

Item 24-0279: Approve request from RYE Restaurant for an annual street occupancy permit along 308 W. College Avenue for a window box overhang/obstruction

Common Council

Wed, Mar 20, 2024 7:00PM

Mayor Jake Woodford 07:05

We come now to a time of public participation. At each meeting of the Common Council, the Council reserves 30 minutes for members of the public to express their views on items which appear on our agenda. We have seven people signed up to speak this evening. When I call your name, please approach the microphone, and state your name and address for the record. We ask that you please keep your comments concise and to the point, and that you please take into consideration the comments that have been made by those who have spoken before you. And we ask that you keep your comments to five minutes or less, and we'll be keeping track of time.

Mayor Jake Woodford 07:38

We've got two topics that folks want to talk about, one related to the item from municipal services committee, the Rye flower box or Rye planter boxes. We'll take those comments first. And then the other folks who are here to comment would like to speak on the US Venture 222 develop development agreement. So, first is **[Nathan W.]**.

[Someone spoke off microphone, presumably asking if Danielle could go first.]

Mayor Jake Woodford 08:06

That's fine with me. So, Danielle, come on up.

Danielle W. (Angels Forever – Windows of Light) 08:14

Hi, my name is Danielle. My address is 310 West College. I hope that pretty much all of the members here received my email and letter regarding the planter box. I'm just here to basically go over that again. A lot of my letter had to do with PROWAG which is a pedestrian right of way Accessibility Guidelines, which are the same for the protrusion levels as the 2010 ADA standards. I did bring a tape measure with me. So, the protrusion limits basically are regarding objects that are above 27 inches and below 80 inches. 80 inches is because you've got a head clearance. 27 inches is because a cane is not going to detect something there. Their a planter box is currently 45 inches above the sidewalk, so that's going to be in that 27 to 80 range. The protrusion limit is four inches and their planter box—the box itself is about 12 inches depending on where you measure from the wall. And we've measured it before it at out to 22 inches with the plants. So that's more than three times the accessible—the ADA standards.

Danielle W. (Angels Forever – Windows of Light) 09:33

I did reach out to the Wisconsin Council for the Blind and Visually Impaired and I spoke to the their executive director Denise Dress who provided me with the following testimony and allowed me to share it with all of you. It just kind of gives more of a personal level of why planter boxes like this present a challenge to blind and visually impaired pedestrians. I'll read that for you now.

Danielle W. (Angels Forever – Windows of Light) 09:57

For those of us who navigate using a white cane or guide dog, objects in the right of way are very problematic as we are depending on some predictability in the built environment to get spatial awareness and move safely. As a white cane user myself, when I encounter an unpredicted object, I need to use a cane to determine the size of

the object and figure out how to route around it. If the object juts into the right of way, is not at ground level, or if it gets wider near the top, I am unable to detect the object with my cane. I'm likely to side swipe the object or, depending on its height, get hit in the thighs, torso, or face. We use sound cues a lot in our mobility. But again, these sorts of planters aren't giving a sound cue so we're vulnerable in these types of environments.

Danielle W. (Angels Forever – Windows of Light) 10:41

We personally have had multiple blind and visually impaired people in our adjoining store in just the last month. They—if they were not accompanied by sighted individuals, they would not be able to have any awareness of the box being there. Additionally, we've had, during the cafe walk on the second earlier this month which was a busy pedestrian day, we had a teenage girl who brushed her face and irritated her eye with the amount of branches that are overhanging. I've heard comments about the visual aesthetic of the box being a benefit for downtown. However, that only works if you have vision abilities. If you can't see or have visual impairments, the box is not going to be anything but a hazard. I've also heard the word "empathize" or "empathy" in response to my email—that people empathize with the visually impaired but they don't see a problem with the box. I think it's less of a problem of empathy and more to do with respect. It's respecting those with disabilities and respecting the laws that are put into place for a reason to protect them. So, I'm hoping that you'll agree with me there. Thank you.

Mayor Jake Woodford 11:59

Next is [Nathan W.].

Nathan W. (Angels Forever – Windows of Light) 12:07

Welcome second day of spring. Wisconsin does give us a roller coaster, doesn't it? I'm here to talk about the Appleton code section 12-30, public nuisances affecting peace and safety. "The following acts, omissions, places, conditions, and things are hereby declared to be public nuisances affecting peace and safety." Item number one, "all signs, billboards, awnings and other similar structures over or near streets, sidewalks, public grounds, or places frequented by the public, so situated are constructed as to endanger the public safety."

Nathan W. (Angels Forever – Windows of Light) 12:53

Department of Public Works city of Appleton street terrace policy, adopted November 2, 2022. "No elevated planting, planting beds are permitted. Any private plantings or mulch in the terrace shall be fully confined within the terrace area without the aid of structural supports or fencing. Under no circumstances shall any plant encroach over a sidewalk, curb, or roadway shoulder. Under no circumstances shall any plant encroach over a sidewalk, curb, or roadway shoulder."

Nathan W. (Angels Forever – Windows of Light) 13:29

Permit to occupy a public right of way, which is this as I'm sure you've all seen. One of the items on there is "no occupancy shall occur prior to the approval of this permit by the Department of Public Works."

Nathan W. (Angels Forever – Windows of Light) 13:47

We've got an increasing population in the city of Appleton we've all worked very hard for that. I'm very happy for the increasing population. Do we really need to create additional obstacles in our right of way? Especially during Oktoberfest, Mile Of Music, License To Cruise when those sidewalks are jam packed full of people. I don't know if any of you have ever walked down the sidewalk, looking at your phone, talking to a group of people...

[He stepped away from the microphone.]

Nathan W. 14:33

If you're using a cane like this, there is no indication that that flower box is there. It's supposed to be 27 inches off the ground or lower. There's nothing to tell you that that flower box is there. It's sticking out from the wall 12 inches and then it has plants additionally. It's a safety hazard.

Nathan W. (Angels Forever – Windows of Light) 14:56

So, the American Disabilities Act says that a protrusion is only supposed to be out four inches. 12 inches is a lot more than four inches and that's how—that's what the American Disabilities Act calls for is four inches. Where else on College Avenue do you find obstructions in the public right away in the sidewalk? And if you do allow this to happen, what precedent are you possibly setting? I'm not really sure why we're even discussing this if it doesn't meet ADA and it doesn't meet the code. Injury could produce legal problems, and remember the ADA wasn't written for the many. It was written for the few. You've done a great job here, all of you, creating a very diverse, welcoming community for all. Let's not diminish that.

Mayor Jake Woodford 15:53

Next is [Nick M.].

Nick M. (Rye Restaurant) 16:02

Hello, my name is [Nick M.]. I'm the owner of Rye Restaurant at 308 West College Ave. Personally, we'd like to say we're thankful to be a part of this thriving downtown community and the opportunities it provides for local businesses such as ourselves. Upon receiving the notice from the city regarding the planter box violation, we did take immediate action to rectify the issue, meeting with the Department of Public Works the following day, applying for the permits needed, and paying the associated fees to ensure compliance, and following up to make sure that we had insurance for coverage of the planter box.

Nick M. (Rye Restaurant) 16:49

When we originally had their planter box built, we were completely unaware that it was had any ADA potential issues. Now that we are aware, we have immediately started acting to try and find remedies and pursuing active ways how we can accommodate ADA abilities. We do hope to work with the city quickly to find a workable solution to maintain our long-standing planter box which has been in place since 2016. During that time, we have not had any issues reported to us or incidents of injuries or anything of that nature. So, I hope that you will work with us so that we can maintain downtown beauty and be able to maintain it and make alterations to it. Thank you.

Mayor Jake Woodford 17:47

Next is [Mackenzie V.].

Mackenzie V. (Rye Restaurant) 17:54

Hi, my name is [Mackenzie V.], and I'm the general manager at Rye restaurant. First, I would just like to thank you for the opportunity to speak about the matter of Rye's request for an annual street occupancy permit. Our request is for a window planter box that protrudes just under 12 inches from the exterior of the building. It does change seasonally. Right now, it was still our winter decor which adds another two inches that protrudes from the building. It is well maintained by a local gardener and changes based on the season. It adds to Rye's overall aesthetic as well as the downtown neighborhood. We take pride in adding to Appleton downtown Incorporated is one great place campaign, which highlights enhancing walkability with features such as lighting, signage, and flowers.

Mackenzie V. (Rye Restaurant) 18:37

We recently became aware that we needed a permit for the planter box and went through all appropriate steps with the city of Appleton. We're fully insured; we take liability for any issue that could arise from the planter box; and as you can see, all applicable paperwork has been filed in a timely manner, and we will continue to pay any fees associated with this.

Mackenzie V. (Rye Restaurant) 18:55

There has been a claim that the planter box is not ADA compliant. Though policies are not yet in place or enforceable, we have already started exploring options to make it fully compliant. We've reached out to our local craftsman who made the planter box and he is currently right now working on adding something to the underside of the planter box so it would not be higher than 27 inches from the ground which would give the proper cue to anyone that we're using a cane that the planter boxes above it.

Mackenzie V. (Rye Restaurant) 19:22

For the past eight years the planter box has not obstructed pedestrians or been a safety hazard. The permit we are requesting acceptance for is only a few inches of planter box as it only enters the right of way by no more than six inches. We spoke with two different separate Public Works staff. One quoted it as being three to four inches over the line, and the other said it could be four to five inches.

Mackenzie V. (Rye Restaurant) 19:44

We are proud to be a part of the downtown community and value our relationship with the city of Appleton. We are more than willing to comply with anything that is needed to make the planter box safe and legal. Our intention is not to harm anyone, but rather to add to the beauty of Appleton. Thank you

[Cut]

Mayor Jake Woodford 26:12

We have no public hearings this evening. No special resolutions. So, we'll establish the order of the day. Alder Croatt.

Aldersperson Chris Croatt (District 14) 26:26

Thank you, Mayor. Separate votes, please, on the two items that we had comment on which is the municipal services item 24-0279, the Rye restaurant street occupancy permit. And then the US venture development agreement which is Community and Economic Development Committee 24-0269.

Mayor Jake Woodford 26:47

All right. Alder Siebers.

Aldersperson William Siebers (District 1) 27:08

Thank you, Your Honor. In light of the information that we received this week in regards to the street with a flower box or at Rye, as well as the information that we received tonight from Rye saying that they're willing to make some changes, I think it would be appropriate to refer it back to committee so we can hear about those changes. And I'd like to know from staff why this was approved by them, or recommended for approval.

Aldersperson Katie Van Zeeland (District 5) 27:48

...hold.

Mayor Jake Woodford 27:48

We have an objection to the hold. Is there a second? We have an objection to the hold and a second. Discussion.

Aldersperson Katie Van Zeeland (District 5) 27:58

Yes, the reason I objected to the hold is because the owners of the restaurant have been in touch with Director Block regarding the accessibility issues for people with low vision or vision impairment. And I had discussed with Director Block, a motion to amend the item to approve with a special use permit pending the modifications as the owners were amiable with that.

Mayor Jake Woodford 28:25

Further discussion on the objection. I see there's two speakers in the queue. Are you looking to speak on this? Okay. All right hearing no further discussion, we have a motion or we have we have an objection raised and a second. All those in favor of sustaining the objection and keeping the item here at Council please signify by saying aye. Any opposed? All right, the ayes have it and the item will stay here at the Council. It'll be taken up under the municipal services committee items.

[Cut]

Mayor Jake Woodford 29:41

We'll get started with the item from municipal services committee. This is item 24-0279 approved request from Rye Restaurant for an annual street occupancy permit along 308 West College Avenue for a window box overhang obstruction. We have a motion and a second to approve. And we'll open the floor for discussion. First to speak is Alder van Zeeland.

Aldersperson Katie Van Zeeland (District 5) 30:09

Thank you, chair. As I alluded to before, the owners have been in contact with Director Block regarding the issues. Everyone here knows how important accessibility is to me personally, as the mother of a child with a disability, I would not be supporting this item if we were not looking at the serious hazards that were caused by the current height of the planter. So, I'd like to make a motion to amend to approve the special use permit in—let's see. I just want to make sure I have the wording correctly. "Pending the modifications that make the planter box ADA compliant."

Mayor Jake Woodford 30:52

We have a motion and a second. Discussion on the motion. Alder Schultz?

Aldersperson Alex Schultz (District 9) 31:05

Thank you, Mayor, I would encourage us to vote in favor of the motion. Having heard from the owners and the proposed remediation of the issue, I think it's—I feel it's fair to give ourselves a little bit more time to see what that looks like. It does feel like a relatively small fix to the issue. And again, I think I'm—I would lean into that business working with our staff to come up with an amicable solution that gets him within ADA compliance and removes any hazard from the sidewalk. So, I would encourage us to vote in favor of this amendment.

Mayor Jake Woodford 31:45

Alder Fenton.

Aldersperson Denise Fenton (District 6) 31:47

Thank you, Your Honor. I would also encourage us to vote in favor this amendment, but I would like to thank the people who brought it to our attention because I know that it is never the intention of this body to approve

anything that would be detrimental to people with disabilities. So, I want to thank them for calling that to our attention, and I believe this amendment will work things out to everybody's advantage. Thank you.

Mayor Jake Woodford 32:17
Alder Meltzer.

Alderman Vered Meltzer (District 2) 32:19

Thank you. I would have been much more comfortable discussing this again at committee. I am a bit uncomfortable that it would—it came through committee without us knowing that there were these ADA issues. So, at this point, I just want to make some comments that I don't feel entirely comfortable with this process, but I'm very grateful for the **[W. Family]** for taking the time and the effort to educate us about this issue. And I think that, you know, going forward, there's certainly ways that I can be better with my own research. Thank you.

Mayor Jake Woodford 33:04
Alder Hayden.

Alderman Patrick Hayden (District 7) 33:05

Thank you, Chair. I would like to thank Alder van Zeeland for proposing this amendment. It sounds like from everyone we heard from this evening, that both parties are focused on making it ADA compliant, and the owners of Rye seem to be making strides to meet what their neighbors want. So, I think what Alder van Zeeland has proposed, kind of fixes everything, and I think sets everyone up for success. So, thank you, Alder Van Zeeland.

Mayor Jake Woodford 33:37
Any further discussion? We have one speaker in the queue and it's Alder Wolff.

Alderman Nate Wolff (District 12) 33:42

Thank you, Chair. So, my question is with this amendment, are we kind of stating when we expect them to be in within compliance or is it open ended?

Mayor Jake Woodford 33:56
Alder van Zeeland, would you just address the intent?

Alderman Katie Van Zeeland (District 5) 33:59

Sure. I guess I don't see there being an issue with this being done quickly, but I did not intend to have a timeline. Perhaps Director Block could speak a little bit more about the discussion that's been had and the steps that we're looking at.

Mayor Jake Woodford 34:20
Director Block.

Director Danielle Block (Department Of Public Works) 34:21

Thank you, chair. Typically, when we deal with non-compliance or issuing of permits, so long as there is a plan of action that meets the requirements—the ADA requirements—we would work with the property owner, depending on what improvements need to be made, to set a timeframe, 30 days, 60 days within our CSR tracking before we go back out and review it. The permit would not be issued until the planter box is in compliance.

Director Danielle Block (Department Of Public Works) 34:55

The planter box itself was outside of the guidelines that would allow us to administratively approve this permit in terms of just overall dimensions that we note for overhanging objects into the right of way. It was later when the ADA guidelines were presented and this concern was voiced. So, in terms of addressing the question that was posed, you know, "Why wasn't this brought to our attention at municipal services committee?" It overhangs four, approximately four inches into the right of way, so until the property owner can complete the survey on what the front property line was—all we knew at that time was it overhangs the right of way; it's outside our guidelines set by policy to administratively approve; and it needs to go to committee and Council for approval.

Mayor Jake Woodford 35:50

All right, any further discussion on the amendment? All right, again, we have motion and a second to amend. All those in favor. Please—oh please cast your votes. Excuse me. Motion passes 15 to zero. The item has been amended.

Mayor Jake Woodford 36:15

Back to the item as amended. Any further discussion? Hearing none, we have a motion and a second to approve the item as amended. Please cast your votes. All right, that motion passes 13 to two. The item has been approved as amended.