

CITY OF ELKHORN
ARCHITECTURAL REVIEW BOARD/CITY PLAN COMMISSION MEETING
Council Chambers, 311 Seymour Ct., Elkhorn, WI
November 16, 2023

The Architectural Review Board/City Plan Commission Meeting was called to order at 6:00 p.m. by Vice-Chairman Meinel followed by the Pledge of Allegiance and Roll Call.

ROLL CALL

Present: Boardman, Stotko, Hunter, Wuttke, Meinel
Absent: Geaslen, Lechner
Also Present: Swann, Schwark, Ekes
Visitors: Lee Loveall, Eric Jones, an unidentified person

APPROVAL OF MINUTES

Motion (Hunter/Wuttke) to approve the minutes of the Architectural Review Board and Plan Commission meetings of November 2, 2023. Motion carried unanimously.

CONDITIONAL USE PERMIT/544 S. LINCOLN ST./ON TIME TOWING LLC

Vice-Chairman Meinel reported that a public hearing was held on September 7, 2023 before the Plan Commission regarding the Conditional Use Permit (CUP) request for property located at 544 South Lincoln Street by Lee Loveall, On Time Towing LLC, with citizen comment. He said that the Plan Commission had recommended to City Council to approve the Conditional Use Permit (CUP) with conditions that were stipulated by the Zoning Administrator at the September 7, 2023 meeting. The matter was placed on the September 18, 2023 Council meeting agenda for discussion and/or action. The Council referred the matter back to the Plan Commission for more detail because the applicant was not able to attend the previous meetings to respond to questions and/or comments. He asked the Zoning Administrator to provide the Staff Report to be followed by the applicant's response to those comments.

The Zoning Administrator presented the Staff Report dated November 10, 2023. The applicant is requesting a Conditional Use Permit (CUP) for vehicle outdoor storage behind security fencing at 544 South Lincoln Street (Tax Key No. YP00030). **Staff Recommendations:** At this time, staff recommendation is pending for the CUP for outdoor storage located at 544 S Lincoln Street until further discussion is had at the Plan Commission Meeting. The following draft conditions have been prepared for your consideration should the Plan Commission recommendation be to approve subject to conditions: 1) Fencing shall be installed around the entire perimeter of the rear and side yards of the property; a solid fence shall comply with sec. 17.7-2, and not exceed 6 feet in height, an open style fence shall comply with sec. 17.7-2, and not exceed 10 feet in height. Material shall be determined by the plan commission. 2) A closing security gate attached to the fencing shall be installed at the entrance of the property and shall always remain closed unless vehicles are being pulled in or out of the property. 3) A ten (10) foot wide landscaped screen of evergreen shrubbery not less than six (6) feet in height shall be installed around the perimeter of the fence, and property to prevent noise carryover, and properly separate residential and commercial properties. Landscaping and plant materials shall be maintained in a healthy growing and live condition. Trimming and pruning shall occur regularly. Any dead or diseased landscaping shall be removed and replaced regularly. 4) Trucks entering or exiting the property shall not use back up alarms on vehicles for back up past 10:00PM. 5) Property shall maintain adequate space in the street yard for tow trucks to pull into site head on, and back into tow lot on the property instead of backing in off the street when traffic is present. Tow trucks shall never back in off the street when any traffic is present.

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6) Property building appearance shall be maintained to abide by all City of Elkhorn Municipal Ordinances pertaining to exterior property maintenance. The property owner shall be responsible for adding landscaping in the street yard to increase curb appeal. 7) No vehicle shall be stored on the property for longer than 90 days. 8) The property owner/ tenant shall be responsible for installing a Knox box on the front of the property for the fire department and ensuring that the building and parcel is in full compliance with all applicable fire codes. Additionally, the fire department shall have access, or be able to open gates in the event of an emergency. The applicant shall comply with all fire department requirements. 9) The property parking area shall be asphalted where gravel is currently existing. Applicant shall comply with all City Engineer requirements including for paving and stormwater management. 10) Vehicles shall be stored on hard surfaces only, and never be stored in the front yard, or grassed and landscaped areas on site. All vehicles shall be stored behind the fencing. No vehicles shall be advertised as for sale on the property. All vehicles associated with the business shall be parked on premises and not on City streets. 11) No vehicle shall ever be stored in a manner where fluid, oil, or gasoline is leaking from the vehicle. In the event vehicle(s) are leaking fluids proper drip trays shall be placed at all times, and property shall be equipped with proper clean up equipment and materials such as sawdust, oil dry, etc. All vehicle fluids shall be properly disposed of. Any oil or hazardous fluids must be stored in a designated containment area that complies with all Wisconsin Department of Natural Resources (WI-DNR) regulations. Any oil or hazardous fluids must be disposed of in an environmentally sound manner. 12) No employees will be on site, therefore, all emergency responders, police, fire, and building and zoning departments shall have on record an authorized individual to contact 24/7 in the event of an emergency, and that can respond within 30 minutes. 13) No electric vehicles shall be stored on site at any time. 14) Security cameras shall be installed on site. 15) Security lighting shall be installed on site and comply with 17.10-9. 16) Property owner shall hook up to City water and sewer and install proper bathroom facilities. The property owner shall supply Zoning Administrator bids for hook up services to establish a timeline for hookup. Hook up shall be completed before any business operation begins, and be completed within one year of approval. 17) Rear property currently zoned RS-1 shall never be used for business operations, and shall be used as greenspace, and landscaping buffer for neighboring residential properties. Greenspace shall be mowed and maintained at all times. 18) The applicant must obtain permit cards from the office of the City Zoning Administrator after paying the zoning fees. These cards must be displayed in a prominent location at the site, and a copy of these conditions must be kept at the site at all times. 19) Failure to comply with the terms and conditions stated herein could result in the issuance of citation(s) and/or revocation of this permit. 20) The proposed use must be conducted in compliance with the plans and documents on file with the City of Elkhorn Zoning Office. 21) Any proposed advertising sign at the site will require a separate permit prior to installation. Please contact City Zoning staff for advertising sign regulations and permit procedures. 22) This approval will expire six (6) months from the date of the City's final approval unless substantial work has commenced following such grant. If this office determines that no substantial work has commenced, the project may not occur unless the City grants a written extension. Written extension requests must be submitted to the City Zoning Office thirty (30) days before permit/approval expiration. 23) Any fence, wall, hedge, yard, space or landscaped area must be kept free of any accumulation of refuse or debris. No other types of outside storage is allowed on the property. 24) No vehicle parts or vehicle salvage yard activity is allowed at the site. 25) No additions, deletions, or changes may be made to the project, site plan, or these conditions without the City 's prior approval. All addition, deletion, and/or change requests must be submitted to the City Zoning Administrator in writing. A minor change to the conditions of this permit, as deemed by the Zoning Administrator, may be made at a staff level, if authorized by the Zoning Administrator. 26) Your accepting the conditional use approval/permit and beginning the project

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means that you have read, understand, and agree to follow all conditions of this approval. Applicant, and its heirs, successors, and assigns are responsible for full compliance with the above conditions. 27) It is the property owner's responsibility to inform any subsequent owner or operator of these conditions. 28) The applicants must allow any City employee full and unlimited access to the project site at a reasonable time to investigate the project's construction, operation, or maintenance. 29) The applicants are responsible for obtaining all necessary federal, state, and local permits, approvals, and licenses. The applicant is required to comply with all applicable local, state and federal regulations. 30) Applicant shall reimburse the City all costs incurred by the City for review of this conditional use including but not limited to engineering, legal and planning review that occurred prior to permit issuance and during the implementation of the plans and construction of improvements.

The Zoning Administrator continued by stating that **the proposed conditional use for outdoor storage as a towing business is a conditional use application. The law governing conditional use permits is under Sec. 62.23 (7) (de) of the Wisconsin Statutes which provides as follows:** a) A “Conditional use” means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by the City. b) If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the City ordinance or those imposed by the City Plan Commission and Council, the City shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and **be based on substantial evidence.** c) The requirements and conditions described must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. d) The applicant must demonstrate that the application and all requirements and conditions established by the City relating to the conditional use are or shall be satisfied, both of which **must be supported by substantial evidence.** e) The City's decision to approve or deny the permit **must be supported by substantial evidence.** f) “Substantial evidence” means facts and information, **other than merely personal preferences or speculation,** directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

Vice-Chairman Meinel felt there should not be a limit of not more than 10 vehicles stored on site. Brief discussion. The Zoning Administrator said that this could be added as a condition to the Conditional Use Permit (CUP). Lee Loveall responded by saying that he would need to increase the 10 to 20 vehicles allowed to be stored on the property but could reduce that number from 20 to 10 vehicles if that is the recommendation by the Plan Commission. Mr. Loveall explained that he had contacted a contractor for the installation/connection of water and sewer but the contractor could not meet the project deadline proposed in the conditions with completion date prior to occupancy. He also does not agree with some of the other proposed conditions. Discussion regarding the 30 conditions. Some additional discussion on Condition No. 13 regarding clarification of electric vehicle storage.

Motion (Meinel/Stotko) to recommend to the City Council to deny Conditional Use Permit (CUP) for vehicle outdoor storage behind security fencing at 544 South Lincoln Street (Tax Key No. YP00030) requested by On Time Towing LLC, Lee Lovell. Discussion. A guideline listing the two reasons for and eight reasons against approving the Conditional Use Permit (CUP) created by Attorney Ekes, legal counsel, and distributed to members at this time, explaining the reason this list was not distributed to members in advance of the meeting. She was requested to read the reasons not to approve the Conditional Use Permit (CUP) request. She suggested that any motion to be made by members should include the Plan Commission's reasons for denial and advised that the original motion should be amended to reflect the reasons against approving the Conditional Use Permit (CUP).

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Attorney Ekes read aloud the eight reasons to deny the Conditional Use Permit (CUP): 1) While the back part will be maintained as a RS-1 zoning, the parcel is already small and nonconforming for a M-1 parcel, it is not possible to provide a better transition between the proposed industrial use of outdoor storage and residential uses on the other adjacent parcel to minimize adverse impacts on that existing use. 2) The 2040 Comprehensive Plan provides that when a light industrial use is to be located adjacent to residential uses, they should be well buffered by landscaping to mitigate adverse impacts on residential and other existing uses and a 100' separation should try to be achieved between the building and adjacent property, with a ten (10) foot wide landscaped screen of evergreen shrubbery not less than six (6) feet in height. The proposed site is too small to fully achieve this and a 100 foot separation between the building and the boundary line of the adjacent residential parcel can never be achieved. 3) Traffic volumes on the street and safety concerns with blocking traffic with delivery of towed cars and concerns that small site can't handle the site circulation. 4) The setbacks, safety concerns, site overutilization, noise, buffering and screening cannot be addressed with appropriate conditions because the site is too small for such an intensive outdoor use and too close to the adjacent residential uses. 5) The proximity of adjacent uses including the electrical substation, make the risk of fire and negative impacts of use of excessive water to put out fires on adjacent parcels, particularly concerning with the storage of vehicles that are increasingly electric or hybrids that a reasonable condition cannot adequately address without a disproportionate impact on the City's enforcement and inspection capabilities. 6) The fact that applicant is requesting exceptions to the Code with regard to many of the requirements of Section 17.6 of the Municipal Code, including parking space size, aisle width, parking lot landscaping, and surfacing tells us that this site is too small for the proposed use. 7) Conditions cannot adequately address the blending of the proposed use of outdoor storage and residential uses adjacent to this property as intended light industrial uses for the area are those types of uses that occur within a structure with limited outdoor storage not a use that is solely just outdoor storage per the 2040 Comprehensive Plan. 8) Proposed uses should have adequate conditions to protect the character of this area while allowing for future higher density residential and community business activities like offices, food establishments, service or light industrial uses and that even with the proposed draft of conditions it is not achievable for this proposed use.

Attorney Ekes was also requested to read the reasons for approving the conditional use which are: 1) The proposed use is allowed as a conditional use and through the building, site, and operation plan review process in the M-1 zoning district; and 2) The applicant can meet and agrees to meet all of the requirements and conditions specified in the City ordinance and those imposed by the City Plan Commission and Common Council based on the substantial evidence presented at the public hearing and provided as a part of the application and review process. Discussion.

Motion (Boardman/Stotko) to amend the original motion to recommend to the City Council to deny the Conditional Use Permit (CUP)) for vehicle outdoor storage behind security fencing at 544 South Lincoln Street (Tax Key No. YP00030) requested by On Time Towing LLC, Lee Lovell, to include the eight reasons, Item Nos. 1-8 for denial prepared by Attorney Ekes, legal counsel, with the exception of Item No. 5 and striking same from list. Discussion.

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Vice-Chairman Meinel requested a roll call vote on the original motion to recommend to the City Council to deny the Conditional Use Permit (CUP) for vehicle outdoor storage behind security fencing at 544 South Lincoln Street (Tax Key No. YP00030) requested by On Time Towing LLC, Lee Lovell for the property located at 544 South Lincoln Street. Roll Call Vote: Wuttke-Yes; Hunter-Yes; Stotko-Yes; Boardman-Yes; Meinel-Yes. Motion carried unanimously.

Vice-Chairman Meinel requested a roll call vote on the amended motion to recommend to the City Council to deny the Conditional Use Permit (CUP) for vehicle outdoor storage behind security fencing at 544 South Lincoln Street (Tax Key No. YP00030) requested by On Time Towing LLC, Lee Lovell subject to Item Nos. 1-8, striking and excluding No. 5 of the list of reasons against the Conditional Use Permit (CUP) created by Attorney Ekes, legal counsel. Roll Call Vote: Wuttke-Yes; Hunter-Yes; Stotko-Yes; Boardman-Yes; Meinel-Yes. Motion carried unanimously.

ETZ COMMITTEE MEMBERS/TOWN OF SUGAR CREEK

It was noted that an ordinance was adopted to amend City Code at the Elkhorn City Council meeting of October 16, 2023, in order to create an interim zoning ordinance to preserve existing zoning in the Extraterritorial zoning jurisdiction (ETZ) area of the Town of Sugar Creek, which would freeze zoning in the Town of Sugar Creek and extends 1.5 miles beyond City limits into the town. Three members of the Plan Commission would be required to be appointed and serve on the ETZ Committee to represent the City's membership at future committee meetings. Discussion.

Motion (Wuttke/Boardman) moved to recommend to the City Council to appoint the same three Plan Commission citizen members (Stotko, Boardman, Wuttke) who currently serve on the other ETZ Committees with the Towns of Delavan and LaFayette, to the City's newly established ETZ Committee with the Town of Sugar Creek. Motion carried unanimously.

MEETING DATES

Meeting dates: The next Plan Commission meeting may be scheduled for Thursday, January 4, 2024 since there were no application submittals for the month of December.

ADJOURNMENT

Motion (Wuttke/Boardman) to adjourn. Motion carried unanimously. Meeting adjourned at 6:40 p.m.