

**VILLAGE OF THIENSVILLE
PUBLIC HEARING AND
PLAN COMMISSION
MINUTES**

DATE: Tuesday, December 15, 2020

LOCATION: Village of Thiensville
Fire Department Training Room
250 Elm Street

TIME: 6:00 PM

I. CALL TO ORDER

Chairman Mobley called the meeting to order at 6:00 PM.

II. ROLL CALL

Chairman:	Van Mobley	
Commissioners:	Douglas Chimenti	Carol Gengler
	Mike Dyer	Sarah Hughes
	Rick Gattoni	Ken Kucharski
Administrator:	Colleen Landisch-Hansen	
Planner:	Jon Censky	
Director of Community		
Services/Public Works:	Andy LaFond	

III. PUBLIC HEARING

The applicant, Jesse Daily, Daily Taco & Cantina, LLC, is seeking a Conditional Use Permit to Use Drive-Thru Window on East Side of Building for Online Order Pickup, 105 West Freistadt Road

A. Motion to Open Public Hearing

MOTION by Commissioner Kucharski, **SECONDED** by Commissioner Dyer to Open the Public Hearing at 6:02 PM. **MOTION CARRIED UNANIMOUSLY.**

B. Director of Community Services/Public Works Andy LaFond to read and explain Notice

Director of Community Services/Public Works Andy LaFond read and explained the Notice. The applicant, Jesse Daily, is seeking a Conditional Use Permit to use drive-thru window on east side of building for online order pickup at Daily Taco & Cantina, LLC, 105 West Freistadt Road.

C. Comments from anyone present requesting to be heard

Mr. Daily shared that he and his wife recently opened Daily Taco & Cantina at 105 West Freistadt Road. One of the reasons they partnered with Mila Kofman was for the ability to have, during this health pandemic, drive-thru and curbside pickup. Mr. Daily explained that there is no kiosk to place an order; orders can be placed by phone at which time a scheduled pick-up time is given with every order queued four minutes apart. At this time, the only source of revenue for this building would be by drive-thru. There is no dining indoors at this time. Mr. Daily is requesting this Conditional Use Permit be approved in order to continue business.

Mr. Daily understands there has been concern regarding egress expressed by nearby businesses. The cars in the drive-thru are not parked and are only there for a minute and then they move. Should there be an issue where the Fire Department needed to get through, those cars can easily be moved. If there is an instance where someone's food may not be ready at their scheduled time, they are directed to park in the lot on the east side of the building, given a buzzer and drive back through when their buzzer goes off.

Mila Kofman, 105 West Freistadt – Ms. Kofman stated that she does not see any problem with the drive-thru. The drive-thru has been in existence for many years and there has never been any problems. The design has not changed. Ms. Kofman did speak with James Wilke from McNabb and Risley.

D. Director of Community Services/Public Works Andy LaFond to read any correspondence received related to the request

Director LaFond shared three letters with the Commission in regards to this request:

James M. Wilke, 215 North Main Street – Mr. Wilke wrote to inform the Commission of the existing easement north of Milas Bakery and south of Daily Taco. First, Mr. Wilke recognized the loss of wheel and stated he is deeply sorry for all that the Daily's are going through and this action is in no way meant to harm them. Mr. Wilke welcomes them.

Mr. Wilke shared that the drive-thru lane has encroached the 20 foot easement which has been enforced since 1955. There is an 8 foot setback off the north wall of Milas Bakery and then a 20 foot easement.

Mr. Wilke is asking that the yellow lines indicating a lane be removed as to not obstruct the easement which is to be open at all times. Vehicles may not stop or park within the easement, with the exception of making a delivery. Other businesses in the center receive many semi-truck deliveries a day as well as Fed-X, Amazon, garbage trucks and most important emergency vehicles, such as fire equipment, rescue and police.

Two businesses have already had trucking companies question if there could be delays going in between the buildings.

Nicholas Soja, 215 North Main Street – Mr. Soja is the owner of McNabb and Risley, Inc., however, does not own the property and wrote expressing concerns that the business owners and property owners have concerning the drive thru. Mr. Soja stated that the drive thru lane is encroaching into the easement allowed to all building owners. Historical documents show that previous enforcement by the Village of Thiensville of the easement of the property should be enforced again. This easement is to allow for semi-truck deliveries, garbage pickup, delivery trucks for businesses and more importantly emergency service vehicles to easily and properly service the businesses on this corner of Main Street. Also, written consent from all property owners that benefit from the easement must unanimously agree and be given written consent to allow any modifications to the easement per the original agreement. Mr. Soja thanked the Commission.

John Timm, Timm Holdings, LLC, Owner, Extreme Ski & Bike, 235 North Main Street – Mr. Timm wrote to inform the Commission that the legally binding easement between Cousins Subs/Milas and Daily Taco must be observed. The purpose of the easement is to provide unobstructed access for trucks and vehicles to the rear of the buildings. Mr. Timm is asking that Daily Taco have a plan in place to address the drive-thru lane within the easement to allow unobstructed access for trucks and other vehicles to the rear of all buildings.

Mr. Timm believes a solution can be reached to satisfy all property owners involved. Unobstructed access to the rear of the building is critical to the function of the businesses. Not allowing vehicles to stop within the easement while in the Daily Taco drive-thru lane or having vehicles move to allow access for trucks and other vehicles to the rear of the building may be a solution. Mr. Timm also believes all can work together to keep this a successful shopping center.

E. Motion to Close Public Hearing

MOTION by Commissioner Gattoni, **SECONDED** by Commissioner Chimenti to Close the Public Hearing at 6:14 PM. **MOTION CARRIED UNANIMOUSLY.**

IV. BUSINESS

- A. Approval of Minutes
 - 1. October 13, 2020

MOTION by Commissioner Kucharski, **SECONDED** by Commissioner Gengler to approve the October 13, 2020 Minutes. **MOTION CARRIED UNANIMOUSLY.**

- B. Review and action regarding a Conditional Use Permit for Jesse Daily, Daily Taco & Cantina, LLC, 105 West Freistadt Road to Use Drive-Thru Window on East Side of Building for Online Order Pickup

Village Planner Jon Censky shared that this is a situation where the Code has not necessarily caught up to the changes in the industry. The Code specifically identifies drive-in and drive-thru lanes for restaurant pick up; it does not speak to online pick-up windows. The Code does, however, have a section that says if the use is similar in character to a permitted use then the Commission has the authority to approve. Planner Censky stated that the proposed lanes are sufficient in length to provide adequate queuing and does not see any potential problems.

In respect to the easement, that is a legally binding agreement between private property owners. The Village had no part in approving this agreement so the Village is not responsible to enforce it; this is between the private property owners.

Director LaFond reported that the Village also consulted with Village Attorney Tim Schoonenberg. Attorney Schoonenberg stated that the underlying easement between private parties is not tied into a Conditional Use Permit as this is two separate issues and the issuance of a Conditional Use Permit for Daily Taco would not prevent or nullify the existing easement between private parties on the neighboring parcel. In 2009 the opinion from the Village Engineer was that the Village cannot control the traffic movement on an existing use for private property.

Also, through further research with the Register of Deeds, the easement is on Ms. Kofman's other property. Daily Taco is on its own parcel. Speaking with Fire Chief Brian Reiels, emergency access is needed here and the Village does have enforcement action over a fire lane – not over the easement. Mila's is properly labeled on the building wall with "no parking". After reviewing this with Chief Reiels, he indicated no concerns regarding emergency vehicle access. Drivers will be in their cars in the drive-thru and, therefore, able to move their vehicles immediately if needed.

Director LaFond also noted that after reviewing the easement, it did state that the 20' easement can be used for temporary stopping for the purpose of delivering or picking up persons, goods or merchandise. It appears that the language in the easement states that picking up goods and merchandise was part of the agreement.

Chairman Mobley stated that it appears the easement is for the parcel to the south of Daily Taco and when that easement was written, the Pizza Hut was not under the current owner. Commissioner Gattoni believes there is sufficient space for the drive-thru. Commissioner Chimenti stated it seems that the current owner wants to extend the easement into an adjacent property; it is 20 feet now which is what is required.

MOTION by Commissioner Kucharski, **SECONDED** by Commissioner Chimenti to approve Conditional Use Permit for Jesse Daily, Daily Taco & Cantina, LLC, 105 West Freistadt Road to Use Drive-Thru Window on East Side of Building for Online Order Pickup. **MOTION CARRIED UNANIMOUSLY.**

- C. Review and action regarding Outdoor Storage Shed, Lyn Falk, 129 Grand Avenue

Lyn Falk, 129 Grand Avenue is requesting approval a storage shed. The shed measures 10' x 12' for 120 square feet and will stand 9' 10" tall at its peak. It will be made of wood material painted creamy yellow to match the color scheme of the home with black shingles. The shed will not be visible from Grand Avenue.

Planner Censky reported that the shed completely complies with all zoning requirements and recommended approval.

Ms. Falk thanked the Village for such a fabulous place to live and is excited about the recent Village purchase in the TIF district.

MOTION by Commissioner Gattoni, **SECONDED** by Commissioner Kucharski to approve Outdoor Storage Shed, Lyn Falk, 129 Grand Avenue. **MOTION CARRIED UNANIMOUSLY.**

D. Review and action regarding New Home, Hillcrest Builders, Lot 5, 110 North Orchard Street

Fred Bersch, Bonnilake Real Estate, is developing the ten lots on North Orchard Street. Also in attendance is Dan Gerke of Hillcrest Builders. Mr. Gerke is the sales representative and also designs homes. Presented this evening are four new homes on North Orchard Street. Three of the four homes presented are customer homes; the fourth is on Lot 11 and is a spec/model home. The spec/model home will be similar to what was proposed originally on Lot 7. The three customer homes have a gabled roof with varying depths of front porches from the front façade and changes in the garage door.

Director LaFond shared that each of these homes are not exactly the same in appearance. Some of those differences are that some garage doors have windows, porch depth, front door, two are barrier free entry (the garage door is raised relative to the front door which changes the front elevation - Lot 5 and Lot 10), stone wainscot on Lot 7, chimney on Lot 5 as well as variations to color.

Planner Censky shared that all these homes carry a common theme and the theme respects the character of the neighborhood. Planner Censky recommends that Director LaFond review and approve the grading, drainage and erosion control plans for these homes.

Commissioner Gengler, who lives in the neighborhood, shared that if the current home on Lot 7 is any indication of what the other homes will look like, that is exciting. Commissioner Gattoni appreciates that there are differences between the homes and that they are not all the same. Commissioner Hughes believes they all look great. Commissioner Chimenti likes that the homes are not exactly the same. Chairman Mobley believes the new homes fit very nicely with the current homes.

MOTION by Commissioner Chimenti, **SECONDED** by Commissioner Hughes to approve New Home, Hillcrest Builders, Lot 5, 110 North Orchard Street. **MOTION CARRIED UNANIMOUSLY.**

E. Review and action regarding New Home, Hillcrest Builders, Lot 8, 116 North Orchard Street

MOTION by Commissioner Gattoni, **SECONDED** by Commissioner Chimenti to approve New Home, Hillcrest Builders, Lot 8, 116 North Orchard Street. **MOTION CARRIED UNANIMOUSLY.**

F. Review and action regarding New Home, Hillcrest Builders, Lot 10, 120 North Orchard Street

MOTION by Commissioner Dyer, **SECONDED** by Commissioner Gattoni to approve New Home, Hillcrest Builders, Lot 10, 120 North Orchard Street. **MOTION CARRIED UNANIMOUSLY.**

- G. Review and action regarding New Home, Hillcrest Builders, Lot 11, 122 North Orchard Street

MOTION by Commissioner Hughes, **SECONDED** by Commissioner Dyer to approve New Home, Hillcrest Builders, Lot 11, 122 North Orchard Street. **MOTION CARRIED UNANIMOUSLY.**

- H. Review and recommendation to the Village Board. The applicant is requesting a Land Use Plan Amendment from Office/Professional Service to Single-Family Residential and Rezoning from B-3 Office/Professional Business District to R-2 Single Family Residential District and Planned Development Overlay (PDO) District, Lakeside Development Company, Parcel Located at 200 Green Bay Road

Tom Zabjek and Jill Ridley of Lakeside Development Co. were both in attendance. Mr. Zabjek is the President of Lakeside Development Co. and Ms. Ridley is the Director of Marketing and Real Estate Development. Proposed is to take the former M&I Bank at 200 Green Bay Road, which has been vacant for the last 12 years, and redevelop the site with 16 new homes. Mr. Zabjek believes that this proposal is the best use of the property.

Planner Censky shared that for any land use change to take place, state law does require that the Comprehensive Land Use Plan for the site and the zoning on this site be consistent with each other. Accordingly, the first item before this Commission this evening is to consider a recommendation to change the land use classification for this site from the commercial classification to the single-family residential classification. Then, if this change is supported, the next step is to consider recommending rezoning the site from B-3 Office/Professional Business District to R-2 Single Family Residential District and the Planned Development Overlay (PDO) District. That District will be applied over the R-2 – it is an added zoning district. The PDO District is being used because it does provide the Commission and the Village Board the authority to modify the base district standards on a case-by-case basis.

Recognizing that this is for a pocket neighborhood development, the modifications proposed are as follows:

1. An increase to the allowable density from 6.4 units per acre up to 8.7 dwellings per acre.
2. A decrease in the lot size from 6,800 square feet down to 3,056 square feet.
3. A decrease in the front yard setback of 25 feet to 3 feet. This is with the understanding that this has a private road – it will not be a public road. There is also a side yard modification from 5 feet to 3 feet.

Director LaFond shared the following:

The current building was built in 1963 and last occupied in 2007

1.84 acres

Current assessment is \$387,900

Site Notes: 4 drive-thru lanes, 43 parking spaces and at one point had an additional parking lot across the street with 24 additional spaces

2009

Proposal by MSP Real Estate for a senior housing and memory care

Units proposed: 68

Units Per Acre: 36.95

Rezoning request denied

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2013

Proposal by MSP Real Estate for multi-family

Units proposed: 60

Units Per Acre: 36.95

Rezoning request denied

2015

Proposal by The Hoff Group for townhomes

Units Proposed: 44

Units Per Acre: 23.91

Proposal withdrawn by developer

In addition to the above, since 2007, Village staff have met with many interested parties. Projects considered were restaurants, chiropractic offices, engineering firm, offices for a university, lawyer's office, financial firm and a church. Some of the complications included inability to obtain property from owner and high cost for remediation and renovation. In 2016 it was estimated that to renovate the building would cost between \$500,000-\$600,000.

Storm water is reviewed and addressed in the Developer's Agreement. Requirements are reviewed by the Village Engineer, MMSD and the DNR. The current proposal has more green space than the current condition.

A 2009 sewer analysis completed by the Village Engineer indicated capacity for 60 units on the site. Sanitary sewer capacity will again be reviewed as part of the approval process for a new development.

Director LaFond shared some comparable developments in the Village:

Village Green Homes Proposed Pocket Neighborhood - Green Bay Road

16 Homes

1.84 Acres

8.69 Units Per Acre

One Driveway

The Pines - Heidel Road

12 Units

1.12 Acres

10.7 Units Per Acre

One Driveway

Thiensville Village Homes - Elm Street

14 Units

1.8 Acres

7.77 Units Per Acre

One Driveway

White Coach Condominiums - Main Street

12 Units

.91 Acres

13.1 Units Per Acre

One Driveway

Village Estate Condominiums - North Main Street

44 Units

3.44 Acres

12.79 Units Per Acre

Driveway, Two way in with one-way exit

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Village Place Condominiums - Freistadt Road
16 Units
1.17 Acres
13.67 Units Per Acre
One-Way Driveway

Water's Edge Condominiums - Lake Bluff Road
32 Units
2.3 Acres
13.9 Units Per Acre
4 Driveway Entrances

LakeView Condominiums - Lake Bluff Road
12 Units
.87 Acres
12.37 Units Per Acre
One Entrance

Willowbrook Place - Green Bay Road
60 Units
2.46 Acres
22 Units Per Acre
One Entrance

The current zoning code densities are as follows:

<u>District</u>	<u>Description</u>	<u>Units/Acre</u>
R-1	Single-Family Residential	3.2
R-2	Single-Family Residential	6.4
R-3	Two-Family Residential	5.8
R-4	Multi-Family Residential	11.5
R-5	Multi-Family Residential	14
PDO	Planned Development Overlay	22

Commissioner Dyer had indicated that the corner of the property is in the floodplain and inquired if that needed to be split from the other properties. Director LaFond clarified that this is an outlot. The previous Developer's Agreement had this lot being deeded over to the Village. It is very small.

Commissioner Kucharski inquired if the neighbors had been contacted regarding egress. Mr. Zabjek had spoken to the neighbor to the north and discussed various options i.e. getting an easement, purchasing some land. Mr. Zabjek stated the proposed roadway allows for sufficient room for egress in both directions without having to exit to the north.

Planner Censky stated that cul-de-sacs tend to be safer in regards to crime.

Chairman Mobley likes that these are single-family residences, and Mr. Zabjek is a quality builder. The size of the proposed homes are similar to area homes.

Commissioner Gattoni stated that these homes all differ and are unique in their own way. Mr. Zabjek stated that there are four different elevations and the electric will be relocated.

Commissioner Gengler believes this is a welcomed opportunity for people to live in Thiensville. The location also allows for walkability in the Village.

Commissioner Chimenti agreed and stated this opens up the market for a single family who does not want a yard but wants their own home that is not a townhome or multiplex.

Mr. Zabjek shared that he had developed Stonefields in the City of Mequon. A homeowner's association maintains these grounds, and this is the plan for 200 Green Bay Road as well.

A Public Hearing will be held on Monday, January 18, 2021 at 6:00 PM if the Plan Commission votes to move this project forward. Chairman Mobley believes this is a good opportunity for single-family residential which seems to be what is wanted in the Village.

MOTION by Commissioner Dyer, **SECONDED** by Commissioner Gengler to recommend to the Village Board to Amend the Land Use Plan from Office/Professional Service to Single-Family Residential and to Rezone from B-3 Office/Professional Business District to R-2 Single Family Residential District and Planned Development Over (PDO) District, Lakeside Development Company, Parcel Located at 200 Green Bay Road. **MOTION CARRIED UNANIMOUSLY.**

I. Discussion regarding B-1 District First Floor Use

Director LaFond brought this back to the Plan Commission based on previous discussions regarding the B-1 District first floor use. Provided was a map of the B-1 District which includes residential, mixed and commercial uses. The current code indicates for B-1 that 100% of the first floor area shall be used for commercial use only. With the changing environment of retail and leased office space, there is a possibility that requiring the first floor to be 100% commercial will cause the Village commercial district to be vacant. Maybe it could be allowed by Conditional Use for a portion of the first floor to be residential.

The minimum lot size for B-1 is 7,200 square feet with a 60 foot wide lot. This causes challenges for being ADA compliant. There was an inquiry as to if the first floor could be 100% residential. There are other buildings for sale that are having a hard time finding a buyer.

There are also restrictions in regards to the residential use that it has be the owner, employee or caretaker, with some exceptions.

Planner Censky shared that in other communities, because first floor businesses typically need frontage, first floor residential is allowed in the back. Commissioner Gattoni stated that minimal change allows things to stay the same.

A variance had been granted 2-3 years ago by the Zoning Board of Appeals allowing 30% of the rear of the first floor be allowed for residential for a property on Green Bay Road.

Director LaFond stated that we do not want vacant buildings or the entire downtown to be residential.

Administrator Landisch-Hansen stated that this does not have a great impact on the TIF district, however, would affect the historic district.

Commissioner Chimenti expressed concern regarding residents and noise in the Commercial District and stated that there should be stipulations in the zoning addressing this. Planner Censky agreed stating that whenever there are residents in a downtown area, they have to realize any noise complaint must be reasonable.

Planner Censky stated that the residence becomes an Accessory Use in the Commercial District. In each District there are Permitted Uses, Accessory Uses and Conditional Uses. Those residential uses would fall into the Accessory Use.

Administrator Landisch-Hansen shared that due to Covid and many people working from home, this may give individuals the opportunity to meet with a client in their home.

Director LaFond stated that there could either be no further action or a Text Amendment to the Accessory Uses be considered. This will be before the Plan Commission at a future meeting.

**J. Discussion and possible action regarding Covid Temporary Business Measures
Which Include Temporary Enclosures, Tents and Igloos (Commissioner Kucharski)**

Commissioner Kucharski stated that the Village Board has been very supportive of businesses by relaxing the rules/ordinances in regards to signage, tents, etc. and this is appreciated by all businesses. This was discussed at last evening's Village Board meeting with the Board supporting these measures continue.

Commissioner Kucharski does not support temporary igloo use and that if a portable structure goes up, it should be presented and action taken by the Plan Commission. Chairman Mobley agreed that relaxing ordinances without an end in sight is not a good idea and it may also be worth looking into the Sign Code in the future.

Director LaFond is now reviewing submittals from businesses which does include an end date. A tent that is 1500 square feet or smaller does not require a Village permit.

Commissioner Kucharski shared that come spring, businesses may get more creative and more items/structures may be brought before the Plan Commission.

All applicants or their contractors must be present for any approvals.

V. STAFF REPORT

Director LaFond shared that moving forward the wording on the agendas has been changed to read "Review and action" or "Review and discussion".

The sign plan on Riverview and Main has not been submitted to date.

Two staff approved projects include a fence at 400 Oakwood and 100 South Highland.

VI. BUSINESS FROM THE FLOOR

Open to any citizen who wishes to speak on items not on the agenda. Please step to the podium and give your name and address for the record.

VII. ADJOURNMENT

MOTION by Commissioner Hughes, **SECONDED** by Commissioner Kucharski to adjourn the meeting at 7:20 PM. **MOTION CARRIED UNANIMOUSLY.**

Submitted by,



Amy L. Langlois
Village Clerk

Approved by,



Andy LaFond
Director of Community Services/
Public Works

Signed by,



Colleen Landisch-Hansen
Administrator