

MINUTES OF THE PLAN COMMISSION
March 20, 2023

The regular meeting of the Plan Commission was called to order by Chairman Eric Steffe at 7:01 p.m. at the Libertyville Fire Department located at 1551 N. Milwaukee Ave., Libertyville, IL 60048.

Members present: Chairman Eric Steffe, Amy Flores, Walter Oakley, Thomas Rankin, and Gregory Wheeler.

Members absent: Richard Pyter.

A quorum was established.

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

Others present: Caitlyn R. Culbertson, Village Attorney.

Commissioner Wheeler moved, seconded by Commissioner Rankin, to approve the January 23, 2023, Plan Commission meeting minutes.

Motion carried 5 - 0.

OLD BUSINESS:

PC 23-03 Village of Libertyville, Applicant

Request is for a Text Amendment to the Libertyville Zoning Code in order to further regulate Temporary and Permanent Outdoor Dining and Parking Regulations.

Mr. John Spoden, Director of Community Development, introduced the proposed text amendment to the Zoning Code. Mr. Spoden stated relative to outdoor dining that circumstances have been fluid and changing over the past three years. Mr. Spoden stated that up until 2016, the Village of Libertyville allowed outdoor dining with few limitations and the Village also could grant an exemption from the parking requirement for up to 1,500 square feet for building additions per calendar year in the C-1 Downtown District. He stated that over time since then there were a number of additions in the downtown and the proliferation of outdoor dining areas in one form or another. He stated that the feedback that Staff was receiving indicated that there was a concern over the parking exemption and therefore, the amendment to the Code was made to reduce the square footage for the parking exemption be reduced from 1,500 square feet to 100 square feet and to allow up to but not more than 500 square feet for outdoor dining and not have to provide parking.

Mr. Spoden stated that two important events happened since 2016. He stated that one event was a change in philosophy relative to regulating outdoor dining and required parking, and the second

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was the COVID pandemic. He stated that when COVID hit in the beginning people were not going into the restaurants and there were no regulations in place to address the demand for temporary outdoor dining. He stated that in 2020, the Village passed an ordinance to accommodate temporary outdoor dining for the Libertyville restaurants which included banners. He stated that the next year in 2021, customers were slowly beginning to patronize the restaurants indoors and the Village updated the temporary outdoor dining ordinance. He stated that some of the changes included taking back the parking spaces and then in the following year it was amended again to take back the public sidewalks and alley ways by requiring that there be at least a 48 inch wide pedestrian access path through these areas that would otherwise be an outdoor dining area.

Mr. Spoden stated that Staff's intent is to continue to allow for temporary outdoor dining as it helps to enliven the downtown. He stated that the Village allows outdoor dining in other commercial districts but the benefit to the outdoor dining areas in the downtown is that it feels more European. He stated that questions have come into the discussion regarding some dining facilities that have presented themselves as outdoor dining. He stated that examples of the questionable outdoor dining areas include the Manchester building located at the southwest corner of Milwaukee Avenue and Lake Street where dining tables are outside both at Casa Bonita and Egg Harbor, but located under the building cantilever above the area, but not technically inside the restaurant. He stated that some of these restaurant owners eventually seek to make these dining areas available year-round by enclosing them with windows. He stated that the way the current Code is written these enclosures then become building additions and the restaurant should provide parking spaces for the additional floor area being enclosed.

Mr. Spoden stated that examples like Casa Bonita outdoor dining areas are not drawing additional parking than they have done so since the building was constructed. He stated that with or without the window additions creates a zoning interpretation conundrum.

Mr. Spoden stated that the direction from the Village Board is for Staff to implement regulations that provide the restaurants opportunities more conducive to meet their outdoor dining needs without ignoring appropriate parking regulations. He stated that the proposed Zoning Code text amendment is crafted in such away with the intent to accomplish these ends. He stated that within the proposal both temporary outdoor dining and permanent outdoor dining regulations are discussed. He stated that temporary outdoor dining would be for six (6) months from May 1st to November 1st. He stated that the parameters for temporary outdoor dining would incorporate the use of a tent. He stated that the Fire Department would be involved when issuing permits for the tent and the six month cap on the time period would preclude the requirement for fire sprinklers, etc.

Mr. Spoden stated that the Zoning Code already allows for permanent outdoor dining for up to 500 square feet devoted to the outdoor dining area before a parking requirement kicks in. He stated that in the past the Zoning Code had a 1,500 square foot building addition allowance in the C-1 downtown district with a parking requirement exemption. He stated that Staff have been meeting with various restaurants to discuss future additions in the C-1 downtown. He stated that the prospective additions are generally around 1,000 square feet. He stated that Micky Finn's did an addition with a roofing structure that incorporated louvers that could allow the roof to partially open up to the sky and the Village at that time took the position to allow it as outdoor dining

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without charging them for additional parking although the addition could allow for year-round customer occupancy. He stated that Micky Finn's now wants to reconstruct the louver roof with a metal roof because it leaks.

Mr. Spoden stated that the Coppolillo's Italian Steakhouse restaurant located at 160 East Cook Avenue has had an outdoor dining area for some time. He stated that the Village did not require additional parking when the Coppolillo's building changed from an office use to a restaurant use, but when they proposed to enclose the outdoor dining area they would then be required to provide additional parking.

Mr. Spoden stated that the Board Room, previously Tommy's, is seeking approval to enclose their outdoor dining area with operable windows. He stated that the Board Room outdoor area is approximately 1,000 square feet.

Mr. Bob Bleck, architect, stated that depending upon where the area is enclosed the Board Room outdoor area would either be 1,300 square feet or 1,000 square feet.

Mr. Spoden stated that Milwaukee Trace had previously proposed a glass greenhouse type of structure over their existing outdoor dining area. He stated that some of the restaurant owners have complained that the Village requires additional parking for an area that is already being used for dining. He stated that in some cases these conversations have led to restaurants proposing that if the structures over the outdoor dining areas have operable windows or louvers in the roofing structure then these areas should be considered outdoor dining areas and not be required additional parking.

Mr. Spoden stated that the current Staff proposal is to consider going back to allowing small additions in the C-1 Downtown District with requiring additional parking and clearly defining what outdoor dining is in order to eliminate confusion in the future.

Chairman Steffe asked where additional parking would be provided for those restaurants in the downtown. Mr. Spoden stated that if additional parking is required it would end up being a 'pay-in-lieu' situation which is very expensive at \$20,000 per parking space to pay-in-lieu to providing the actual parking space which goes into a parking fund to be utilized in the future. He stated that these funds were used in the past to partially pay for the two public parking decks.

Mr. Spoden stated that the proposed text amendment includes design parameters that would be applied to outdoor dining areas. He stated that he would not impose a restriction on signage on umbrella's as it would be highly improbable that this could be complied with due to the enormous amount of branding that would be printed on the umbrellas.

Mr. Spoden stated that the primary intent for the discussion tonight is to check with the Plan Commission to see if Village Staff is going in the right direction with this proposed amendment and to also check to see what makes the most sense for the allowable square footage for building additions in the C-1 Downtown District without imposing a parking requirement. He stated that the proposed amendment may allow some additional flexibility to the restaurant owners.

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Commissioner Rankin asked what the reason was for having the 100 square foot building addition allowance without a parking requirement in the Zoning Code.

Mr. Spoden stated that the direction from the Board at that time was to completely remove the 1,500 square foot exemption but Plan Commissioner Schultz at that time recommended to keep a 100 square foot building addition exempt from the parking requirement in order to enable building owners in the C-1 Downtown District the ability to make minor modifications without a penalty. He stated that the 100 square foot building addition exemption is currently in the Code.

Mr. Spoden stated that Staff is recommending that the Code be amended to allow building additions of up to 1,000 square feet in the C-1 Downtown District without requiring additional parking, but admitted that it still may not be large enough when considering how some of the downtown restaurants enclosed their outdoor dining areas with the seasonal rooms that might be a little larger than 1,000 square feet in area.

Commissioner Rankin asked for clarification that Staff is recommending removing the 100 square foot exemption and replacing it with 1,000 square foot exemption.

Mr. Spoden stated that the proposal at the moment is 1,000 square feet and noted that it use to be 1,500 square feet. He stated that this point is up for discussion with the Plan Commission.

Commissioner Wheeler asked if there are any restaurants that currently exceed 1,000 square feet of enclosed outdoor dining area that would be grandfathered in.

Mr. Spoden stated that if the Zoning Code were amended it would then be applied for new projects moving forward. He stated that Casa Bonita outdoor dining area didn't have to provide parking even though it was open air horizontally, but not open air vertically to the sky, but not they want to glass it in with operable windows and still call it outdoor dining and not have to provide additional parking.

Commissioner Flores stated that in her opinion the addition of the windows for the Casa Bonita outdoor dining area makes it an indoor dining area. Mr. Spoden stated that with this proposed text amendment Staff can then call what they did at Casa Bonita a building addition.

Commissioner Flores asked how the Village views the outdoor dining areas for Austin's Restaurant or Wildberry Restaurant. Mr. Spoden stated they already had outdoor dining patios established.

Commissioner Wheeler stated that the outdoor dining area at Austin's is an actual structure. He asked Staff to identify the problem that is being addressed by the proposed text amendment.

Mr. Spoden stated that there are a multitude of problems this ordinance is attempting to address. He stated that COVID has had a significant influence on the operation of the restaurants. He stated that it has become very important to the Village Board that the Village makes the permitting of temporary outdoor dining as convenient as possible. Mr. Spoden stated that he cannot change the

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public hearing process, but the Zoning Code text amendment will lend itself to the goal of making the permitting process easier for the restaurants.

Mr. Spoden stated that one of the proposed use limitations for the outdoor dining is to incorporate a 48-inch-wide accessible path through an outdoor dining area for outdoor dining areas in order to enable pedestrians and wheelchair-bound people to the ability to pass by the dining areas without needing to traverse the street. He stated that this width derived from the Building and Fire Codes.

Mr. Spoden stated that in 2020 during the initial onslaught of COVID the Village started to implement the temporary outdoor dining permits to the restaurants, and it seemed to be successful. He stated that as COVID was subsiding last year the Village was receiving complaints about how the temporary outdoor dining areas on public sidewalks were increasingly crowding out the ability of pedestrians to get past them. He stated that this is where the need to implement a 48-inch passage way came into being.

Chairman Steffe asked for how the 48 inches is defined whether it starts from the back of a dining table chair or the edge of the dining table.

Mr. Spoden stated that the intent of the ordinance was to orient the chairs outside of the 48 inch path for tables that were to accommodate two seats only but often times after the permit is issued tables and chairs get shuffled around. He stated that the path is to be totally unobstructed.

Chairman Steffe asked if the 48-inch path also meets the Fire Department requirements. Mr. Spoden stated that it responds both to Fire Department and Building Codes. He stated that for the Fire Department the more important issue was the regulation of tents for the temporary outdoor dining areas.

Commissioner Wheeler stated that he agrees that the regulation for outdoor dining should be made simpler for the restaurants. He asked who is responsible for ADA violations and complaints. Mr. Spoden stated that it will still be the Village's responsibility to enforce the regulations and to respond to the complaints. Mr. Spoden stated that the Liberty Restaurant which had a large outdoor dining area tent needed close supervision and multiple inspections because tables and chairs often were shifted around in the space and would not always be compliant with the 48 inch accessible path.

Mr. Spoden stated that the Village permitted temporary outdoor dining behind the Townee Restaurant in the alleyway. He stated that the Townee owns that alley way. He stated that if there were any enforcement issues that would have come up from that situation the Village would be responsible for enforcement even that alleyway is on private property.

Commissioner Rankin stated that he likes the outdoor seating in the alleyways. He asked how is it decided which restaurants get to use the publicly owned alleys for outdoor dining.

Mr. Spoden stated that it has not become an issue as of yet. He stated that before COVID the Village enforced a no outdoor dining along the Milwaukee Avenue sidewalks policy. He stated that they've been allowing it for the past couple of years and letting each restaurant define their

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outdoor dining areas. He stated that during the first year of COVID Tommy's restaurant laid out their outdoor dining area on top of the row of parking spaces next to their restaurant and the Village allowed that because those parking spaces are privately owned.

Commissioner Rankin asked if by defining this information in the Code will help or handcuff the Village. Mr. Spoden stated that it will help the Village provided that clarity it brought to both the outdoor dining and the downtown building addition exemption together in tandem. He stated that addressing the outdoor dining in the Code without addressing the building additions will not help anything.

Mr. Spoden stated that the proposed temporary outdoor dining regulations would go under Article 9 in the Zoning Code and the permanent outdoor dining regulations would go in the commercial districts in the Zoning Code under Article 5.

Commissioner Rankin stated that Morgans use to allow live music outdoors behind their restaurant in the parking lot. Mr. Spoden stated that the Village no longer allows that in the downtown.

Mr. Spoden stated that the Island Tap created a nice outdoor seating area on their privately owned parking spaces.

Commissioner Rankin asked for clarification as to the meaning of 'stacking' spaces.

Mr. David Smith, Senior Planner, stated that stacking is relative to drive-through establishments where the vehicles are queued going through the drive-through lane.

Mr. Spoden stated that drive-throughs are not permitted in the downtown but are special permitted in the other commercial districts outside of the C-1 Downtown District.

Commissioner Wheeler asked if the intent of the proposed text amendment is intended to make things more restrictive or to cultivate more flexibility.

Mr. Spoden stated Staff has been comfortable with how the outdoor dining facilities operate but there is the need to set specific parameters around the building addition exemption aspect of it. He stated that it is important to get both aspects codified so that in future scenarios the Village will be in a better position to respond to inquiries or challenges to how these are regulated.

Commissioner Wheeler stated that the intent should be to help make the administration of the Code easier for Staff without the restaurants feeling the impact of tighter restrictions.

Mr. Spoden stated that the challenge will be both to get these regulations in the Code in a workable way and to also be able to provide brochures to the restaurants that clearly explain what they can and cannot do.

Mr. Spoden stated that for the past two years when the temporary outdoor dining permits were issued for public spaces the Village has not leased land only issued permits. He stated that the

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outdoor dining enlivens the area but allowing the public access through these areas remains an important goal as well as maintaining access to the adjacent buildings of the outdoor dining areas.

Chairman Steffe stated that the proposed text amendment language includes a requirement to maintain the outdoor dining furniture in a good and clean condition. He asked how this is monitored. Mr. Spoden stated this responsibility will fall upon the Village to enforce this. Mr. Spoden stated that most of the restaurants understand the importance of maintaining their outdoor furniture because their customers will inform them as needed.

Commissioner Oakley stated that he is concerned about the building addition exemption and how this allowance is regulated. Mr. Spoden stated that under the current proposal it would allow 1,000 square feet of new floor area building additions once every five years and not require additional parking.

Commissioner Oakley stated that Coppolillo's on Cook Avenue has increased their occupancy floor area within the existing building and they have the front outdoor dining area which they are enclosing. Mr. Spoden stated that this is what is ironic about the current Code. Mr. Spoden stated that because Coppolillo's is located in the C-1 District they can build out the existing office space without being charged additional parking, but once they enclose the front outdoor dining area then the Village must require additional parking. Mr. Spoden stated that they have worked out an arrangement with Coppolillo's and the School Street residents to allow them to park in the Village parking lot located at 200 East Cook Avenue after 5:00 p.m.

Commissioner Rankin asked about the curb side pickup policy. Mr. Spoden stated the Village tried during the height of COVID to help to facilitate curb side pickup along Milwaukee Avenue but it was not very successful.

Mr. Bob Bleck, architect, stated that one of the arguments have been that the peak for parking is during the summer. He stated that this argument doesn't change the parking demand in the winter time if the outdoor dining is covered or enclosed. He stated that the restaurant's desire to cover the outdoor dining areas so that they can coast through the first of the year. He stated that even with the enclosures they are not at full capacity like they typically are in the warmer weather. He said that the weather has more influence on people's decision to get out of the house than going to the restaurant. Mr. Bleck stated that the difficulty for him as an architect serving his restaurant clients and for Village Staff is that when you enclose a space it is interpreted as a building addition. He stated that there have been discussions on how to interpret openness whether it is roof top louvers or operable sky lights. He said that they are looking for some kind of standard, but it is difficult to draft such a regulation. He stated that he supports bringing back the exemption in order to avoid defining what is permanent and what is temporary. He stated that the current situation encourages restaurants to put up leaky tents and place heaters inside of them. He stated that the implementation of enclosures requires less stringent building code compliance and function more as a three season space. He stated that he supports an approach that both the business side and the regulatory side can come to agreeable terms quicker.

Mr. Spoden asked the Plan Commission for their opinion regarding the allowable building addition amount while exempting additional parking. He stated that he does not have a problem going back

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to the 1,500 square foot building addition while exempting additional parking requirement in the C-1 Downtown District.

Commissioner Oakley asked what the risks are of allowing 1,500 square feet of building addition versus 1,000 square feet of building addition. Mr. Spoden stated that it is difficult to know the risks of one size versus the other.

Mr. Bleck stated that either building addition size whether it is 1,500 or 1,000 square feet is expensive because they would be small additions.

Commissioner Rankin stated that he has no problem bringing it back to 1,500 square feet and allow the parking exemption.

Commissioner Flores asked if the alleyway between Firkin and the bank is at risk of becoming enclosed. Mr. Bleck stated that the problem with that is that it currently is heavily trafficked by pedestrians access between the parking lot behind Firkin's and Milwaukee Avenue. Mr. Bleck stated that those alleyways on the west side of Milwaukee Avenue also function as overland flow paths for storm water.

Commissioner Flores stated that she supports the 1,500 square feet building addition allowance and be exempt from additional parking in the C-1 Downtown District.

Commissioner Oakley stated that he supports the 1,500 square feet building addition allowance and be exempt from additional parking in the C-1 Downtown District.

Commissioner Wheeler stated that he supports the 1,500 square feet building addition allowance and be exempt from additional parking in the C-1 Downtown District. He asked if consideration should be given to incorporating additional language to address those pedestrian alleyways and whether they should somehow be restricted from allowing enclosures.

Mr. Spoden stated that the level of detail needed to address specifically the alleyways for the proposed text amendment would become cumbersome and counterproductive for the purposes of addressing outdoor dining and the limited building addition allowance in the C-1 Downtown District with the exemption of additional parking requirement.

Commissioner Flores asked if there have been any inquiries regarding roof top outdoor dining. Mr. Spoden stated that the subject of roof tops has been broached, but Staff chose to leave that out of the current proposal in an effort to not get mired down.

Chairman Steffe stated that he supports the 1,500 square feet building addition allowance and be exempt from additional parking in the C-1 Downtown District. He stated that the Libertyville downtown is known for its independent restaurants and the regulations should be flexible in order to be supportive of the restaurants.

In the matter of PC 23-03, Commissioner Oakley moved, seconded by Commissioner Flores, to continue this item to the April 24, 2023, Plan Commission meeting.

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Motion carried 5 - 0.

Ayes: Steffe, Flores, Oakley, Rankin, Wheeler
Nays: None
Absent: Pyter

NEW BUSINESS: None.

STAFF COMMUNICATIONS AND DISCUSSION:

Mr. John Spoden, Director of Community Development, stated that the Grahams had initially indicated that they were going to apply for their car wash project to be located at the corner of Milwaukee Avenue and Park Avenue for the April 24, 2023 Plan Commission meeting, but afterwards they contacted Community Development and indicated that they would not be ready by the March 10, 2023 submittal deadline. He stated that they were shooting for the April 7, 2023 submittal deadline which would place them on the May 22, 2023 Plan Commission meeting agenda. Mr. Spoden stated that they are preparing the Attainable Housing Ordinance for either a May or June Plan Commission special meeting date.

Chairman Steffe stated that he prefers the informal round table format and would like to see that for the first Attainable Housing public hearing meeting.

Chairman Steffe asked if the Grahams are incorporating any of the feedback that was given to them during the Committee of the Whole meeting. Mr. Spoden stated that Staff doesn't know yet how much of the feedback given to the Grahams will be reflected in their proposal.

Commissioner Flores asked if there is any news on the old Baker's Square restaurant site. Mr. Spoden stated that there have been no applications in yet for that site.

Commissioner Oakley asked if there is any news on the movie theater site. Mr. Spoden stated there aren't any proposals in yet but there have been ongoing discussions with the owner of the property.

Commissioner Wheeler moved, seconded by Commissioner Flores, to adjourn the Plan Commission meeting.

Motion carried 5 - 0.

Meeting adjourned at 8:05 p.m.