners.

Mr. Meza explained that he just wanted to have a business in Whitewater and do his best. His two other restaurants are doing good. He works with his neighbors.

Bob McCullough, one of the owners of McCullough's Pharmacy, re-addressed some of the concerns he still has. Even though the proposal has changed from a sports bar to a restaurant, many of the elements are similar. They still have a concern of the parking, quantity and seeming inaccessibility of the stalls, especially for the taller trucks and beer trucks. Friday night, February 10<sup>th</sup>, Bob McCullough checked out some parking lots to see what kind of space was available. At 6:45 p.m. there were 64 vehicles in the Whitewater Plaza parking lot. At 7:45 p.m. there were 34 vehicles at Rick's East Side Pub. The hours have changed by being cut Sunday night by closing at 10 p.m. and Monday through Wednesday nights closing at 11:30 p.m. The parking, noise and hours of operation could create a nuisance for the residents of Blackhawk Manor. A similar circumstance would be for the residents on Fremont Street having to put up with the noise as the patrons of the bars downtown make their way back to campus. The City of Whitewater has a very good police department, but we should not be just handing them issues. Class B licenses are hard to come by. It should not be issued to an ill-suited proposal. Employees and patrons are needed to make a business successful. As to the government getting in the way, the City has a City Council and Plan Commission to look at and review proposals on behalf of the community.

Bob Freiermuth, Whitewater investor and President of the Rental Association, plows snow for McCullough's Pharmacy. He supports small business. The more snow there is, the less parking. Freiermuth attests to the parking problem.

John Kiddleson, owner of Jimmy John's, has no problem with the business. He wants to see a business there. But he needs a guarantee that the Whitewater Plaza will not lose parking. In regard to the mutual agreement, there is none. It will be considered trespassing if the Whitewater Plaza parking area is used to service this business. His concern is the parking.

Wendell Swift, a resident of Blackhawk Manor, expressed his concern of the change from a sports bar to a restaurant and the maximum capacity for the business. The main floor has a game room, an area for a 12 stool bar and an area with tables with a maximum capacity of 99 persons. The basement level has a future game room which states a maximum capacity of 20 persons and 40 persons on the same sheet. (A contradiction there.) Wendell Swift also questioned the closing time of Mr. Meza's other restaurants. The hours being requested for Cube's Restaurant are similar to bar hours. The second issue is with the parking. There are 14 parking stalls for a maximum capacity of 119 persons with 3 to 5 of them being employees. Per the City Attorney, the Plan Commission has the discretion to require more parking.

Vicki Fiedler, owner of the property at 1155 W. Main Street, explained that there are 7 businesses at the Whitewater Plaza. With 64 vehicles, over 7 businesses, that makes it about 9 vehicles per business. They have 14 parking stalls. As far as the hours of operation, they (the Greenhouse Café) were always asked to stay open later when there was something going on at

the Center of the Arts. They did not want to do that. But there is a need there. They wanted to expand to offer more opportunity to enjoy Whitewater. Vicki Fiedler asked if the Plan Commission had heard any complaints about their business in the 9 years they have been there. They have had bands on Thursday nights.

Oscar, from Cozumel, explained that he had a slow night on that Friday, February 10<sup>th</sup>. They had 4 tables full. The parking is short. Whole families come in 2 or 3 vehicles. The red garbage cans are not for Whitewater Plaza. He wanted to know if there was a permit from Whitewater Plaza.

Terry Smith, residence manager and tenant at Blackhawk Manor, stated that the law enforcement in Whitewater is very good, but it can be strained. She believes the noise level will be most noticeable at closing time when people are leaving the business and the employees are cleaning up. The closing time of 2:00 – 2:30 a.m. is not family time. Terry Smith wanted to go on record as supporting appropriate business. They would be more in favor if the restaurant closed Sundays through Thursdays at 10:30 and weekends at 11:00 p.m. This would be more family friendly and more in line with what the Blackhawk Manor tenants would appreciate. The tenants' apartments that face the south side of the proposed restaurant building would be most affected by any noise, cleanliness, traffic or other concerns. This business could create a parking impact on the families of residents of Blackhawk Manor. If there is not enough parking on the property for this business's patrons, they may take up street parking on Blackhawk Drive across from the apartment building, reducing the availability for the families of residents to park there. Terry Smith hopes the residents would not go unheard. They know they will not go unheard at election time.

Helen Henschel, Blackhawk Manor tenant whose apartment overlooks the parking lot of the proposed business, explained that the restaurants in the Whitewater Plaza area are closed by 10 or 11 p.m. She knows that customers of the Greenhouse Café parked on the sides of the building. She likes to have her windows open during nice weather and would prefer not to have the noise late at night or early in the a.m.

David Bayer owns the building in Edgerton that he leases to Alex for his restaurant. The property has little parking. Neighboring business owners share their parking when they do not need it. Everything has been favorable. Alex's business in Sun Prairie has also received no negative feedback from anyone.

Harriet Kaluva, resident of Whitewater, voiced her concern of groups of youth hitting the ATM machine and gathering there. The numbers downtown are very large when that happens. She is worried about someone getting hurt there.

Bob McCullough stated that he never had any complaints toward the Greenhouse Café. It was the nature of the business. This is a completely different venue.

Attorney Penwell explained that as a part of the change in the business plan, Mr. Meza realized that Whitewater has a niche that is not being filled. Some people like to eat later at night, especially within close proximity to the University. He didn't think it was fair to characterize the

restaurant as a bar. Mr. Meza is asking for a Class B Beer and Liquor license. The business would provide a mix of business in the area for a mix of income. The City has no problems with Randy's or Rick's East Side Pub (near a residential area). The problem of closing at 2:30 a.m. is unfounded. They have plans to do some creative re-striping of the lot with diagonal parking and expand or come to an economical agreement with other business owners in the area for extra parking. Attorney Penwell explained that noise is a part of community living. He also noted that Mr. Meza has had real experiences that were positive; Mr & Mrs. Fiedler took great pains to find the best fit for their property; and Mr. Meza should be given the opportunity to prove he can be a good neighbor.

Jeff Knight, 405 S. Panther Court, voiced his concern of the possible noise from this business exiting the back of the building toward the Senior housing.

Attorney Penwell stated the building is air conditioned. The back door exit could be made into a fire exit.

Wen Swift wanted to know the closing time of the current restaurants that Mr. Meza operates.

Nancy Giorno wanted to know where the smoking patrons would be able to smoke? She worked second shift and would come into Whitewater around midnight. At that time there was a lot of commotion in the downtown area involving "bar people". She strongly objected to putting "bar people" in her front yard.

Barb Congdon, owner of "Robins Nest", explained that the Greenhouse Café had been open until 10. They have parking issues as they are open until 8 p.m. If you make the back door a fire door, then the patrons will have to walk from the parking lot behind the building to the front of the building to enter.

Chairperson Meyer closed the public hearing.

Vice Chairperson Binnie encouraged the Plan Commission to focus on the conditional use permit application for the serving of alcohol. The Plan Commission needs to determine if this location is appropriate for alcohol to be served. Restaurants are primarily restaurants. This is to be a family type restaurant. The menu does not attract family clientele. A conditional use permit is not required for a restaurant alone. A conditional use permit is required for a liquor license. The issue happens when patrons over indulge in alcohol and the owner has problems controlling the situation especially when the patrons leave the building. The proposed restaurant would have senior housing in the back yard. The student population is close to this business. Plan Commission should also protect the quality of life and peaceful enjoyment of senior living.

City Attorney McDonell explained that the conditional use does not get reviewed annually. The liquor license is annually renewable. Plan Commission does not grant or deny a liquor license, only a conditional use.

Plan Commission Member Henry stated that the location is attractive to keep open. There would be parking problems during the time for families to enjoy the restaurant. The location is close to

campus which would work for the 11 p.m. to 2:30 a.m. She wondered if they would be interested in closing between 10 and 11 p.m. With the business being located next to senior housing, she could not convince herself that this is a good fit.

Chairperson Greg Meyer compared parking at different locations all over the City. Rick's Eastside Pub and Whitewater Family Restaurant and Lakeside Pub each had 70 parking stalls. Rick's has a 99 person capacity and Whitewater Family Restaurant and Lakeside Pub has 112 person capacity. Their parking lots were full. The 14 stalls for the Cubes Restaurant is grossly inadequate. Meyer felt there was not enough parking to sustain the business.

Moved by Binnie and Miller to deny the application for a conditional use permit for a "Class B" Beer and Liquor License for Alejandro R. Meza and Alfredo G. Camerena, to serve beer and liquor by the bottle or glass at 1155 W. Main Street, Whitewater, Wisconsin. City Attorney McDonell asked whether the motion was based on the factors Binnie had expressed earlier. Binnie confirmed that it was. Motion approved by unanimous roll call vote.

**Public hearing for consideration of a conditional use permit to construct the proposed new 8 unit multi-family building (six 4-bedroom and two 5-bedroom) across three existing lots located at 157 and 165 N. Tratt Street and 1039 W. Florence Street in an R-3 (Multi-family Residence) Zoning District for DLK Enterprises Inc. and Review of proposed certified survey map to combine the lots located at 157 and 165 N. Tratt Street and 1039 W.**

**Florence Street.** Chairperson Meyer introduced the public hearing for consideration of a conditional use permit to construct the proposed new 8 unit multi-family building (six 4-bedroom and two 5-bedroom) across three existing lots located at 157 and 165 N. Tratt Street and 1039 W. Florence Street in an R-3 (Multi-family Residence) Zoning District for DLK Enterprises Inc. The project and the certified survey map will be considered together.

City Planner Latisha Birkeland explained that the proposed project would be an 8 unit apartment building with 6 4-bedroom units and 2 5-bedroom units. A conditional use permit is needed to allow 8 units in an R-3 Zoning District. The original landscaping plan had a mistake in the totals. A new plan was given to the Plan Commission members. The total is 1800 points. The City Forester has reviewed the plan and has no problem with it. An agreement has been worked out with the Director of Public Works, Dean Fischer, for the sewer and storm sewer lines to go to Tratt Street and the water to go to W. Florence Street. The parking will be off W. Florence Street with two accesses. There will be no additional lighting on the property. The only lighting will be on the building. The certified survey map would go along with any approval or changes. Birkeland recommended approval with conditions.

Mike Kachel stated there was a change to the plan. There would be 8 4-bedroom apartments. There are two houses on site that they are looking to move. They want to save the structures if possible.

Attorney Mitch Simon explained that two of the lots are owned by DLK Enterprises Inc. The third lot is owned under a different LLC. Once the ownership is changed, they will re-execute

the certified survey map with the deed with correct ownership. He stated the Plan Commission can move forward and take action on this item.

Chairperson Meyer opened the public hearing.

City Attorney McDonell stated that all previous comments that have been made are considered part of the public hearing.

Brad Werginz, Architect at Angus Young and Associates, representing DLK Enterprises Inc. explained that the building is a two story building with 4 units on each floor. It will be all cream brick façade with brown accents, trim and roofing. There will be a horizontal band on the building and a bumping out of the bricks on the corners to look like pilasters.

Chairperson Meyer closed the public hearing.

Mike Kachel explained that the house at 157 N. Tratt Street would be removed before construction. The house at 1039 W. Florence Street will remain until the end of the lease which runs until May 15, 2012. They plan to begin construction in April. The area of 1039 W. Florence Street will only affect the parking area of the project. The street address of the new building will be 165 N. Tratt Street. The three city owned trees will remain and they will be adding a 4<sup>th</sup> tree to the southern end of the building on the terrace. On Florence Street they will be moving the sidewalk around the tree. Any of the trees they replace will be replaced with larger trees.

Moved by Binnie and Coburn, as this area is targeted for higher density, to approve the conditional use permit to construct the proposed new 8 unit multi-family building (8 4-bedroom units) across three existing lots located at 157 and 165 N. Tratt Street and 1039 W. Florence Street in an R-3 (Multi-family Residence) Zoning District for DLK Enterprises Inc. and to approve the certified survey map as soon as the ownership records have been taken care of, all with the conditions of the City Planner. Motion approved by unanimous roll call vote.

The City Planner conditions of approval are:

1. The applicant shall make the building and site renovations in accordance with the plans approved by the Plan Commission on 2/13/2012, including any adjustments agreed upon with the Public Works Director for the location of all utilities.
2. Knox Box to be installed on the new building per the Fire Chief.
3. All approved landscaping shall be installed no later than six months from date of Certificate of Occupancy.
4. The applicant shall include with all leases provisions related to the following:
  - a. Limits on occupancy to one (1) tenant for each bedroom and that the number of tenants in each apartment unit shall not exceed the number of bedrooms in that unit.
5. Prior to the issuance of a building permit, the applicant shall:

- a. Provide the City with a plan indicating the routing of the storm water to Tratt Street, along with locations of Water and Sanitary Sewer lines.
- 6. Prior to the issuance of the Certificate of occupancy, the applicant shall:
  - a. Establish the parking lot in accordance with the submitted plans.
- 7. The Certified Survey Map associated with the same 8-unit Multi-Family Apartment Building, is subject to the condition:
  - a. The CSM shall be recorded prior to the occupancy of the apartment building that is authorized through the City conditional use permit and site plan approval for the same property.

**Review proposed construction of a smoking area inside the existing beer garden at 158 W. Whitewater Street in a B-2 (Central Business) Zoning District for Greg Condos/Mitchell's Bar.** City Planner Latisha Birkeland explained that this is a site review application for a roofed smoking shelter. The proposed is a roofed structure with no walls (the original proposal had vinyl walls).

Greg Condos, the applicant, stated that they do everything with professional contractors. The beer garden has security guards and cameras. They would like to have the canopy up to protect their patrons from the elements. It would deter them from going outside on the sidewalk area.

The structure will be 6' x 6's with a 2' x 12' rim board. The structure can be green treated wood, be painted or go with cedar. The end of the gable will be covered. The end of the canopy has a 24" drop and will cover the rim post. The height of the structure is 8'6" to the bottom of the rim board. (The drawing shows it below the shed type roof, but it will be above.) There will not be a sign on the structure and it will not be heated. The top will be beige. The posts won't be seen with a building on one side and the six foot fence on the other.

Plan Commission Members voiced their concerns: that this is an historic area, this proposal doesn't tie in with anything. Is there a way to get it so it does not become an eye sore?; it was a good idea; it keeps the kids off the streets; it was good to keep the patrons out of the front (street) area; could the canopy match the roof of the building?; would like it to blend in.

Moved by Miller and Binnie to approve with City Planner conditions; and applicant to work with City Staff on the height and any changes that may be needed, and work with the State for any approvals needed.

The City Planner conditions of approval are:

- 1. All required permits must meet the required code standards. If the Building Inspector (State or Local) determines that changes need to be made to the proposed structure, i.e. location, width of posts, etc. all conditions must be complied with. City Staff will review any changes to the building permit plans.
  - a. The Building inspector wrote a memo regarding items the building permit will need to address, if approved by the Plan Commission. If the State of Wisconsin determines this structure to be an addition because of the State Building Code requirements, items that may be needed, but not limited to, include having the plans drawn by a State

Licensed Architect, identify occupant load of roofed area, identify fire ratings of proposed materials, etc. At this time, we do not know what will be determined by the State Building Code.

2. There shall be no walls, permanent or temporary, added to this structure without first seeking approval of the Plan Commission.
3. No signage shall be allowed on the roof of this structure.
4. The applicant shall work with the City Planner to reduce the height of the approved structure and to make the exterior materials / color of the structure more consistent with the principal structure.

Plan Commission Member Parker had spoken with the State Inspector. This proposal would need State Approval. If the structure was more than 20 feet away from the building it would not need state approval.

Motion was approved by unanimous roll call vote.

#### **Update on status of the Zoning Rewrite.**

Latisha Birkeland explained that the discussion has been continued with the steering committee and the public. The next meeting will be with the Plan Commission and the City Council to update where the steering committee has been and where they are going in more depth than the monthly report to the Plan Commission. The meeting will be scheduled in early May.

Donna Henry noted that the discussion at the meetings seems to be away from the re-write of the ordinance in general and is centered around student housing. She would like to see the discussions go back to the whole picture in the future.

Plan Commission Member Parker asked if the steering committee was looking at the whole ordinance or just parts.

Latisha Birkeland explained that at this time they are going through the major concerns that were identified during stakeholders' meetings. Graef will be going through the total ordinance to make sure items are where they need to be and will organize it so items are easier to find.

Parker asked that when the Zoning Ordinance is presented to the Plan Commission that it is presented in parts and not the whole thing all at once.

#### **Future agenda items:**

Chairperson Greg Meyer noted that Tom Miller will be leaving the Plan Commission at the end of this term. Plan Commission will be looking for a representative to the Community Development Authority (CDA).

Neighborhood Services Manager/City Planner Birkeland stated that a conditional use for Wanda's Waterfront, at the American Legion Building (formerly Capn's); and Technology Park certified survey map would be on the next meeting.

**Next regular Plan Commission meeting- March 12, 2012.**

Moved by Miller and seconded by Henry to adjourn at approximately 8:40 p.m. Motion was approved by unanimous voice vote.

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Chairperson Greg Meyer