

**Mt. Pleasant Planning Commission
Minutes of Regular Meeting
July 12, 2012**

I. Chairman Orlik called the meeting to order at 7:00 p.m.

Present: Brockman, Hoenig, Kostrzewa, Orlik (Chair), Quast, Shellady, Smith (Vice-Chair).

Absent: Lux, Holtgreive

Staff: Gray, Mrdeza, Murphy.

II. Approval of Agenda:

Motion by Brockman, support by Kostrzewa, to approve the agenda.

Motion approved

III. Minutes:

A. June 7, 2012 Regular Meeting

Motion by Kostrzewa, support by Shellady to approve minutes as written.

Motion approved.

IV. Zoning Board of Appeals Report:

Commissioner Quast gave a report on Zoning Board of Appeals (ZBA) action for June, noting that they had approved variances for the separation distance and fencing for L-1 Bar and Grille, based on their determination that they were operating more as a Class I Restaurant rather than a nightclub.

V. Public Hearings:

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

A. SUP-12-07 L-1 Bar and Grille

Staff introduced case SUP-12-07, noting that the location is on the East side of Mission and is zoned C-3, as are the other properties along Mission Street. Behind the subject property is the Forum Apartments, zoned M-2.

Staff shared the site plan, noting the location of the suite within the complex. Staff noted that the applicant had received approval in 2011 to operate as a restaurant that serves alcohol and nightclub and provided background on that case. Staff also provided the definitions from the Ordinance for both Class I Restaurants and Nightclubs, noting that

although the Board has seen several requests for Class I Restaurants, there have been very few for nightclubs, with this being the only one that involves a changeover between restaurant and nightclub hours. Staff noted that we are regulating this based on the more intense nightclub use. Staff commented on the uniqueness of the use and noted that when the Board previously approved the use it was with very specific conditions. Staff reported that some of the conditions included that the night club hours could not be increased without prior approval; restaurant hours could not be decreased without approval and noted that the layout of the interior seating was very specific. This was done in order to make it easily identifiable as to whether it was operating as a nightclub or a restaurant.

Staff reported that recently it was discovered that the applicant had made some unauthorized changes to the operation, including elimination of the vestibule and some soundproofing to open up the front windows; reducing the hours of restaurant operation; and modifying the layout. Staff stated that because of the unique regulatory approvals, these changes required both ZBA and Planning Commission renewals. The applicant was notified that these changes would need to be approved by both Boards and therefore submitted the applications to gain these approvals.

Staff noted that the changes being requested are to modify the hours of operation. The nightclub will continue to operate from 10:00 p.m. - 2:00 a.m. Staff stated that more clarification is needed on the proposed restaurant hours of operation as there are differing times listed in the application materials. The applicant is also asking to eliminate specific interior layouts and has committed that at least 75% of the seating will be tables/chairs. In addition, the applicant has asked for approval to open up the mezzanine to be used for office, storage space, and additional seating. The applicant has proposed 127 seats on the main floor, with 24 seats in the mezzanine area. Staff noted that the total occupancy for the restaurant use has been set at 151 and noted that this number includes employees, etc. so there will be a need to reduce the seating to assure that they are not over occupied. In addition to these changes, the applicant has added an Indian Buffet to their menu options.

Staff reported that the ZBA re-considered the variances approved with the original operation, including a request to waive the required 8 ft. masonry screening wall between the nightclub and adjoining M-2 Zoning District and a variance to permit a nightclub on property within 50 ft. of a residential district. Staff noted that the ZBA re-approved the variances and shared their findings as follows:

1. The distance from the actual site of the business to the R-2 district is 450 ft. +/-.
2. The resort license requires the applicant to maintain at least 50% of their sales to be from food as opposed to alcohol, which is consistent with a Class I restaurant.
3. Night club hours of operation shall be limited to 10:00 p.m. - 2:00 a.m.
4. The majority of the hours of operation to be devoted to restaurant use as opposed to night club.
5. Change in the vestibule does not increase sound transmission to the residential properties.
6. The use of the mezzanine as additional floor/seating space is acceptable provided there is no increase in the overall occupancy.

7. Seating layout shall be flexible provided the applicant maintains the same number of tables and chairs for the restaurant use as was approved in 2010.
8. Waive the requirements for the 8' masonry wall, and allow the Planning Commission to condition alternate screening options if they feel they are warranted.

Staff noted that the applicant is operating under a resort liquor license, which requires that at least 50% of the revenue comes from non-alcoholic beverages. The applicant recently went through their six-month review by the Liquor Control Commission and it was determined that the applicant has met that requirement, with food sales at 61% - 68%. Staff noted that this is the last pro-active review that would be conducted by the Liquor Control Commission. Any future audits would be complaint-based.

Staff commented that his report did not give any hard line recommendations, noting that he appreciates the applicant's needs and desires to make the proposed changes; however, noted some concern with regulation of the night club use.

Commissioner Brockman asked if the Liquor Control Commission's review was conducted for only the nightclub hours. Staff noted that they review the sales from the entire time the business is open.

Kerry Chahil, representing L-1 Bar and Grille, addressed the Board, stating that their wish is to become more of a restaurant rather than a nightclub. Mr. Chahil stated that they need to make the proposed changes in order to be more successful. He noted that they originally anticipated more early morning business; however stated that this has not been the case - there is no business from 2:00 - 6:00 a.m. and the only people coming in were not the clientele they were looking for.

Mr. Chahil reported that they are currently having issues with not enough storage and need the mezzanine area to help in that regard. The mezzanine would also be used for office space and additional seating; mostly for larger groups coming in for special occasions.

Mr. Chahil stated they would like to be open from 8:00 a.m. until 2:30 a.m. with the flexibility to close at 11:00 p.m. on Monday through Wednesday when the students are not around.

Mr. Chahil stated that they originally thought they could compete with area restaurants; but found that they needed to find something different and therefore added the Indian Buffet, commenting that this has been very successful, and since adding the buffet, business has increased.

Mr. Chahil referred to the changes in the vestibule noting that they found that the covered windows deterred restaurant patrons, as it appeared too much like a nightclub. Opening up the windows and taking out the vestibule has made it appear more like a restaurant. He also noted that they have not had any complaints since they have been open.

Mr. Chahil again noted that they would like to have the hours be flexible. He referred to the hours of 8:00 a.m. - 2:00 a.m. with flexibility to open earlier for breakfast if that started to become more successful.

Mr. Chahil referred to the seating layout, commenting that they need to be able to move tables around to accommodate larger parties coming in, and noted that they are not asking to do anything different with the nightclub.

Chairman Orlik stated that flexibility is one thing; however, commented that he was somewhat distressed at the disregard shown to the previous stipulations. He further commented that whether they are operating more as a restaurant or a nightclub, they will still be serving alcohol and will need to come to some type of agreement on the regular hours of operation.

Commissioner Shellady commented that the applicant has stated they don't wish to change the occupancy "much" and asked the applicant to speak to that. Mr. Chahil stated that with the resort license they need to maintain 101 seats. He stated that when they submitted the proposed changes he didn't realize that the occupancy of 151 included employees, but stated they would make sure the total occupancy not exceed 151.

Commissioner Kostrzewa asked if the landlord was aware that they had removed the vestibule. Mr. Chahil stated he was and was fine with the changes.

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

Board Discussion:

Commissioner Kostrzewa questioned if every entity with a liquor license is required to maintain specific hours of operation. Staff explained that some of the operations were in existence before Special Use Permits were required so they would not be operating under any restrictions. Those that have been established since SUP's operate under the conditions of approval stipulated by the Planning Commission.

Chairman Orlik commented that the Planning Commission doesn't generally dictate hours of operation, but prefers the applicants to represent their proposal and the Commission then ties their approval to that representation.

Commissioner Brockman commented that he can understand the applicant's desire to have some flexibility.

Staff commented that approval is dependent on the Board's comfort level, stating that if there is some interest, they could possibly approve a maximum number of night club hours and a minimum number of restaurant hours.

Commissioner Quast noted that the ZBA was comfortable with the request as the nightclub hours were not being changed. They felt that as long as the majority of the

hours the establishment was open were dedicated to the restaurant use, they should be allowed some flexibility.

Chairman Orlik stated he would like to see the case postponed until they bring us a more specific request.

Commissioner Brockman asked the applicant whether on the nights they wished to close the nightclub early, if the restaurant would continue to be open. Mr. Cahil stated that if they closed early, it would be the nightclub hours that were reduced, which would be a benefit to the community. Mr. Cahil also stated that if the Commission wanted to stipulate the hours, he is only asking for the flexibility to shorten the nightclub hours.

Vice-Chairman Smith questioned what would happen to the applicant if the case was postponed. Staff noted that unless the Commission approves a temporary change, they would be bound to the previous approval.

Vice-Chairman Smith stated that they shouldn't be required to stay open 24 hours just because the Commission can't make up their mind. Vice Chairman Smith asked the applicant if it would be a burden to postpone. Mr. Cahil stated it would be a huge burden to postpone. They would not be able to move forward with the mezzanine. He commented that they made a mistake saying they would be open 24 hours and allowing some flexibility allows them to be more of a restaurant. He again noted that if the Commission wished to stipulate the hours they would abide by them and noted that the occupancy would stay at 151, which would include employees.

Commissioner Quast stated she doesn't feel that the Commission should tie his hands - if he wants to close early he should be able to. In addition, if he wants to open earlier to offer breakfast, he should have that option. She further stated she agrees that the nightclub hours should not be extended.

Chairman Orlik stated ~~is~~ *it* isn't just the hours of operation that are in question, but also the mezzanine and the occupancy.

Vice-Chairman Smith stated as long as the mezzanine doesn't increase occupancy, he has no concerns with it. Commissioner Brockman agreed, stating they need the storage.

Commissioner Shellady commented that the challenges are that there is some confusion over what the applicant is requesting and what the expectations are. By moving forward without additional, specific details, she feels the Commission could be setting a precedent for others.

Motion by Brockman, support by Shellady to postpone Case SUP-12-07 for L-1 Bar and Grille until the applicant has an opportunity to meet with staff and work out the proposed hours of operation and other associated aspects of this request. In the interim, the Planning Commission will allow a reduction in the hours of operation, provided there is no increase in the hours of the nightclub beyond 10:00 p.m. - 2:00 a.m.

Motion approved unanimously.

Staff reiterated for the applicant that the case has been postponed; however until the Board meets again, they would be allowed to reduce their overall hours of operation, provided the nightclub hours do not extend beyond the 10:00 p.m. - 2:00 a.m. time frame.

VI. Public Comments:

Chairman Orlik opened the floor for public comments.

There being no one who wished to address the Board, the Public Comments portion of the meeting was closed.

VII. Site Plan Reviews

A. SPR-12-14 - 1280 N. Fancher - Wally Link.

Staff introduced the case noting that approval was granted in 2010 for the construction of the existing building and approval was also granted for construction of a second building in the future. Staff noted that this is a request for approval to add a roof overhang on the north side of the existing building. In addition, the applicant is asking for reauthorization of Phase II of the project to allow construction of the second building sometime in the future.

Staff explained that the applicant is requesting approval to put a roof enclosure over the self-contained cleaning unit. The Planning Commission approved the installation of the cleaning unit provided that screening was installed to block the view of the equipment. Staff noted that the screening would remain in place.

Staff noted that the proposal meets all the setback requirements; parking exceeds the required number of spaces; greenbelt and landscaping that was required with the previous approval has been met and the applicant has proposed no changes in signage, dumpster enclosures or lighting. Staff noted that DPW had indicated storm water management review will be required.

Wally Link, applicant, addressed the Board, noting that they wish to place a roof over the cleaning unit to protect it from the rain and snow. Mr. Link offered to answer any questions of the Board.

Motion by Kostrzewa, support by Smith to approve SPR-12-14 to allow the construction of an 805 square foot roof overhang and a 2,400 square foot future building addition on the property located at 1280 N. Fancher, based on the site plan dated June 11, 2012 and prepared by Dennis Maloney, architect, for Wally Link, with the following conditions:

1. All conditions related to the prior site plan reviews for the property (SPR-10-08 and SPR-10-12) remain in effect.
2. Construction of phase 2 of the project may proceed provided that the Site Plan Review remains current. Construction after one year from the date of this approval

- will require the applicant to seek an extension of this approval or a new site plan approval.
3. The applicant shall demonstrate that any new site lighting shall meet the requirements of Section 96.13 of the City Code prior to issuance of a building permit.
 4. The applicant shall comply with the requirements of the Division of Public Safety (DPS) and the Division of Public Works (DPW).

Motion approved unanimously.

B. SPR-12-15 - Mulder Glass for Panera Bread

Staff introduced Case SPR-12-15, noting that the Commission recently approved the conversion of the former Fazoli's restaurant located at 2111 S. Mission Street into a Panera Bread with a drive-through window. Staff reported that the applicant is asking for a modification to the approved site plan to convert a portion of the patio to allow the addition of a small atrium. This would convert part of the outdoor patio seating to indoor seating. Staff noted that this change results in a slight increase in the building area, and therefore requires site plan review. Staff reported that the site has sufficient parking to meet Ordinance requirements and further noted that there is significant overflow parking available on the adjoining shopping center property.

Staff noted that the decorative fencing would need to be modified to accommodate the changes. The sidewalk that the Planning Commission required the applicant to install will provide pedestrian access to the patio.

Staff noted that there were no concerns from DPW and further noted that DPS has indicated the new enclosed atrium will be required to be sprinklered as is the main building.

Staff concluded his report noting that the proposal complies with all setback requirements and is recommending approval.

Silas Mulder, Representing Panera Bread, addressed the Board, noting that they wished to add additional indoor seating based on the limited time that outdoor seating can be used in Michigan, and offered to answer any questions from the Board.

Motion by Smith, support by Brockman to approve SPR-12-15 to allow the construction of an atrium addition on the property located at 2111 S. Mission Street, based on the site plan dated June 15, 2012 submitted by Panera Bread #1613, with the following conditions:

1. All conditions related to SUP-12-02 shall remain in effect.
2. The applicant shall demonstrate that any new site lighting shall meet the requirements of Section 96.13 of the City Code prior to issuance of a building permit.

3. The applicant shall comply with the requirements of the Division of Public Safety (DPS) and the Division of Public Works (DPW).

Motion approved unanimously.

VIII. Unfinished Business

A. SUP-12-04 & SPR-12-03 - 1003 Douglas - Joseph Olivieri.

Staff provided an overview of the request, noting that the Commission held a public hearing on this request in June, which involves the razing of two non-conforming buildings and the construction of one building to be used as a rooming dwelling. Staff noted that the applicant was asking for 11 occupants, where 9 is allowed by Ordinance. Staff referred to the recently endorsed document outlining the Review Procedures for Redevelopment of Housing in the M-2 Zoning District, which states that "occupancy increases should be limited to one additional tenant, with two only considered on rare occasions. Staff reminded the Commission that following the Zoning Board of Appeals approval of the two additional occupants; the Commission had postponed action last month, requesting the Zoning Board articulate what the "rare occasion" was that warranted two additional occupants.

Staff reported that the ZBA had revisited the case at their June 27th meeting and reaffirmed their previous decision, noting the following finding:

The case is unique for the following reasons:

1. The applicant worked and cooperated significantly with staff over a period of time (3 Months) to provide a number of revisions that were requested by the Board.
2. The applicant is reducing a significant number of non-conformities, such as:
 - a. Elimination of two non-conforming dwellings, including a rear dwelling unit which did not meet setbacks, and replacing them with one building.
 - b. Parking Ratio will be increased to exceed ordinance requirements
 - c. Parking will be hard surface
 - d. All setbacks will comply
 - e. The distance between the building and those on the adjoining property will meet ordinance requirements.
3. The applicant has upgraded the proposed building materials and added architectural detail.
4. The applicant has agreed to put stricter language in their lease agreements.
5. The redevelopment will mean a significant increase in property values.

Staff concluded his report noting if the Commission was comfortable with the ZBA's finding of facts and approval of 11 tenants, they may take action to approve the request for the Special Use Permit and Site Plan Review.

Joe Olivieri, applicant for the case, addressed the Board, offering to answer any questions.

Chairman Orlik commented that the ZBA reiterated why they approved the request; noting 5-9 different elements; however, he noted that he wished they had stated what the specific rarity was. He further commented that he is wrestling with the request and what it may mean for future requests.

Staff noted that the ZBA had some apprehensions over specifically defining "rare" as they wished to maintain some flexibility. Staff suggested that once we move beyond this case, we may wish to take the opportunity to review the document and have some dialogue with the ZBA to see if we wish to quantify the meaning.

Chairman Orlik gave a brief review of the document outlining review procedures for the viewing public to give some clarity on what the Commission is struggling with.

Commissioner Quast noted that she was present at the ZBA meeting and what was stated in the minutes is what the Board stated. She commented that, as the crossover member to the ZBA, she voted against the request because she was struggling with identifying the rare instance as well. She suggested the applicant may wish to speak more to what makes this a rare case.

Chairman Orlik asked the applicant if there was anything other than what the ZBA had articulated in the minutes that would make this a rare instance.

Mr. Olivieri stated that the document itself doesn't articulate what a rare instance is and commented that he is providing an additional parking space; the owner is adding \$17,000 in brick to the exterior and noted that of all the redevelopments he has been involved in, this one is reducing the largest number of non-conformities. Chairman Orlik asked in comparison, how many more non-conformities would be eliminated. Mr. Olivieri estimated probably double the amount of the others.

Commissioner Brockman commented that the ZBA has considered several requests - and noted that at the time he was serving as the cross-over member, a request came in for four additional occupants. The applicant was denied. He commented that he trusts the ZBA's judgment and noted that they have taken a lashing lately on how they are doing their jobs and in his opinion they are doing a remarkable job. He stated he did not believe they would have passed it along if they had not felt it was justified - they never have in the past.

Chairman Orlik questioned whether the Commission is comfortable taking this case and using it as a benchmark.

Commissioner Hoenig commented she would like more clarity on "rare" circumstances.

Chairman Orlik commented the Commission could do one of two things:
Make a motion to approve 11 occupants or make a motion to approve the SUP with 10 occupants.

Commissioner Quast commented that she feels it is a great project; however still expressed some concern over what is the benchmark.

Commissioner Kostrzewa stated that both the words "unique" and "rare" are intangible and will always be. He further stated that the ZBA has stated that this case is "unique" and he has enough respect for them to trust their judgment on this one.

Commissioner Hoenig stated that if the policy is not clear, then we will continue to receive these requests. Both Commissioner Brockman and Vice-Chairman Smith stated that if that is the case, then the policy may need to be changed.

Commissioner Shellady stated she is looking for some shared understanding of the policy and that the policy issue needs to be addressed.

Motion by Kostrzewa, support by Brockman to approve the request for SUP-12-04 from Joe Olivieri on behalf of Rentwood Management, LLC to allow construction of a Rooming Dwelling with a maximum occupancy of 11 at the property located at 1003 Douglas with the following conditions:

1. The applicant shall comply with the Department of Building Safety and the Fire Department requirements to obtain and retain a Rental license.
2. The applicant shall comply with all site plan review requirements.
3. The applicant shall comply with the requirements and conditions of the Zoning Board of Appeals.

Roll Call Vote:

Ayes: Smith, Kostrzewa, Brockman

Nays: Shellady, Quast, Hoenig, Orlik

Motion denied 3:4.

Motion by Kostrzewa, support by Brockman to approve the request for SUP-12-04 from Joe Olivieri on behalf of Rentwood Management, LLC to allow construction of a Rooming Dwelling with a maximum occupancy of 10 at the property located at 1003 Douglas with the following conditions:

1. The applicant shall comply with the Department of Building Safety and the Fire Department requirements to obtain and retain a Rental license.

2. The applicant shall comply with all site plan review requirements.
3. The applicant shall comply with the requirements and conditions of the Zoning Board of Appeals.

Roll Call Vote:

Ayes: Hoenig, Shellady, Quast, Brockman, Kostrzewa, Orlik.

Nays: Smith

Motion approved 6:1.

SPR-12-03.

Joe Olivieri, requested that the Commission postpone action on SPR-12-03.

Motion by Kostrzewa, support by Shellady to postpone action on SPR-12-03 at the applicant's request.

Motion approved unanimously.

IX. New Business:

None

X. Other Business:

A. Staff Report

1. August Planning Commission meeting - Anticipated Agenda Items.

Staff noted that the Planning Commission will be holding a public hearing regarding vacating an alley and provided a brief background of the request.

B. Master Plan Update:

Staff provided a schedule of the Master Plan update, noting that there has been a lot of behind-the-scene work taking place. The CMU class has completed the demographic study and has provided us with their report. In addition, the City Commission has approved a sole source contract with AECOM. The City Attorney is currently working on the language. Staff commented that he hopes to begin working with Ian Lockwood, from AECOM, soon after Labor Day.

In addition, staff reported that the RFP for Planning Consulting Services has been sent out and bids are due July 31st. Once they are received, interviews will be scheduled; potentially for the last week in August (staff will send out potential dates) with hopes of having a contract by mid-September.

C. Other

- a. **Goals & Priorities:** Commissioner Quast noted that next month's agenda may be lighter and suggested it may be a good time to take a look at the Commissions goals and priorities.
- b. **ZBA/Planning Commission:** Commissioner Brockman questioned the current practice of sending cases to the ZBA prior to the Planning Commission hearing them, noting that on two recent occasions; the Planning Commission has either reverted the decision or sent it back after they have received approval. Chairman Orlik stated that it is difficult for the Planning Commission to approve something prior to the ZBA action.

Staff commented that the redevelopment process has evolved, and noted that in the case of 1003 Douglas, the intent was not for the ZBA to take issue. The Commission felt that the rare instance was not articulated clearly enough and wants to use some caution.

Commissioner Kostrzewa commented that you can't define unique or rare, as everyone sees it differently - it is intangible. Discussion ensued.

Staff commented that if the Commission is interested in further defining the process, a work session could be scheduled to look at it closer. Commissioners expressed interest in a session for this purpose.

Adjournment:

Motion by Kostrzewa, support by Shellady to adjourn.

Meeting adjourned at 8:40 p.m.

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