

PLANNING & ZONING COMMITTEE MEETING

JUNE 19, 2013

The meeting was called to order by Chairman Tim McCarthy at 5:00 p.m. Committee members present were Joe Lawless, Tom Mackin and Tim McCarthy. Also present were City Administrator Bridgette Kabat, Law Director Mathew Beredo, and Planning and Zoning Administrator Brody Walters.

CODE AMENDMENT – RESIDENTIAL USES IN PLANNED BUSINESS PARK ZONING

Mr. Walters stated that the intent of this amendment is to remove residential uses from Planned Business Park zoning. A public hearing regarding this issue was held prior to the previous City Council meeting. The Committee agreed 3-0 to recommend approval of this Code Amendment.

CODE AMENDMENT – ANIMAL SERVICES

Mr. Walters explained that the Code currently has only two classifications dealing with animal services – Kennels and Animal Hospitals. This amendment would create Animal Services – Indoor and Animal Services – Outdoor, eliminate Animal Hospitals and retain Kennels, which would allow the City to accommodate more uses. A public hearing was also held regarding this issue prior to the last Council meeting. The Committee agreed 3-0 to recommend approval of this Code Amendment.

MUNICIPAL UTILITY OVERLAYS (MUO) – WILLOWBEND PLAT 2 LOTS 13 AND 80

Mr. Walters stated that we have received requests for Municipal Utility Overlays ahead of the annexation process for lots 13 and 80 in Willowbend Plat 2. Water service is available through the City of Perrysburg and sewer service is available, but not through the City. Mr. McCarthy expressed concern that the annexation will not occur. Mr. Beredo stated that the annexation petitions have been filed, but there is a slight delay because the property is in the name of a trust. The Committee agreed 3-0 to recommend approval of the Municipal Utility Overlays.

5th STREET PUB – APPEAL OF PLANNING COMMISSION DECISION TO DENY SPECIAL APPROVAL USE

Mr. McCarthy stated that the Committee read the draft Planning Commission minutes, and so they are familiar with the issue. Mr. Walters called attention to a proposal received from Geoff Kies, owner of the 5th Street Pub. The proposal states that during

summer months they will vacate the patio by 9 p.m. Monday through Thursday, and by 10:00 p.m. on Friday and Saturday. When school is in session, they will vacate the patio by 8 p.m. Monday through Thursday, and by 9 p.m. Friday and Saturday. The patio will be enclosed by September 30th utilizing windows that open and close. When the patio is enclosed the same hours as proposed will be observed when it comes to having the windows open or closed. Mr. Walters said that according to our Law Director, once the patio is enclosed it will no longer be subject to the Outdoor Café Special Approval Use process.

Geoff Kies said that he has instructed his employees to park in the parking lots and not on the street, and so with regard to parking, he has done all that he can do. He said that when they were allowed to use the patio, the police were out several times, but they were never cited. Mr. Kies said that the Alkires and the neighbor across the street have a legitimate concern with the noise, but his proposal is that it will be vacated by 9 p.m. during the week. He said when he says vacated he means cleared out and lights out. He said he believes he is doing what a commercial district is built for, and he wants it to be a successful commercial district. Mr. Kies said he understands that it is disruptive, and he apologizes for ruffling the feathers of the neighbors, but he came into this commercial district to have a successful business. Mr. Kies presented the Committee with a petition supporting the 5th Street Pub's request to use the patio for outdoor dining and letters from two neighbors who also are in support. Mr. McCarthy read the two letters, which are attached to and made a part of these minutes along with the petition.

Mr. Lawless asked if there was any discussion at the Planning Commission meeting about using the patio during lunch until this issue is resolved, and he asked about music on the patio. Mr. Kies said there was no discussion about using it at lunch and there are speakers that play music throughout the restaurant, but there is no live music. Mr. Lawless said that the original petition referred to loud music and he talked to some who signed the petition because of the music. Mr. Lawless noted that this is the only restaurant in C2 zoning with parking spots. Mr. McCarthy said that we have strived for a long time to help downtown businesses be successful and we want them to be successful but also have to be sensitive to the neighbors.

Ronald Parry, 13 Callander Court, said as a resident he wants to see businesses flourish to ease taxpayers' burden. He said that he was not at the Planning Commission meeting, but this is a C2 district, and you have the Fire Division, the Farmers' Market and Music at the Market that all generate noise. He said that he is concerned as a resident that Perrysburg could get a reputation as anti-business.

Julie Olmstead, 1048 Birch, said as a business owner she knows how hard it is to get a business started and she supports this request 100%. She said that Swigs and Casa Barons are also zoned C2 and what we do for one, we should do for others.

Mr. Lawless said that when you open a business you project your income and expenses, and now part of Mr. Kies' income is limited. He said that he feels this is a Code issue that needs to be dealt with. Mr. McCarthy asked if a Special Approval Use transfers. Mr. Walters said if a new business went into this location and wanted to use the patio, they would need to go through the Special Approval Use process. Mr. Kies said he had no idea he needed to do this and if he had, he would have applied for it a long time ago.

Todd Grayson implored the Committee to treat this as an ongoing Special Approval Use after the patio is enclosed.

Laurie Huskisson, 26180 Hull Prairie Road, said that the owners of this restaurant had a reasonable expectation to believe that they could use the patio, and it is flawed that they were not told about the Special Approval Use. She said we are setting a dangerous precedent and are sending a bad message.

Josh Alkire, 121 W. Fifth Street, said that a permit was issued for the patio, and he does not believe ignorance is an excuse.

Jennifer Rahe, 10468 Cliffwood Road, said that Mr. Kies has presented an opportunity for compromise and she believes that Perrysburg has set them up for failure, it is not fair, and she does not understand why it was denied.

Mr. Lawless said we definitely have a flaw in the system since the patio was approved but the use of it was not, but we'll deal with that after this is resolved. He said that City Council does not want businesses to fail and this fell through the cracks. Mr. McCarthy said that we want to support businesses and that the City evaluates land uses and overall does a good job of planning development.

Tonya Motter, 121 W. Fifth Street, said that a neighbor tried to have lunch in the bar area of 5th Street Pub and was approached about signing the petition and some reference was made to her and her husband. Mr. McCarthy said that City Council does not put a lot of weight on a petition. He said that they are elected to make judgment calls and they don't do a head count every time; they make the best decision they can.

Gene Phlegar, 144 W. Fifth Street, said that the issue is 1215.02(128) which is the definition of nuisance. He said that the issue is whether the noise is at a nuisance level.

Julie Olmstead stated that fifteen years ago the swim team went from 60 participants to 120 participants, there are trains, you hear the baseball games and pool parties from Municipal Park. Perrysburg today does not look like it did fifteen years ago or thirty

years ago. Ms. Olmstead said that she offered to bring more people to support the 5th Street Pub, but Mr. Kies said no.

Josh Alkire said that according to 1235.02(d)(2), the criteria for granting a Special Approval Use, it says that it shall not diminish and impair property values, but he has a letter from his realtor that says his house lost \$20,000 in value when the patio opened up. Mr. Alkire also said that there are two Bed and Breakfasts in the area and it won't take too much before we start to lose travelers. He asked if this is approved how the noise is going to be measured and how will it be enforced.

Tonya Motter said they should just enclose the whole thing. Mr. Kies said then it wouldn't be a patio.

Carl Motter said that when his daughter and her husband bought the house ten years ago, they could not have envisioned what would go there.

Jim Kuch, 124 W. Fifth Street, asked the Committee if they had seen the video that Mr. Alkire submitted. He questioned if the committee has adequate information to make a decision without seeing the video. He also said that there are security issues that nobody is talking about. Mr. McCarthy asked if the security issues relate to the patio or the restaurant as a whole. Mr. Kuch said it applies to our quality of life and what is happening to this town. He said that his neighbor's girlfriend had to change her route for walking the dog at night because she was approached by a man and he asked to use her cell phone. Mr. Lawless asked if this was someone from the patio. Mr. Kuch said it has nothing to do with the patio. Mr. Kuch presented additional signatures for the petition against the patio. Mr. Lawless said that his wife walked up to meet him for dinner and they had no safety concerns. He said if there are security issues, the police should be contacted.

Mr. Lawless said that he likes the compromise Mr. Kies has offered and he thinks it is worth trying. He said he is very uncomfortable with the way the Code reads now and it needs to be fixed. He said he would support overriding the Planning Commission decision based on Mr. Kies' compromise. He suggested that Mr. Kies look into sound baffling because there is a lot of cement.

Mr. McCarthy said he agrees with overriding the Planning Commission's decision based on the following conditions: that the patio open at 11 a.m. and be vacated by 9:00 p.m. Monday through Thursday, and by 10 p.m. on Friday and Saturday. When school is in session it will be vacated by 8:00 p.m. Monday through Thursday, and by 9:00 p.m. Friday and Saturday. Mr. McCarthy stated that by vacated this means, as Mr. Kies described earlier, cleared out and lights out. Mr. McCarthy continued with the conditions

that there is no live music, that the patio size be reduced to a 24 seat capacity from a 49 seat capacity, and that the patio ultimately be enclosed.

Mr. Mackin said he appreciates everybody's passion about this issue. He said that living within the boundaries has a certain appeal, but what some see as adding charm can be a nuisance to others. He said that he agrees with the recommendation, but he would like to add that the noise level must still satisfy the standards as defined in the Code. He said if approval is granted to use the patio and it is still overly loud, the business owner has a problem. We aren't changing the standard, and they have to comply with the standard. Mr. McCarthy added that if we do not have the proper equipment to measure the noise level, he is sure that funds can be found in the budget to purchase the equipment.

There was a discussion regarding the timing of enclosing the patio. Mr. Kies plans to have it done by September 30th but Mr. Lawless expressed concern that it could be completed by that date. Mr. McCarthy noted that an outdoor patio cannot be used after October 31st, and, so if it is not enclosed, it will not be allowed to reopen in the spring. Mr. McCarthy said that this recommendation will go to City Council on July 9th and a hearing will be held at 6:00 p.m. Mr. Beredo said at the hearing the appellant, Mr. Kies, can appear and offer evidence.

Mr. Alkire said that he would like City Council to see the video and asked if it could be shown at the hearing. Mr. Beredo suggested that copies be distributed to City Council prior to that time. Mr. Alkire asked who is going to use the noise monitoring equipment and at what times. Mr. McCarthy said that will be coordinated between Planning and Zoning and the Police Division.

There being no further business, the meeting adjourned at 6:38 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Timothy G. McCarthy". The signature is written in a cursive, flowing style.

Tim McCarthy, Chairman
Planning & Zoning Committee

Next meeting: Wednesday, July 17, 2013 at 5:00 p.m.