

MINUTES OF THE PLAN COMMISSION
April 14, 2014

The regular meeting of the Plan Commission was called to order by Chairman Mark Moore at 7:02 p.m. at the Village Hall.

Members present: Chairman Mark Moore, Scott Adams, William Cotey, Dan Donahue, Walter Oakley, Kurt Schultz, and David Semmelman.

Members absent: None.

Village Staff present: John Spoden, Director of Community Development; and David Smith, Senior Planner.

Commissioner Semmelman moved, seconded by Commissioner Cotey, to approve the March 10, 2014, Plan Commission meeting minutes.

Motion carried 7 - 0.

NEW BUSINESS:

PC 14-08 Mark Loeb, Applicant
412 N. Milwaukee Avenue

Request is for an Amendment to Ordinance No. 93-O-52 which granted a Special Use Permit for a Microbrewery accessory to a Full Service Restaurant, including an outdoor eating area, in order to expand an existing outdoor eating area in a C-1, Downtown Core Commercial District.

PC 14-09 Mark Loeb, Applicant
412 N. Milwaukee Avenue

Request is for a Site Plan Permit in order to expand an existing outdoor eating area in a C-1, Downtown Core Commercial District.

Mr. David Smith, Senior Planner, introduced the petitioner's request. He stated that the petitioner, Mark Loeb, is requesting approval for an Amendment to a Special Use Permit and Site Plan Permit in order to expand an outdoor eating area for a Food Service and Drinking Place and Microbrewery limited to a Full Service Restaurant, including outdoor eating area, but excluding Drive-In Restaurant, in a C-1 Downtown Core Commercial District located at 412 N. Milwaukee Avenue. He stated that Mr. Loeb is the owner of the property of 412 N. Milwaukee Avenue.

Mr. Smith stated that the subject site located 412 N. Milwaukee Avenue is currently occupied by the Mickey Finn's Brewery restaurant and microbrewery. He stated that Mickey Finn's is in the process of relocating to 345 N. Milwaukee Avenue. He stated that the new tenant will be Timothy O'Toole's Restaurant. He stated that Mickey Finn's established occupancy at 412 N.

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Milwaukee before 1984. He stated that in 1993, the Village Board granted an ordinance for a Special Use Permit to allow a Microbrewery and Associated Uses in conjunction with the proposed expansion of Mickey Finn's Restaurant.

Mr. Smith stated that one of the conditions for approval of the 1993 ordinance was that the outdoor eating area shall have a minimum setback of 17 feet from the west property line which abuts the Milwaukee Avenue right of way, instead of the 20 feet required at that time. Mr. Smith stated that the current Zoning Code that would not require any setback for outdoor dining from the front property line in the C-1, Downtown Core Commercial District.

Mr. Smith stated that Mr. Loeb is proposing to expand the outdoor dining patio area to meet the front western property line. Mr. Smith stated that the scope of work includes installing an outdoor stone fire place, patio expansion to be done with brick pavers and along the property line perimeter will include a two foot high brick wall with a wrought iron 16" fence on top. Mr. Smith stated that these proposed changes shall require an Amendment to the 1993 Ordinance that granted the Special Use Permit and a Site Plan Permit.

Mr. Rick Swanson, architect representing the petitioner, presented the proposed changes for the O'Toole's of Libertyville for 412 N. Milwaukee Avenue. Mr. Swanson stated that there is a Pine Tree located within the area of the proposed expanded outdoor eating area that is to be removed, but that they will keep the existing deciduous tree. He stated they plan to raise the proposed wrought iron fencing on top of the stone knee wall to be 42". He stated that the outdoor dining area will become similar to a beer garden environment. He stated that there will be little landscaping, but will include flower boxes along the proposed perimeter fencing. He stated that the proposed outdoor fireplace will be gas burning and not wood burning. He stated that the outdoor patio area will have a trellis constructed over the dining area. He stated that O'Toole's will keep the microbrewery component of the restaurant.

Commissioner Oakley asked if the number of outdoor dining seating will increase. Mr. Mark Loeb, building owner and petitioner, stated that the number of outdoor dining seating will remain the same at 64.

Commissioner Cotey asked for clarification of the proposed outdoor fireplace chimney height. Mr. Swanson stated that the fireplace height is proposed to be 26 feet.

Commissioner Cotey stated that he is concerned about the proposal to allow the storage of firewood on site. He asked if there will be any use of outdoor heaters in the outdoor dining patio area. Mr. Loeb stated that they can opt to not store firewood on site. He stated that he will allow the restaurant tenant to decide if they need outdoor heaters or not, but under no circumstances will he allow the use of a tent on the outdoor dining area.

Chairman Moore asked about the level of emissions coming from the fireplace chimney. Mr. Swanson stated that the neighboring building owner is proposing to build out a new restaurant to include roof top dining. He stated that his understanding is that the proposal for next door will require the roof top dining to be forward of O'Toole's proposed outdoor fireplace and should not

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be impacted by the fireplace. He stated that it is a clean burning gas fireplace and should not exhaust smoke from the chimney.

Chairman Moore asked about the width of the walkway leading up to the entrance. Mr. Swanson stated that it is approximately 54”.

Chairman Moore asked if an additional emergency egress should be added to exit from the outdoor dining area. Mr. Swanson stated that if the Plan Commission is requesting a second egress from the outdoor dining area it could be installed along the perimeter west property line.

Commissioner Cotey stated that the second emergency egress may not be necessary.

Chairman Moore asked what the petitioner wants the Plan Commission to do tonight. Mr. Swanson stated that they would like for the Plan Commission to give a positive recommendation to the Village Board tonight.

In the matter of PC 14-08, Commissioner Oakley moved, seconded by Commissioner Adams, to recommend the Village Board of Trustees approve an Amendment to Ordinance No. 93-O-52 which granted a Special Use Permit for a Microbrewery accessory to a Full Service Restaurant, including an outdoor eating area, in order to expand an existing outdoor eating area in a C-1, Downtown Core Commercial District, subject to the following conditions:

- 1. That the gate attached to the fence enclosing the dining area shall open when pushed and have panic hardware. The gate shall not open from the outside of the patio dining area. A mesh panel shall be provided on the gate to prevent reaching through to the panic bar. The panel shall be without openings greater than ½” within 18” of the panic bar.*
- 2. That an exterior fence and gate shall completely enclose the outdoor dining area.*
- 3. That the proposed stone knee wall with wrought iron fence enclosing the outdoor dining area shall have a combined total height of not less than six (6) feet.*
- 4. That the wrought iron fence bars shall be spaced narrowly apart so that the passing of alcoholic beverages from the outdoor dining area to pedestrians on the public sidewalk would be prohibited.*
- 5. That public access to the outdoor dining area can only be gained from within the restaurant, not from the public sidewalk.*

Motion carried 7 - 0.

Ayes: Moore, Adams, Cotey, Donahue, Oakley, Schultz, Semmelman
Nays: None
Absent: None

In the matter of PC 14-09, Commissioner Schultz moved, seconded by Commissioner Donahue, to recommend the Village Board of Trustees approve a Site Plan Permit in order to expand an existing outdoor eating area in a C-1, Downtown Core Commercial District, subject to the following conditions:

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1. *That the gate attached to the fence enclosing the dining area shall open when pushed and have panic hardware. The gate shall not open from the outside of the patio dining area. A mesh panel shall be provided on the gate to prevent reaching through to the panic bar. The panel shall be without openings greater than ½” within 18” of the panic bar.*
2. *That an exterior fence and gate shall completely enclose the outdoor dining area.*
3. *That the proposed stone knee wall with wrought iron fence enclosing the outdoor dining area shall have a combined total height of not less than six (6) feet.*
4. *That the wrought iron fence bars shall be spaced narrowly apart so that the passing of alcoholic beverages from the outdoor dining area to pedestrians on the public sidewalk would be prohibited.*
5. *That public access to the outdoor dining area can only be gained from within the restaurant, not from the public sidewalk.*

Motion carried 7 - 0.

Ayes: Moore, Adams, Cotey, Donahue, Oakley, Schultz, Semmelman
Nays: None
Absent: None

OLD BUSINESS:

PC 14-07 Village of Libertyville, Applicant

Request is for an Amendment to Chapter 17, Article III of the Libertyville Municipal Code in order to regulate Mobile Venders, Itinerant Merchants, and Transient Merchants in the Village of Libertyville.

Mr. David Smith, Senior Planner, introduced the proposed text amendment to regulate mobile vendors in the Village of Libertyville.

Mr. John Spoden, Director of Community Development, stated that one of the more significant changes is allowing mobile vendors to operate only on private property and prohibit their operation within the public rights-of-way.

Commissioner Schultz stated that he is concerned about what types of services could be provided by mobile vendors.

Mr. Spoden stated that it would be difficult from a legal standpoint to discriminate certain mobile vendors from others.

Commissioner Schultz stated that consideration could be given to listing out which services the Village wouldn't allow.

Chairman Moore stated that he is concerned that anyone can pull up onto a lot and sell anything. He stated that there are certain limitations for land uses in each Zoning District. He stated that consideration should be given to applying the same idea to mobile vendors.

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Mr. Spoden stated that it would be inconsistent with the intent of the Code to prohibit certain types of mobile vendors from the residential districts while at the same time Home Occupations are permitted in the residential districts.

Chairman Moore stated that there appears to be a distinction between inviting a mobile vendor to sell from a residential lot and inviting a mobile vendor to sell from a commercial lot.

Mr. Spoden stated that the proposed ordinance is Village-wide except for the prohibiting mobile vendors from the C-1 District.

Mr. David Goles, Village Attorney, stated that the legal concern is the potential for disparate impact when focus is given to distinguishing between type and trade in business and the inconsistency in the manner in which they could be treated.

Commissioner Schultz stated that it makes him nervous if a wide variety of mobile vendors are allowed to go anywhere when brick and mortar establishments are regulated to certain zoning districts depending upon what they are.

Mr. Spoden stated that there will be a licensing requirement that may be used to limit certain mobile vendor uses such as adult bookstores, but further consultation with the Village Attorney may be advised.

Mr. Goles stated that the Adult Use ordinance was written broadly and may be able to regulate mobile vendors, but it was written during a time without forethought of regulating mobile vendors.

Commissioner Schultz stated that he is concerned about the potential for distracting lights coming from the mobile vendor's vehicles.

Commissioner Donahue asked if mobile vendors will be permitted to sell services as well as merchandise. He asked for clarification as to why the Plan Commission is being asked to revise the existing regulations regarding mobile vendors. Mr. Spoden stated that Staff has been asked to review the current regulations in response to a particular mobile vendor requesting permission to park on a private commercial property to sell their merchandise. He stated that mobile vendors are currently restricted from selling their merchandise from private property and can only be on the public rights-of-way.

Commissioner Donahue asked if services such as a mobile tattoo or massage establishments would be permitted as mobile vendors under the existing or proposed ordinance. Mr. Spoden stated that those types of adult uses would not be permitted as mobile vendors.

Commissioner Donahue asked for clarification as to how the regulation would respond to coffee/donut trucks that show up at construction sites. Mr. Spoden stated that the proposal makes one distinction to allow mobile vendors to revisit the same site unrestricted if they sell for only one hour. He stated that if they want to exceed the one hour, they would then be limited to a particular site only four times per year.

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Commissioner Semmelman asked if the issuance of only five (5) mobile vendor licenses will be enough.

Chairman Moore stated that there may be a number of mobile vendors working in the community that are not aware they should be regulated. He stated that he is concerned about enforcement.

Mr. Spoden stated that the number of licenses could be increased, but an established limit was thought to be important. He stated that other communities that Staff surveyed had a small number capping the maximum permitted.

Chairman Moore stated that he does not disagree with a cap of five (5) licenses issued, but to note that this is an evolving issue and should be monitored.

Commissioner Cotey stated that he is concerned that there will be mobile vendors seeking to sell alcohol.

Mr. Spoden stated that they would have to have a liquor license.

Commissioner Cotey stated that he is concerned about the ability to sell e-cigarettes.

Mr. Spoden stated that the Police Department is currently reviewing e-cigarettes to see if they want to apply additional regulations on e-cigarettes or not.

Commissioner Oakley stated that he is concerned about the ability to enforce mobile vendor regulations.

Mr. Spoden stated that they will rely on the Police Department to assist with enforcement.

Commissioner Cotey stated that he is concerned about mobile vendors selling food items.

Mr. Smith stated that the regulation would require certificates of approval from the Lake County Health Department.

Chairman Moore stated that consideration could be given to increasing the cap on permits issued.

Commissioner Schultz stated that he is comfortable with a cap number closer to eight (8).

Mr. Spoden stated that it would not be difficult to amend this regulation as it is an amendment to the Municipal Code, not the Zoning Code.

Commissioner Donahue stated that he is concerned about putting the ice cream trucks out of business.

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Mr. Spoden stated that with the change of this regulation, ice cream trucks, like all other mobile vendors, would be prohibited from selling from the street and could only sell from private property.

Commissioner Cotey stated that he is not comfortable with a permit cap of eight (8) and that the Village should start out with a smaller number until any potential administration and enforcement issues are resolved. He stated that five (5) would be better to start out with.

Commissioner Donahue asked for clarification of regulating the location and frequency of permitting mobile vendors to sell their service or merchandise in the Village. Mr. Spoden stated that the proposal is to permit mobile vendors to sell their service or merchandise from private property with the property owner's permission, four (4) times a year on any particular lot, more frequently on a particular lot if limited to one hour. He stated that Staff is addressing the potential impact of a mobile vendors setting up shop and not vacating property for extended periods of time, yet enable them to sell from private property.

Commissioner Oakley stated that he is concerned about the proliferation of mobile vendors without permits.

Mr. Spoden stated that they have issued three (3) permits so far.

Commissioner Adams stated that he agrees with Commissioner Cotey on the lower number cap on permits issued.

In the matter of PC 14-07, Commissioner Oakley moved, seconded by Commissioner Semmelman, to recommend the Village Board of Trustees approve an Amendment to Chapter 17, Article III of the Libertyville Municipal Code in order to regulate Mobile Vendors, Itinerant Merchants, and Transient Merchants in the Village of Libertyville, as outlined in the Development Review Committee Report dated April 11, 2014.

Motion carried 5 - 2.

Ayes: Moore, Adams, Cotey, Oakley, Semmelman
Nays: Donahue, Schultz
Absent: None

COMMUNICATIONS AND DISCUSSION:

Chairman Moore asked about an article from the Daily Herald newspaper about moratoriums in Libertyville. Mr. John Spoden, Director of Community Development stated that the Mayor made a comment about applying a moratorium on restaurants in the downtown who are seeking to add seating until further consideration can be given to the existing downtown parking regulations. He stated that the Village Board has not yet taken action on the suggested moratorium.

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Commissioner Donahue moved, seconded by Commissioner Schultz, to adjourn the Plan Commission meeting.

Motion carried 7 - 0.

Meeting adjourned at 8:15 p.m.