

**PLANNING COMMISSION
MEETING MINUTES
WEDNESDAY, OCTOBER 18, 2006
COUNCIL CHAMBER
7:30 P.M.**

I. CALL TO ORDER

The meeting was called to order at 7:31 p.m.

II. ROLL CALL

Present: R. Johnson, G. Clark, B. Lenart, M. Greff, R. Andrews,
B. McClemens, C. Zuellig, P. Lippens

Absent: None

Staff: N. Voght, City Planner, N. Schuette, Executive Secretary

Commissioner Johnson welcomed new member, Paul Lippens, to the board.

III. APPROVAL OF MINUTES – September 20, 2006

Commissioner Lenart moved to approve the minutes of September 20, 2006 (Support: G. Clark) and the motion carried unanimously.

IV. AUDIENCE PARTICIPATION

None

V. OLD BUSINESS

None

VI. NEW BUSINESS

1. 1486 Washtenaw – Special Use and Site Plan Review

N. Voght presented the staff report stating that this is an application for a specialty wine-tasting and retail use for customers to order custom wine for pick up at a later date. The use is proposed to occupy one tenant space, within a multi-tenant property with two total retail spaces, approximately 2600 sq. ft. The building has a second floor which is currently vacant and is proposed to remain vacant. There is also an ancillary parking lot to the north across an alley which has historically served this property and is under the same ownership. The parking lot is zoned R1 Single Family while the commercial building is zoned B-1 Neighborhood Business.

The site plan shows the general layout of the area and the properties in question. The plan has been revised a number of times with the input of the City Planner. The plan was prepared by Mr. Kubiske, engineer for the project. Voght stated that while normally he provides a review of the standards for a Special Use, it was his opinion that the accompanying Site Plan was not sufficiently complete to properly review the standards. The Site Plan should be substantially complete in order for the board to determine if the special use standards have been met. Despite having worked with the applicant and her engineer for a number of months, the engineer has not addressed a few key requirements and the Site Plan still has a number of deficiencies.

Voght brought up another issue, which is that the other tenant occupying this property (Mr. Pizza) has been open until 3:00 a.m. for a number of years, contrary to B-1, Neighborhood Business regulations. The Planning and Development Department has informed the owner of the violation and attempted to gain voluntary compliance by requesting that the owner either limit hours to midnight, or Mr. Pizza must apply for a Special Use Permit to be open past 12:00 p.m. The application by Ms. Sullivan, U-Brew, would have been a perfect opportunity for the owner of the property to seek required approvals by both his tenants together for Special Use and Site Plan and review it at one time. However, it appears the owner has chosen not to pursue this. Voght is concerned about granting any approvals pursuant to the Zoning Ordinance for a property which is currently in violation of the same Zoning Ordinance. The property owner authorized U-Brew to apply for Special Use approval as a tenant, and therefore the owner is ultimately responsible for the legal use of the property as a whole.

Voght mentioned the key requirements that were not addressed despite multiple revisions to the plan, which include a photometric study on the new lights recently installed, as well as the dumpster enclosure. The Planning Commission has consistently required that any existing dumpsters on properties undergoing Site Plan review be upgraded to our current screening standards of a masonry enclosure with a woodent privacy swing gate.

Staff recommends that the proposed Special Use and Site Plan be denied based on the following findings:

1. The applicant has not demonstrated compliance with Site Plan Review criteria of 122-127, which is required by Section 122-165 (b) of the Special Use standards.
2. The property is currently in violation of the B-1, Neighborhood Business Zoning District requirement that any use open between the hours of 12:00 a.m. and 6:00 a.m. requires Special Use approval. The owner and tenant have not taken any steps to address the violation since being notified on October 16, 2003.
3. The enclosure and screening of the existing dumpster are not provided in the Site Plan, as required by 122-709 of the Zoning Ordinance.
4. New light fixtures have been installed on the rear of the building, but a photometric study and fixture details have not been submitted to demonstrate compliance with 122-641 of the Zoning Ordinance.
5. No landscaping is provided for the parking lot, although required by 122-704.

Chairperson Johnson asked Voght to confirm that even although the property is two separate businesses, the site plan has to encompass both and Voght responded that any site plan submitted is for a property under single ownership rather than pieces of property, and although 1486 Washtenaw may not use the dumpster, it still must be considered as part of the site plan.

Commissioner Lenart moved to open the public portion of the hearing (Support: G. Clark) and the motion carried unanimously.

Cheryl Sullivan, 325 E. Cross – is the owner of the business and has been a resident of Ypsilanti for 20 years. She received a letter from the Planning Department with new guidelines just the day before the meeting and since she was unprepared to respond, she referred this to her representative.

Henry Ritchie, 616 N. Mohawk, Ypsilanti – stated that he is a local attorney. While he appreciates the improvements of large projects on Michigan Avenue, it is his opinion that the City of Ypsilanti is an older community with older buildings, many of which are vacant. Ms. Sullivan is a small business owner and wants to comply with the best of her ability, but is asking for a reasonable approach to a difficult problem.

Ms. Sullivan's business does not generate any garbage – everything is recyclable materials. She will not be using the dumpster since her business is what is considered "green". He referred to a letter from the owner in which it was stated that she was not allowed to use the dumpster. On landscaping, there is very little room for landscaping out front and she has planned to do whatever possible in the back – it is very limited. Regarding the lighting, Ms. Sullivan will install the correct lighting but she does not own the building and has no legal right to change the location of a fence since she is only a tenant of the building. She also has limited resources. Ms. Sullivan will commit to doing the things she has the authority to do. He suggests that we get the owner of the building in to comply with the ordinance.

Chairman Johnson asked if the parking lot was striped on both sides and Ms. Sullivan responded in the affirmative. Commissioner Clark referred to the e-mail which states that Ms. Sullivan should "refrain from using the dumpster". He questioned why this request is being made if, as stated, she would not be using the dumpster but the e-mail implies otherwise. Ms. Sullivan responded that it was a misunderstanding. Commissioner Lenart asked if store owners could come in and order large quantities for their store and Ms. Sullivan stated they could not since she does not have a license for that purpose. Commissioner Greff asked the type of licenses required and Ms. Sullivan stated she had already received a wine-making license from the Federal Government but the license from the Liquor Control Commission is in process. Commissioner Greff added that the LCC license would allow her to sell large quantities to store owners.

Chairperson Johnson stated that although Ms. Sullivan is the tenant, unfortunately, a lot of the issues goes with the owner and puts her at financial risk of improving property that she cannot sell. Regarding the issue of the dumpster, it does come under the ownership clause and while she may not have any need of one, it still becomes incumbent upon the property, Mr. Pizza or the owner or the three together to come up with a means of enclosing it or taking it out, making the restaurant owner even more out of compliance. Ms. Sullivan insisted that she would not be using the dumpster. However, Chairperson Johnson reiterated that the dumpster enclosure is a necessary part of her site plan.

Voght responded that we must be consistent in our standards for a site plan, and an enclosed dumpster is part of these standards. Some board members suggested the possibility of Ms. Sullivan approaching the other tenant to try to resolve the issue of non-compliance but Ms. Sullivan responded that she would not feel comfortable in that role.

David French, 325 E. Cross – stated that he is Ms. Sullivan's Operations Manager. He explained that the issue on the dumpster pertained to the previous tenant. They are planning on having an individual trash can and have no need of a dumpster. He spoke with Mr. Romain, the property owner, but was unaware of the problem with compliance of the Mr. Pizza tenant. Chairman Johnson asked for hours of operation to which Mr. French responded that they will be open Monday – Friday 11 – 7:00 p.m. Saturdays and Sundays 12 – 6:00 p.m.

Julie Brettenbach, 711 Collegewood – has no objection to this type of business in the neighborhood – feels that it is unique and she is supportive of small businesses.

Chad Clay, 402 Campbell Avenue, Ypsilanti Township – has known the applicant for many years and is supportive of her request.

Commissioner Greff moved to close the public portion of the hearing (Support: B. McClemens) and the motion carried unanimously.

Commissioner Johnson stated that he agreed with the City Planner that there are so many issues on the site plan regardless of the compliance of Mr. Pizza. The choices of the board are to either table or deny the application.

Commissioner Lenart stated that the site plan is missing standard information that has been identified. This is an existing site but there are some challenges which he feels can be achieved. The challenge is we have a landlord who is trying to benefit without spending money. Lenart is not inclined to deny and would like to give the applicant the opportunity to have discussions with the property owner. There is not a lot of opportunity for landscaping which is a reasonable assessment. However, the back parking lot has been striped, there is a potential to upgrade the dumpster, regardless of whether or not the applicant plans to use it. He is not ready to deny this applicant but recommends that the applicant meet with the property owner to discuss these concerns, also giving the City time to ensure compliance with the ordinance. Commissioner Clark agreed with Lenart. This is an opportunity for the owner to ensure that

his property is leased and it would be a relatively low investment to upgrade the site.

Commissioner Andrews asked the City Planner the reason the issue of B-1 zoning compliance has been ongoing since 2003 and Voght responded that this has been a challenge, and staff tries to gain voluntary compliance first and only write tickets as a last resort. In this case, staff exchanged letters with the owners' attorney as recently as May and June regarding the Mr. Pizza hours of operation issue, with no resolution. Commissioner Zuellig agrees that tabling would give more opportunity to make some effort with the owner since the use is acceptable. She is interested in staff's opinion of Special Use conditions.

Commissioner Lenart moved to table the application for Special Use for 1486 Washtenaw based on the fact that:

- a. Additional information is required as stated in the Staff Report dated October 13, 2006.
- b. The site plan does not include dumpster specifications and location, location to comply with the ordinance.
- c. Would encourage the City to take appropriate steps as deemed necessary by City Attorney's office to enforce zoning ordinance on Mr. Pizza hours of operation.
- d. Analysis on Special Use Criteria in updating the next staff report.

The motion was supported by G. Clark.

Mr. Ritchie asked if Ms. Sullivan is being held responsible for the business hours of the other tenant and Chairperson Johnson responded that the board is willing to have the City Attorney step up the level of enforcement so that Mr. Pizza can come in to comply, possibly co-applying for a Special Use Permit. Mr. Ritchie added that it is his opinion that Ms. Sullivan is still at the mercy of the landlord when she has no legitimate legal authority to build the dumpster if the owner refuses. Mr. Ritchie asked for clarification that if the owner does not respond, will the Planning Commission deny her use? Chairperson Johnson responded that this was not included in the motion and not what was stated.

Mr. Lenart added that the intention of his motion is that the City is the entity capable of enforcing the zoning ordinance in relation to hours for Mr. Pizza, However, he does look to the applicant to coordinate with same individual and figure out how interested they are in Ms. Sullivan securing this lease by them complying with the City ordinance. Planning Commission is looking for the applicant to have a discussion with the

landlord about accommodating site improvements but not asking the applicant to enforce the zoning ordinance as to the Mr. Pizza hours of operation.

A roll call vote was taken and the motion carried unanimously.

2. N. Lincoln Street and Adjacent Alley Vacation Application

N. Voght gave his staff report stating that this is an Alley Vacation Request as well as a Street Vacation Request for a small section of N. Lincoln. The location is N. Lincoln but the section of N. Lincoln is south of East Cross which dead-ends into the Norfolk/Southern Railroad. The alley itself extends easterly up the hill to Park Street from the same location. He provided an aerial showing the area under discussion as well as a survey. The process for alley vacation is a recommendation by Planning Commission to City Council for approval if they so desire. The area is zoned C/I, Commercial Industrial, with the exception of the home on N. Park on the north side of the alley, which is zoned R1 Single Family. Lincoln Street serves two businesses, the printing operation on the west side and Mr. Limbright's facility on the east side.

An application was filed which included signatures from all property owners adjoining the alley and street in question. One of the property owners who originally signed the petition has now sent a letter having reservations about closing the alley. Copy of this letter was distributed to board members. The Planning Commission confirmed that removal of this property owner does not void the application, since a majority of abutting owners must sign in order to apply, and Voght confirmed that the application could proceed.

Voght reviewed the standards and recommended that a public hearing be held to receive neighborhood and board input and then table item awaiting further discussion with Police Department, Building Department, Department of Public Works, Fire Marshal and Fire Chief on concerns of fire protection, dead-end street, turn-around issues, snow removal, and other concerns regarding land-locked parcels. If this alley was vacated, utility easements would have to be considered.

Commissioner McClemens moved to open the public portion of the hearing (Support: M. Greff) and the motion carried unanimously.

John Limbright, owns 316 N. Lincoln – gave some background on his various properties in the area. This started when the Planning Department informed them that the grading work conducted within their

parking lot required Site Plan review and the parking lot would need to be upgraded. Since the alley adjoins the parking lot as well as Lincoln Street, it made sense for him to request vacating these areas at this time. Young people race up and down the alley spinning their wheels. The City has not maintained the alley for over ten years and it has many potholes. There are signs posted "no through traffic" but people still go through there. Trash is another big concern. Mr. Limbright is proposing to leave the vacated alley open but place a barrier to prevent cut-through traffic and give each owner a key. The Fire Department could turnaround in the parking lot if necessary.

Chairman Johnson asked the location of the proposed barrier and Mr. Limbright responded it would be at the southeast corner of his building. Commissioner Zuellig asked the reason to vacate N. Lincoln and Mr. Limbright stated that there is not much there and he feels it makes sense to incorporate it into the parking lot since they will be doing landscaping, etc. Johnson stated there are some concerns by the Fire Marshal about not being able to reach the rear of 301 N. Park and Mr. Limbright responded that he could demonstrate that this could work. Voght added that this originated when Mr. Limbright acquired the parking area from Marino who owned 301 N. Park. He had done some things that required a site plan. We put a stop work order on what was being done, informed Mr. Limbright that a site plan was needed. He agreed but since that time decided that if N. Lincoln was vacated, it could be incorporated into the site plan for the parking lot. Commissioner McClemens asked if vacated, what the use would be and Mr. Limbright stated it would facilitate easier driveway for neighbors.

Mark Magiera, 309 N. Park – his property is adjacent to Mr. Limbright's property. Stated he is a good neighbor and he has no problem with vacating the alley. He would like some kind of gate/fence, which could be accessible by the Fire Department when necessary.

Jane Schmiedeke, 313 High Street - is a neighbor on the same alley. Not concerned with possible closing of alley. However, she is concerned with the vacation of the portion of N. Lincoln because it has a number of mature trees on it. Mr. Limbright has already removed a significant number of these trees on his property to the east of his building. While she understands this is zoned Light Industrial, it is neighbor to a residential area and she is requesting that these trees not be removed.

Commissioner Clark moved to close the public portion of the hearing (Support: R. Andrews) and the motion carried unanimously.

Chairman Johnson stated there has been a suggestion by staff that Planning Commission await further clarification by the Fire Department and other city departments. Voght responded that he had not been aware that Mr. Limbright was purchasing Marino's Building. It might be a good opportunity to sit down with the various people involved to review the various options with respect to access, etc. and come back before the board. Commissioner Zuellig stated while she is in favor of the alley vacation, she is not in favor of the N. Lincoln vacation as this is a public connection across the railroad that in the future could be a rails-to-trails connection or other important connection to the other side of N. Lincoln.

Voght shared with the Planning Commission that recently the Auto Museum secured an easement from Norfolk/Southern within the north side of the railroad right-of-way to Park Street. He is not sure how wide it is but it is his understanding that the removal of the vegetation that was referred to by Ms. Schmiedeke was by the Auto Museum. Voght thinks the trees are on the railroad right-of-way and not on Mr. Limbright's property. Johnson asked staff to confirm the location of the stakes.

After further discussion by board members, Commissioner Lenart moved to table our consideration of a recommendation to City Council on the vacation of an alley between N. Lincoln and Park immediately north of the Norfolk/Southern right-of-way as well as the southern most portion of the N. Lincoln Street extension that runs between Cross Street and the north boundary of the Norfolk/Southern right-of-way, based on a desire for more information from all City Departments regarding emergency vehicle access to all properties nearby and additional consideration of closing vs vacating the alley. This includes lack of adequate information on the tree location (Support: C. Zuellig). A roll call vote was taken and carried unanimously.

3. Peninsular Park Planned Unit Development Site Plan Revision

Voght stated this is an amendment to a previously approved PUD Plan. Section 122-578 of the Ordinance discusses minor changes to approved PUD Plans specifically stating that we should follow Site Plan Procedures. The Site Plan shows the overall development. One of the requirements was the construction of a public sidewalk from the west side of LeForge along the north side of Huron River Drive over to the retail shopping center. It has been determined that due to insufficient right-of-way and utility pole placement, the construction of this sidewalk is not possible.

After review by our Department of Public Works and looking at ADA requirements, it was agreed that a public sidewalk is not feasible. As an

alternative, the developer has agreed to give the City a cash escrow for other pedestrian improvements in the future. The amount is approximately \$15k. City Council reviewed this recently as an amendment to the PUD Agreement that was signed by the City and developer after approval of the PUD in 2004. Council agreed to the amendment to accept the equivalent cost of the sidewalk in cash for future pedestrian improvements in the area. However, because the sidewalk is shown on the approved PUD plan it also requires review by the Planning Commission.

Commissioner Zuellig asked how the figure of \$15K was determined and Voght responded that it was an estimate provided by the developer and Bill Bohlen, Director of DPW is checking the number to ensure it is a reasonable estimate.

Rick Kirk, Edwards Companies – he has been working for months with Mr. Voght on revisions to clean up any loose ends. The decision was made that a sidewalk was not workable, consequently, they offered to provide a cash escrow to be used for any improvements the City deemed necessary.

Commissioner Johnson asked if there had been discussion in lieu of a sidewalk and Mr. Kirk responded that the City Council had discussed the possibility of using the funds for the path along the Huron River. Commissioner Lenart stated that the original plan had potential for some additional parking and wondered if that had been resolved. Voght responded that we are working through that right now. Voght added that the PUD Agreement stated that the parking ratio was approved as shown but a parking study would be done within two years of occupancy to determine if there was a need for additional parking, and up to 50 additional spaces would have to be provided at that time. Mr. Kirk has put money in escrow for that study and the traffic synchronization study from MCI, both of which are already underway. Lenart stated that he feels strongly that the escrow funds be earmarked specifically to benefit the residents of this property. Commissioner Lippens agreed with Lenart but added that pedestrian improvements near this property will also benefit residents to the north.

Commissioner Lenart moved to approve the revised Site Plan as presented and as previously discussed, the escrow be earmarked for pedestrian improvements in this vicinity as discussed by City Council (Support: G. Clark). A roll call vote was taken and carried unanimously.

4. Chairman Johnson stated at the next meeting, we should consider what direction to take on the R1A situation to enable us to address the whole Accessory Dwelling issue.

VII. ADJOURNMENT

Since there was no further business, Commissioner Clark moved to adjourn the meeting (Support: R. Andrews) and the motion carried unanimously. The meeting adjourned at 10:18 p.m.