

**Village of Egg Harbor
Plan Commission Meeting Minutes
October 23rd, 2018 at 6:00 p.m.
Paul J. Bertschinger Community Center
7860 STH 42, Egg Harbor, WI 54209**

PUBLIC HEARING: The conditional use permit application filed by Fireside Restaurant LLC, on behalf of Fireside Restaurant and Door County Bagel and Burger Company to open a restaurant facility at 7755 State Highway 42 in the Village of Egg Harbor. This hearing is required pursuant to the Village of Egg Harbor Municipal Code, section 152.045(B) and 152.073.

Cashin opened the public hearing at 6:00 p.m. in regards to the following application for a conditional use permit. The conditional use permit application filed by Fireside Restaurant LLC, on behalf of Fireside Restaurant and Door County Bagel and Burger Company to open a restaurant facility at 7755 State Highway 42 in the Village of Egg Harbor.

- Cashin explained the recently adopted State Statute. Under the provisions of the recently adopted Sec. 62.23(7)(de) of the Wisconsin Statutes, conditional use permit decisions must now be made on the basis of oral testimony before the Plan Commission that establishes, by substantial evidence the necessity of a conditional use and reasonableness of each condition. Documents in support of or in opposition to the conditional use can be submitted but they must be done through testimony by the presenter at the hearing. Oral testimony must be given under oath. Conditions to be established during the public hearing through Finding of Fact and Conclusions of Law.
- Commissioners can ask questions of those testifying, audience members cannot.

Testimony:

Cashin swore in the following individuals willing to provide testimony.

Lauren Schar
2524 Settlement Road
Sister Bay, WI 54234

Blake Schar
2524 Settlement Road
Sister Bay, WI 54234

Megan Vandermause
Village of Egg Harbor
Deputy Administrator/Deputy Clerk-Treasurer
7860 STH 42
Egg Harbor, WI 54209

- Schar stated that she has an updated floor plan for the Commission and handed out the

updated floor plan.

- Schar thanked the Plan Commission for accepting the conditional use permit paperwork and scheduling a hearing.
- On November 1st, 2018 the Schar's will close on the property at 7755 STH 42.
- The Fireside Restaurant has been in Ellison Bay for the past 4 years and she is very excited to bring the business south.
- Schar stated that because the business is in Ellison Bay it is tough because the business only has a few hours of steady business.
- Schar stated that Fireside is very proud of the fact that they have been able to keep the business open and is looking forward to opening in Egg Harbor where there will be more range of business.
- Schar stated that the floor plan contains the entire layout.
- There will be no changes to the outside of the property at this time.
- The Fireside event space will be used for private events and will be used for daily trolley tours for the Door County Trolley Tours.
- The Fireside Restaurant may also host evening trolley tours during the week.
- The Door County Bagel and Burger Company will be located where the current Bistro is and will be set up for counter service.
- The hours of operation will not change much from what is currently today.
- The Door County Bagel and Burger Company will have indoor and outdoor seating.
- The bagel and burger company will create an opportunity for super casual, quick, high quality food.
- The Door County Bagel and Burger Company is one restaurant that will have bagels and cream cheese in the morning and burgers and fries in the afternoon.
- The main entrance for the Fireside Restaurant will be the current entrance to the Liberty Square tap room.
- The Fireside Restaurant dining room will be going in the most historic section of the building.
- The business is also hoping to have two retail stores in the building as well.
- There are four retail businesses interested in the retail space.
- The Fireside Restaurant will be serving the same menu that is served in Ellison Bay.
- The restaurant plans to have 300 seats and 30-35 employees.
- There are 59 parking spots will be provided on-site and 37 will be utilized from on-street parking.
- The Door County Bagel and Burger Company will serve breakfast, lunch, and dinner.
- The pub will feel much like the Gas Light district in New Orleans and the price point is aimed toward families.
- The business is hoping to partner with the Door County Trolley Company. There will be seven daily trolleys for lunch from Memorial Day to Labor Day and there will be weekend trolleys from Labor Day to Memorial Day.
- Schaer stated that she cannot reveal what retail shops are interested in the space at this time.
- Navis confirmed that both restaurants will be serviced by one kitchen.
- The retail stores will not be able to be accessed from the restaurant.
- There is a double set of doors on every wall.
- There are 11 restrooms in the building.
- The space was originally designed as 13 different store fronts.

- Vandermause stated that According to section 152.045(B)(7) of Chapter 152 Zoning of the Village of Egg Harbor Municipal Code, restaurants and taverns are a conditional use in the Village’s multi-use district. The proposed project requires 84 parking spots and 59 parking spots are provided on-site. The property is eligible to count the on-street parking within 500 ft. of the parcel.
- Vandermause stated that section 152.074 (B)(1) (a-l) includes the factors deemed to be reasonable items upon which discretion can be exercised in approving or denying a conditional use. The consideration or non-consideration of these factors is not mandatory; but only suggested as guidelines to aid the exercise of discretion:
 - a. The number of living units in the proposed area
 - b. The effects of traffic control on abutting Village roads and streets and safety to the Villagers, pedestrians, and motorists.
 - c. The general health and well-being of the Village residents.
 - d. The increase in area noise.
 - e. The increase in potential public or private nuisance.
 - f. The availability of municipal services such as fire protection, waste disposal, and sewage.
 - g. The adverse effects on the environment.
 - h. The protection of lake shore, lake, and ground waters.
 - i. Effects on surrounding plant foliage and vegetation.
 - j. The kind and quality of amusements and entertainment.
 - k. General growth and dynamics of the Village.
 - l. The Village Master Plan.
- Vandermause stated that the conditional use application is only for the restaurant portion of the property because the living units are a permitted use in the multi-use district.
- The Commission reviewed the number of living units on the property.
- Schar explained that there are four apartments above the restaurant, and two of the apartments will be occupied by the Schar’s and two will be used for employee housing.
- Schar stated that there are separated entrances to units.
- Kolb asked about the pedestrian situation downtown with the increase of businesses bringing in pedestrian traffic.
- Smith stated that there is a crosswalk from Liberty Square across the highway.
- Heise stated that he has started conversation with the WisDOT regarding improving the crosswalk situation downtown.
- Navis asked if the Schars plan on delivering food across the street and Lauren Schar explained that this was discussed but it does not seem plausible because of the traffic situation and staffing levels.
- The Commission reviewed the finding of fact section of the finding of fact and conclusion of law document.
- The finding of fact section of the document included the following:
 1. That an application for a Conditional Use Permit was filed by the Applicant with the Village on September 21, 2018 (the “Application”) for that property located at 7755 STH 42 Egg Harbor, WI 54209, more particularly described on ATTACHMENT “A” hereto (the “Property”).
 2. That a Public Hearing regarding the application was duly noticed and published as a Class 2 Notice under Chapter 985, Wis. Stats, which notice was published in the Door County

Advocate on October 6th, 2018 and October 13th, 2018 as appears by the Affidavit of Publication on file herein.

3. That the Property is currently zoned Multi-Use under and pursuant to Sec. 152.045 of the Code.
 4. That testimony was presented by Lauren Schar on behalf of the Applicant that the Applicant proposes to open a restaurant facility with a proposed seating capacity of 300 on the Property (the “Project”), as more particularly identified in the Application on file herein.
 5. That testimony was presented by Megan Vandermause, Deputy Administrator/ Deputy Clerk –Treasurer, on behalf of the Village that in order for the Project to obtain Village approval, a Conditional Use Permit under the provisions of Sec. 152.070, et sec. of the Code would be required.
 6. That compliance with the provisions of Sec. 152.048 of the Code regarding off-street parking would be required for the proposed Project.
 7. That evidence was presented by the Megan Vandermause, Deputy Administrator/ Deputy Clerk-Treasurer that 59 parking spaces would be provided in the on-site parking and that the property is eligible to count the on-street parking within 500 ft.
- The conclusion of law section of the document contained the following:
 1. That the Plan Commission has proper jurisdiction to hear this matter.
 2. Due notice was properly given to all parties and publication of the Public Hearing was duly and properly made.
 3. That there is sufficient evidence in the record to conclude that the “Project” is in compliance with the Village parking regulations.
 - The Plan Commission discussed their determination.
 - Smith suggested that all dumpsters and trash areas continue to be screened be added as a condition.
 - Navis confirmed the required parking for 300 seats. Vandermause stated that four spots are required per four employees and four spots are required per four seats. So 84 parking spots are required.
 - Navis asked how many parking spots are required for the retail stores and Vandermause stated that one parking space is required per 400 sq. ft. and one space is required per four employees.

1. Call Meeting to Order

Cashin called the meeting to order at 6:20 p.m. Those in attendance were Paula Cashin, Kathy Navis, Emily Pitchford, Jon Kolb, Joe Smith, Lou Nyberg, Mary Anne Scherer, Ryan Heise and Megan Vandermause. Also in attendance were Blake Schar, Lauren Schar, Todd Jensen, Steve Hamming, Lisa Van Laanen, Tom Stark, Kim Jensen, and Clarence Scherer.

2. Approve agenda

Smith moved to approve the agenda, second by Scherer, motion carried.

3. Pledge of Allegiance

4. Approve minutes of September 25th, 2018

Scherer moved to approve the September 25th, 2018 meeting minutes, second by Smith, motion carried.

5. Open Session (limited to 10 minutes)

- Scherer asked if today's public hearing was necessary because the use of the property isn't changing.
- Vandermause stated that because the property is changing ownership the conditional use process is followed.
- Scherer stated that he noticed that the licensing fee has increased to \$500 and is wondering how the fee was justified because the transient merchant license is only \$175.
- Vandermause explained that she has justified the fee by accounting for staff time in preparing and reviewing application and license materials, Plan Commission review time, preparation of the Plan Commission meeting materials, inspection time and costs if necessary, background check costs if necessary, and license materials.

6. Deliberation and possible action on the conditional use permit application filed by Fireside Restaurant LLC on behalf of Fireside Restaurant and Door County Bagel and Burger Company to open a restaurant facility at 7755 State Highway 42 in the Village of Egg Harbor

- The Commission reviewed the finalized finding of fact and conclusions of law document.
- Navis asked if there is anything else that is typically added as a condition besides the screening of the trash receptacles.
- Smith stated that something that the Commission did not talk about was the hours of operation, but he does not think that this would be fitting for this situation because the hours are likely going to stay the same as the current business.

Smith moved to approve the conditional use permit filed by Fireside Restaurant LLC on behalf of Fireside Restaurant and Door County Bagel and Burger Co to open a restaurant facility at 7755 State Highway 42, second by Scherer, motion carried.

7. Acceptance of the conditional use permit application paperwork filed by Tom Stark to open a mobile food establishment at 7990 Church St.

- Pitchford asked how many employees there will be for the business and Stark stated that application should read two instead of zero.

Cashin moved to accept the application at this time and schedule a public hearing on November 27th, 2018 at 6:00 p.m., second by Kolb, motion carried.

8. Mobile Food Vending Ordinance

- The Plan Commission reviewed the changes made to the draft ordinance.
- The Plan Commission discussed the bathroom requirement.
- Smith stated that he has been thinking about this requirement and he thinks that having a restroom is an advantage that a brick and mortar business has over a mobile food establishment.
- Cashin stated that the Wisconsin State Statute does not require mobile food establishments to provide restrooms for the public, only their employees.
- Smith stated that he does not think the Village should be more restrictive than the state.
- Vande Castle confirmed that the Village can be more restrictive than the state, but not

less restrictive.

- Navis asked where the customers will go to the bathroom and stated that customers are likely to use other business' bathrooms.
- Navis said that if the mobile food establishment has permission from the property owner to park on private property, they should also be required to allow the mobile food establishment's customers to use the private property's bathroom.
- Pitchford stated that there are takeout places where bathrooms are not provided.
- Navis stated that because the business is serving food she feels like a bathroom should be provided.
- The Plan Commission discussed including that the private property owner who has authorized a mobile food establishment to park on private property should also permit the mobile food establishment's customers to use the private restroom.
- The Commission reviewed the annual license fee.
- Vandermause stated that she provided her justification for the fee during open session.
- The City of Green Bay also has a \$500 fee as well.
- The Commission discussed whether or not \$500 is too high for the license fee.
- Smith asked what the cost is for the Farmer's Market vendors and Vandermause stated that the Farmer's Market vendors pay \$175 for the entire event.
- Smith stated that he thinks the fee could be the same as the transient fee.
- Kolb stated that the Farmer's Market is only one a day a week where a food truck could potentially be parking at a business seven days a week.
- Navis stated that she doesn't personally think \$500 is too high when you compare the cost of a mobile food establishment to the cost of a brick and mortar business.
- Smith stated that protectionism is basically what is at the heart of the Gibraltar case and trying to use the government to put special regulations on cost competitors.
- Cashin stated that the Plan Commission cannot make specific regulations that favor one business over another.
- Pitchford pointed out that this is where the cost justification comes in.
- Smith pointed out that the fee amount is a recommendation to the Village Board and the Village Board could change the fee.
- The Commission reviewed the temporary event license and transient merchant license fees.
- Vande Castle explained that the fee needs to be justified, but the justification does not need to account for the fee dollar by dollar.
- Heise explained that he thinks it would also be difficult to predict a dollar by dollar estimate because the Village does not know how much staff time enforcement or inspections might actually take.
- The Village could put a limit on the number of mobile food establishment licenses that are issued in the Village.
- Pitchford stated that the Plan Commission had talked about limiting the number of licenses issued to mobile food establishments by the Village.
- Vande Castle explained that the Village could put a limit on the number of mobile vending unit licenses issued in the Village, but this wouldn't necessarily have to be listed in the ordinance, it could be justified by the impact on health and safety of the community.

- Vande Castle also stated that if the Village puts a limit on the number of mobile food establishment licenses the Village can issue, there could also be a provision that would allow for a bit of leeway by stating that the Village Board can amend the provision as they deem necessary.
- Pitchford stated that she would rather identify the number of licenses to be issued by the Village in the ordinance.
- Smith confirmed that the license application would be reviewed by the Plan Commission.
- Vandermause stated that the license would be issued annually.
- Kolb stated that this way if the Village was having an issue with a mobile food establishment not following the regulations the Plan Commission wouldn't have the reissue the business a license.
- Smith suggested adding the following to section 115.09 "(f) the total number of licenses shall be limited to three."
- Cashin suggested also adding "the Village Board can change this provision as they deem necessary."
- Pitchford asked if the Plan Commission wanted to make a change in the hours of operation and the Plan Commission stated that they were comfortable with the hours of operations as presented.
- The Plan Commission discussed whether or not to require the mobile food establishment to use the private property owner's restrooms.
- The Plan Commission suggested that section 115.08 (i) be changed to the following, "The operator of Mobile Food Establishment or Mobile Vendor vehicle shall arrange for use by personnel and customers of the Mobile Food Establishment or Mobile Vendor vehicle private toilet facilities during all hours the Mobile Food Establishment or Mobile Vendor vehicle is in operation. Written permission shall be provided by the private property owner."
- Smith stated that he thinks \$175 would be sufficient and Navis said \$500 is the number she had in mind.
- The Plan Commission was okay with the \$500 fee.

Smith moved to recommend the adoption of the Mobile Food establishment ordinance to the Village Board of Trustees as amended, second by Cashin, motion carried.

9. Comprehensive plan and zoning code update RFP update

- Vandermause stated that the Village's deadline for the RFP was October 1st, 2018.
- The Village received four proposals from Municipal Group LLC, CIVIC4, MSA, and Vandewalle & Associates and the costs ranged from \$19,000 to \$117,000.
- The Selection Committee, which consists of staff and Cashin and Kolb, met and evaluated the proposals based on the evaluation criteria included in the RFP.
- After the proposals were reviewed, the committee decided to move forward with scheduling a consultant interview with CIVIC4.
- The interview was held on October 22nd, and the selection committee is recommending that the Plan Commission and the Village Board move forward and select CIVIC4 as the consultant to help the Village work on the Comprehensive Plan and Zoning code update.
- CIVIC4's cost came in at \$33,470 and \$35,000 has been included in the FY 2019 budget for the project.

- Vandermause included the proposal from CIVIC4
- The selection committee did have a few follow up items for the consultant after the interview on October 22nd.
- CIVIC4 is going to tweak the budget to include some additional meetings with condo associations or other stakeholders here in the Village.
- CIVIC4 is also going to adjust the timeline a bit.
- Vandermause requested the final proposal in time for the November Village Board meeting.
- Vandermause also mentioned that CIVIC4 is proposing a full rework of the comprehensive plan.
- Kolb suggested that the Plan Commission members try to attend as many as the focus groups and open houses as they can.

Cahsin moved to recommend Civic4 as the consultant for the Comprehensive Plan and Zoning Code update, second by Kolb, motion carried.

10. Code Violations

- Vandermause will continue to follow up on past months code violations.

11. Next Meeting

The next meeting is November 27th, 2018 at 6:00 p.m.

12. Adjourn

Navis moved to adjourn, second by Scherer, motion carried.