

**Mt. Pleasant Planning Commission
Minutes or Regular Meeting
August 4, 2011**

- I. Chairman Orlik called the meeting to order at 7:01 p.m.

Present: Holtgreive, Kostrzewa, Lux, Orlik (Chair), Quast, Rautanen, Shellady, Smith (Vice-Chair)

Absent: Brockman

Staff: Gray

II. Approval of Agenda:

Motion by Holtgreive, support by Kostrzewa to approve agenda.

Motion approved.

III. Minutes:

- A. July 7, 2011 Regular Meeting

Motion by Holtgreive, support by Kostrzewa to approve the minutes from the July 7, 2011 regular meeting.

Motion approved.

IV. Zoning Board of Appeals Report:

Staff reported that the ZBA heard one case on in July related to P & A Development which appears on the Planning Commission agenda tonight. The request was for a front yard setback for the property located at 560-614 W. Pickard to allow an overhang on the proposed building, which the ZBA approved. In addition, the Board toured the houses recently built along Main Street, and visited the L-1 Bar & Grille Site.

V. Public Hearings:

Chairman Orlik explained board proceedings and asked staff to introduce the first case.

- A. **SUP-11-06** –Staff reminded the Commission that this case was postponed from last month. The site is located on the SW corner of Mission and Gaylord. Staff reported that the site was originally approved as a Specialty Goods Store; however the mix of inventory has since changed to include more than 50% of the inventory in beer and wine. As a result, the applicant has applied for a Special Use Permit to allow a liquor store. Staff stated that Ordinance does not allow this use if it is located within 300 feet of residentially zoned property, trailer park, K-12 school, public park church or cemetery

unless a petition is signed by at least 51% of property owners within 500 feet of the site, in which case the Planning Commission may waive this requirement. Staff reminded the Board that there had been some confusion with the first petition that was circulated, with many of those who signed expressing that the representation by the applicant was that the petition was to allow a digital sign. Based on the confusion, the applicant was asked to re-circulate the petition, clarifying the request. Prior to the deadline, staff again received a call from someone who stated that the representation for the 2nd petition was to advertise liquor on the digital sign. Following this conversation, staff sent an e-mail to the applicant clearly stating what the petition was for and asked that he clarify with anyone who signed to assure they were clear on the request. Staff was also asked by the Planning Commission to make some follow up phone calls to the signers to assure they understood what the petition was for. Staff reported that the petition was signed by 29 property owners. He randomly contacted 10 of those who had signed, speaking to 8 of them. They all stated that the representation was clearly for a liquor store and there was no confusion.

Staff suggested that because those who had signed the petition were signing based on the current operation of the store, if the Commission approves the request, they may wish to add the condition that the store continue to operate under the current conditions.

Staff reported that we had received no concerns from the Department of Fire Safety or the Department of Public Works in regards to the request.

Commissioner Lux commented that she had spoken with someone who had signed the petition thinking it was for a sign.

Mr. Fouad Senni, owner of the store, addressed the Board, stating he is willing to answer any questions.

Commissioner Smith asked if Mr. Senni intended to continue the store's operation as it is currently configured. Mr. Senni stated he would like to add some specialty products that he was forced to eliminate due to spoilage now that he can advertise them with new signage.

Commissioner Smith asked if he planned on adding additional liquor to his inventory. Mr. Senni stated he wants to follow the 40/60 percentage. Chairman Orlik asked for clarification on his intent – if it was to have 40% alcohol sales and 60% non-alcohol sales. Mr. Senni stated that this was his intent and he had never intended to eliminate the specialty goods.

Commissioner Smith asked the applicant for clarification on whether when he applied for the original liquor license, if he was limited to 40% of his sales from liquor, and now they are more than 40%?

Mr. Senni asked if he was talking about sales or floor space.

Staff commented that there are a couple of different representations, in regards to inventory value and floor space. He stated that he couldn't go in and say whether the

inventory value is more than 40%; however there is currently far more than 40% of the floor area devoted to alcohol.

Chairman Orlik asked for clarification on the applicant's intent – if it was to go back to the agreement made in 2010 in regards to the 40/60% agreement. Mr. Senni stated that yes that was his intent. Chairman Orlik commented that he would need to change his inventory to do so. Mr. Senni stated that he does not plan on reducing the amount of alcohol inventory, but wants to add more specialty products. The amount of alcohol would remain as it is. Chairman Orlik stated that the amount of alcohol is in violation of the 2010 agreement.

Staff provided clarification on the original agreement as outlined in Attachment 6 of the Board packet and read the stipulations as follows: "...60% of the inventory value will be in non-alcoholic products and far less than 50% of the floor area will be devoted to alcohol sales..." Staff further stated the agreement noted hours of operation and committed to no window advertising and no keg beer sales.

Commissioner Smith stated that if the applicant intends to go back to the original agreement, he doesn't need Board approval.

Mr. Senni stated that he would do whatever the Board wanted him to do. He also commented that when he moved locations, he applied to the Liquor Control Commission in Lansing to get his license transferred from the High Street location. The LLC approved the location and a background check was completed and he received his approval through the City.

Commissioner Smith reminded Mr. Senni that the City's approval was based on the 40/60% and reiterated that he was in violation of that agreement. Chairman Orlik also commented that he was found to be in violation as early as May.

Commissioner Smith again asked if it was Mr. Senni's intent to go back to that percentage. Mr. Senni stated it was.

Chairman Orlik asked Staff to re-read the stipulations from the original approval letter to make sure everyone was clear on what was to be happening at the location. Staff read the stipulations as follows: "60% of the inventory value will be in non-alcoholic products and far less than 50% of the floor area will be devoted to alcohol sales."

Staff further commented that the applicant has indicated that there isn't a market for the specialty store, and was not aware that this is what the applicant's intent was prior to his comments this evening. Staff further questioned whether it was appropriate to continue, or if the applicant needs to reapply for what it is they actually want to do.

Chairman Orlik stated if the intent is to go back to the original approval, then the applicant doesn't need a special use permit. Staff concurred, stating that if the use had continued as originally approved, as a Specialty Goods Store, they would not need this approval. It was the fact that the operation changed that brought it to the Planning Commission. Staff further commented that it is up to the Planning Commission if they

wish to continue to review this as a Specialty Goods Store, which would mean policing to assure compliance, or if they wish to process it as a request for a liquor store.

Commissioner Holtgreive stated he feels a decision needs to be made tonight and that the Board needs to either vote yes or no on the liquor store use.

Mr. Senni commented that he had done everything by the book and in good faith and does not want any confusion. He further commented that he was very clear when circulating the 2nd petition and asked people to please read it before they signed.

Chairman Orlik opened the Public Hearing. There being no one who wished to speak, the public hearing was closed.

Board Discussion:

Commissioner Holtgreive stated the 40/60% is not the issue. He re-stated the Board needs to vote yes or no on the liquor store use.

Commissioner Smith stated that the request is two-fold and the Board needs to first decide whether to waive the separation requirement based on the petition. Chairman Orlik stated the waiver is discretionary. Staff commented that the waiver would be regardless of floor space or inventory and if the Board denies the waiver, then they would also have to deny the SUP.

Commissioner Smith commented that if denied, the applicant would not be able to sell liquor at all and he doesn't want to deny him the right to do so, but would like to see the store go back to the original agreement.

Staff stated that another option would be to grant the SUP, but stipulate floor area, which would be enforceable.

Commissioner Quast questioned who would be charged with the enforcement part and what the penalties are for not complying. Staff commented that once an SUP is approved, any change in the use or conditions would need to come back to the Planning Commission. The Planning Commission could then choose to allow a change in the use or, if the applicant was found to be in violation, the SUP could be revoked.

Commissioner Quest suggested that perhaps they could approve a gradual percentage change to allow the specialty portion of the business to grow. Chairman Orlik stated he prefers a clearer approach – either approve or not, otherwise enforcement becomes too cumbersome.

Commissioner Shellady stated that there has already been a violation of allocated floor space.

Motion by Holtgreive to approve Special Use Permit 11-06 from Fouad Senni to operate a liquor store (Group B Special Regulated Use) at the property located at 1022 S. Mission Street with the following conditions:

1. Alcohol sales shall not be more than 40% of the revenue.
2. The hours of operation will not exceed 10:00 am until midnight Sunday through Wednesday and 10:00 am to 2:00 am Thursday through Saturday, as represented by the applicant.
3. There will be no signs, banners or other advertising in the front windows, as committed by the applicant in his correspondence dated January 14, 2010; and advertising will only occur on permanent freestanding signs or the building wall sign.
4. There will be no sale of keg beer, as the applicant committed to staff and is described in the letter from staff dated February 23, 2010.
5. Modification to these conditions will be considered a change in use and will require review and approval by the Planning Commission.

Motion failed due to lack of support.

Motion by Smith, support by Lux to approve Special Use Permit 11-06 from Fouad Senni to operate a liquor store (Group B Special Regulated Use) at the property located at 1022 S. Mission Street with the following conditions:

1. The hours of operation will not exceed 10:00 am until midnight Sunday through Wednesday and 10:00 am to 2:00 am Thursday through Saturday, as represented by the applicant.
2. There will be no signs, banners or other advertising in the front windows, as committed by the applicant in his correspondence dated January 14, 2010; and advertising will only occur on permanent freestanding signs or the building wall sign.
3. There will be no sale of keg beer, as the applicant committed to staff and is described in the letter from staff dated February 23, 2010.
4. Modification to these conditions will be considered a change in use and will require review and approval by the Planning Commission.
5. 40% of the revenue from the establishment will come from non-alcohol sales and with a minimum of 60% of the floor area be devoted to non-alcohol sales.

Commissioner Holtgreive asked if the concern was liquor sales based on its proximity to residential properties and if so, suggested that revenue is more of a concern than the floor area.

Staff stated that his review was based less on the negative impact on a neighborhood and more on what is the character of the use – i.e., when you open the door, what does it represent? Chairman Orlik commented that this is what was the applicant agreed to when the use was initially approved.

Commissioner Kostrzewa commented that the business faces Mission Street, not a residential district. He further commented that if the petitions are correct, then the neighbors do not appear to have a problem with the liquor store and appear to accept the use. He also stated that there are many other liquor stores along Mission and questioned whether the Board is denying the applicant a right to make a living. He commented that he is not discounting the applicant's representation, but asked if the applicant could change that representation to what the store is now; which is what the neighbor's have

appeared to agree with, or if he was locked into his original agreement. He further commented that by going back to the original agreement, he may be basically putting himself out of business, resulting in yet another vacancy on Mission Street.

Commissioner Lux stated that the applicant has stated it is his desire to go back to the original agreement. She further commented that if he was not doing well in his business, he could have come to the Planning Commission, through the proper channels and requested the change. She stated she does not want to put anyone out of business, but believes people need to follow the rules.

Staff commented that the applicant has changed the representation.

Commissioner Kostrzewa asked for the motion to be repeated. The motion was re-stated.

Commissioner Rautanen commented that the pictures depict a ½ barrel keg of beer advertisement, which would indicate he is selling keg beer at this time.

Chairman Orlik called the question.

Motion was denied 3:5 (Ayes: Smith, Lux, Holtgreive; Nays: Rautanen, Quast, Kostrzewa, Orlik, Shellady)

Staff stated that at this point the Board has no decision and will need to take an alternate motion to either approve, postpone, or deny.

Commissioner Lux asked the applicant to explain the ½ barrel advertisement. Mr. Senni commented that the vendors put posters up when he is not on site. He removes them when he sees them. He further stated that they do not sell kegs.

Mr. Senni shared that there had been some confusion at the time he moved to the Mission Street location. He stated that the liquor license had already been approved, and the city had received the 15 day notice. Mr. Senni reported that the city failed to route the notice to the appropriate departments and had noted that the failure to route the notice was not his fault and he was operating under the belief that everything was approved. Chairman Orlik stated that what Mr. Senni was referring to was a processing error in regards to the original approval, which was worked through and the applicant was approved. Chairman Orlik additionally stated that this is not what this is about – it is about the modifications to that agreement.

Motion by Rautanen, support by Shellady to approve based on the restrictions in the letter dated February 23, 2010 included in attachment 6 of the staff report, with the following stipulations:

1. The hours of operation will not exceed 10:00 am until midnight Sunday through Wednesday and 10:00 am to 2:00 am Thursday through Saturday, as represented by the applicant.
2. There will be no signs, banners or other advertising in the front windows, as committed by the applicant in his correspondence dated January 14, 2010; and advertising will only occur on permanent freestanding signs or the building wall sign.

3. There will be no sale of keg beer, as the applicant committed to staff and is described in the letter from staff dated February 23, 2010.
4. Modification to these conditions will be considered a change in use and will require review and approval by the Planning Commission.

Commissioner Holtgreive noted that the hours of operation listed in the recommendation are longer than the original. He asked if we are saying we don't want liquor sales at this location; and if so, why are we extending the hours of operation. He commented that he is really confused on the intent of what we are trying to do.

Staff stated that there is some confusion and stated that the recommendation provided in the staff report was based on the representation in the application to operate a liquor store and it appears there is a different representation tonight, and that the applicant has indicated his desire to adhere to the original approval. Staff further commented that what the Commission is being asked to approve is a Special Use Permit.

Rautanen, with support by Shellady, withdrew the motion.

Motion by Smith, support by Rautanen to postpone action to allow staff to craft a motion recommending approval of the original agreement.

Staff again stated that based on the confusion on what the applicant is requesting, he will ask the applicant to put in writing exactly what we are being asked to consider, and asked if the Commission was comfortable with that approach. The Board agreed this would be a good approach.

Commissioner Holtgreive questioned why, if the goal is to keep liquor sales at 40%, why it matters how the 40% is obtained – i.e., kegs, etc. Commissioner Kostrzewa questioned why we even care if it is 40, 50 or 60%.

Staff commented that the percentage was based on the applicant's representation. Chairman Orlik stated we care if someone is not following what was approved and commented that someone who is selling alcohol should be able to bring us a straight-forward, clear request.

Commissioner Quast stated she cares because the business is located near schools, residential properties, etc. and feels that many of the signers are landlords and business owners, rather than residents. She further stated that she has had some of these residents express their concerns to her. Commissioner Holtgreive stated that we have held two public hearings have had no one concerned enough to come in and speak against the store.

Staff stated that the Commission could re-open the Public Hearing at the next meeting. Staff was advised to follow standard protocol and place the request under unfinished business on the agenda.

Motion to postpone approved unanimously.

B. Z-11-03 617-701 E. Pickard. Staff introduced this case explaining that the site is just west of Walgreens on Pickard Street, and contains 1.69 acres. The property is currently zoned I-1 Industrial and the applicant is requesting the property be rezoned to C-3 General Business. Staff reported that the requested zoning is consistent with the Master Plan, which calls for C-3 zoning. Staff reported that there are three buildings on the site, two of which are occupied at this time; one by Mr. Muffler and one by an Auto Detailing shop. Staff reported that both of these uses would be allowed in the C-3 zoning district. Staff further reported that there is also a small office building on the property. The owner has been approached by commercial tenants and has had to turn them down based on the zoning.

Staff further stated that the vacant office building, which is less than 1,000 square feet, is no longer viable for industrial uses and is therefore recommending approval of the request.

Karen Mead, on behalf of her father and property owner Patrick McCormick, addressed the Board. Ms. Mead reiterated that her father has had a number of requests to rent the property and was unable to do so because the interested businesses were not allowed in the Industrial Zoning District.

Chairman Orlik opened the Public Hearing. There being no one who wished to speak, the Public Hearing was closed.

Commissioner Quast commented that she appreciates the owners following proper procedures.

Motion by Smith, support by Rautanen to recommend that the City Commission approve rezoning Z-11-03 from Patrick Henry McCormick for the property located at 619 E. Pickard Street from I-1, Industrial to C-3, General Business. Approval of the conditional rezoning is recommended on the following basis:

1. The proposed C-3 zoning district is consistent with the Master Plan designation for the property.
2. The existing uses on site are consistent with the proposed C-3 zoning district.
3. The existing vacant office building no longer seems viable for a permitted industrial use.

Motion approved unanimously.

VI. Public Comments:

Chairman Orlik opened the floor for public comments. There being no one who wished to speak, the public comments portion of the meeting was closed.

VII. Site Plan Reviews

A. SPR-11-08 510 W. Pickard. Staff introduced this case, reminding the Board that this

case was postponed from last month. Staff reported that the property is zoned I-1 and the proposed use is an allowed use in the district. Staff further reported that the revised site plan meets the requirements of the Department of Public Safety and that the applicant is working out some minor technical issues with the Department of Public Works and the DEQ. Staff reported that the applicant has provided a letter from the adjoining property owners confirming that the project will not interfere with the environmental cleanup project taking place there. In addition the applicant has provided clarification in regards to on-site storage issues. Based on the fact that the applicant has addressed the issues of concern, staff is recommending approval.

Tim Bebee, Central Michigan Surveying and Development, addressed the Board as the applicant's representative. Mr. Bebee indicated that they had held a successful meeting with TPI, the Water Department and neighboring landowners to address all issues of concern. He spoke of the technical issues currently being addressed, explaining that the materials used for piping are yet to be determined and will be based on the results from soil tests.

Motion by Lux, support by Rautanen to approve SPR-11-08 for the property located at 510 W. Pickard, based on the site plan revised on July 5, 2011 and prepared by CMS&D (job no.1105-056), with the following conditions:

1. The applicant shall comply with the requirements of the Division of Public Safety (DPS) and the Division of Public Works (DPW), including installation of the new hydrant and water main in compliance with the appropriate standards for the environmental conditions in the vicinity.

Motion approved.

- B. SPR-11-06 560-614 W. Pickard.** Staff introduced this case, reminding the Board that this property went through a conditional re-zoning request at last month's meeting. The applicant had requested a change in the zoning from Industrial to Heavy Commercial. The Planning Commission voted to recommend that the City Commission approve this request. Staff reported that the applicant has proposed the demolition of a 6,000 square foot two-story office building and has proposed a one-story 12,000 addition to the remaining building. Staff reported that the ZBA granted a small front yard variance for the proposed building for an architectural overhang/walkthrough. Staff reported that the applicant has provided a thorough site plan which complies with the minimum requirements of the Ordinance. Staff further commented that the site is a former Brownfield site and the owner has made significant improvements and significant investments in successfully redeveloping the site.

Tim Bebee, Central Michigan Surveying and Development, addressed the Board as the applicant's representative. Mr. Bebee indicated that staff had provided a thorough summary of the request and indicated that there was one minor change on the site plan, moving a fire hydrant from one side of the drive to the other based on a recommendation from the Fire Department.

Motion by Rautanen, support by Holtgreive to SPR-11-06 for the demolition of the existing 5,716 square foot building and construction of a 12,740 square foot addition to the existing industrial building located at 580-614 W. Pickard Street, based on the site plan last revised on July 7, 2011 prepared by CMS&D (job no. 1105-055) for P&A Development, LLC, with the following conditions:

1. Approval of the site plan is subject to City Commission approval of the Conditional Rezoning Agreement for the property.
2. Location and specifications for the exterior lighting shall be submitted prior to issuance of a building permit, in accordance with Section 96.13 of the Zoning Ordinance.
3. The applicant shall comply with the requirements of the Division of Public Safety (DPS) and the Division of Public Works (DPW)), including installation of the new hydrant and water main in compliance with the appropriate standards for the environmental conditions in the vicinity.

Motion approved.

VIII. New Business

Chairman Orlik announced that Rich Morrison, Economic Director for the City, will be leaving the city and moving out of State. Chairman Orlik thanked Mr. Morrison for his service to the Planning Commission and wished him well on behalf of the Planning Commission.

IX. Other Business:

A. September Meeting

Staff reported that we will be hearing a request for the 2nd phase of Rivers Bluff. Deadline for submittals is next Monday.

B. Hotels/Motels in the Downtown

Staff stated he would try to get some language drafted for the Commission to review next month.

C. Walking Tour

Staff asked if there was any interest in doing a walking tour of the Downtown to Campus corridor and to view some of the new developments on Main Street. Chairman Orlik suggested staff send out some dates and see what works for the majority.

D. Joint Meeting

Staff commented that there will be a joint meeting on August 8th at 6:00 p.m. for any members of the Planning Commission that are able to attend. The request was originated by the Zoning Board of Appeals to the City Commission, who suggested including the Planning Commission as well.

E. Town Center

Staff commented on the e-mail routed to Commissioners regarding the Town Center redesign, indicating it had been sent for informational purposes as it was included in the Capital Improvement Plans that the Commission had approved. The Downtown Development Board will be looking for quotes later this month. The budget for the project is \$10,000. Staff commented that this is Phase 1 of a larger project. Materials being proposed are some that can be re-used during the 2nd phase of the project.

X. Adjournment

Motion by Holtgreive, support by Rautanen to adjourn.

Meeting adjourned at 8:13 p.m.

bam