

BLUE ASH PLANNING COMMISSION

August 15, 2012

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**ITEM 1: MEETING CALLED TO ORDER**

Chairman Schafer called the regular meeting of the Blue Ash Planning Commission to order at 7:00 p.m. on Thursday, August 15, 2012.

MEMBERS PRESENT: Raymond Schafer, John Berry, Beverley Gill, John Moores and James Sumner

ALSO PRESENT: Assistant City Manager Kelly Osler, Community Development Director Dan Johnson, Administrative Clerk Traci Smith, Council Member Lee Czerwonka, and interested citizens

**ITEM 2: OPENING CEREMONY**

Pledge of Allegiance

**ITEM 3: APPROVAL OF THE MINUTES**

Commission members waived the reading of the minutes.

DECISION: John Moores moved, Jim Sumner seconded, to approve the regular meeting minutes of July 5, 2012 as submitted. A voice vote was taken. All members present voted aye. Motion carried.

**ITEM 4: HEARINGS**

**a. St. Andrews Place – St. Andrews Place HOA**

Minor variation to an existing Special Use to install a privacy fence

PRESENT: Tracy Davis, Management Plus Realty Service – Applicant

Tracy Davis said the HOA board is proposing to install a privacy fence on the north property line that buffers Peppermill. When St. Andrews Place was developed, one of the requirements was to maintain a green space along that property line. Evergreen buffer plants will not grow under the shade of the existing tree canopy. The HOA board decided that a 6-foot high privacy fence would be a better option for additional buffering and privacy. The proposed fence would match the privacy fences that are located between each unit. St. Andrews has been in contact with the adjacent homeowners and they were in agreement with what they are proposing.

In answer to a question from John Berry, Ms. Davis said the privacy fence will be located at the property line beginning around the second unit and go approximately 100-feet towards Plainfield Road. There is a berm that visually buffers the other buildings. The fence would be natural in color with gothic posts.

Jim Sumner asked if any trees would be removed during installation of the fence. Ms. Davis said all existing trees would remain and they will disturb as little as possible.

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Dan Johnson said the townhouses in that district are by Special Use. Since the undisturbed buffer was specifically mentioned in the ordinance that approved the development, he thought it should be brought before Planning Commission.

There were no public comments or additional discussion among the Commissioners, so Chair Schafer requested a motion.

DECISION: Jim Sumner moved, John Berry seconded, to approve the modification to the original plan as a minor modification. A voice vote was taken. All members present voted aye. Motion carried.

**b. 9012 Blue Ash Road – Sandy’s Stagecoach Saloon, LLC**

Zoning Map amendment seeking a C-2 Planned Commercial District zoning for two parcels on Blue Ash Road

PRESENT: Sandy Copenhaver – Applicant

Sandy Copenhaver, owner of Sandy’s Stagecoach Saloon, formerly Johnny Knuckles Bluebell Tavern, wishes to expand her business by adding restrooms and an outside patio. The plan includes expanding the parking area to help keep patrons from parking on surrounding streets. She said the entire property will be landscaped with a new fence installed on the property line that backs up to the adjacent residential properties. The patio will have a roof, with garage-type doors that will be lowered later in the evening in order to keep noise to a minimum.

Dan Johnson explained there are two separate parcels, one where the building itself sits which is zoned C-1 and the parcel to the north which is zoned R-3. Currently, no part of the commercial use is on the northern parcel. The saloon itself is a conforming use on a lot that has nonconforming elements. The location of the building is partially in the right-of-way and there are some setback issues because it is zoned C-1. The C-1 requires a 50-foot minimum buffer adjacent to R-3. He said Ms. Copenhaver’s request to seek rezoning to C-2 would potentially allow a smaller minimum 10-foot buffer.

Jim Sumner requested clarification about the nonconforming buffer. Dan Johnson said the parcel itself is approximately 80-feet wide, which means that most of the parcel is within a required buffer, including parts of the existing building. If the parcel was not already developed and in the C-1 district, it would be unbuildable because it could not meet the Code. In its current state, it can be used for what it is being used for, but nothing else. It cannot be changed to another conforming use and no additions or modifications to the site are permitted that would make the nonconformity greater. John Berry stated that the only use that can ever occur on this site in its currently developed state is an eating establishment or restaurant/bar since it pre-dated the zoning code. Mr. Johnson confirmed.

Jim Sumner said that as currently configured, the parking lot cannot be expanded into the back area because that would make the nonconformance greater. Mr. Johnson confirmed and stated that the buffer required is in the Landscaping Standards chapter. It is a vegetative buffer intended to protect the adjacent property owners, not a setback to the building.

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Dan Johnson explained that leaving the existing commercial property zoned C-1 is potentially an option, but the proposed development would require many variances. The northern parcel would have to be rezoned to a commercial zone, because not even City Council can grant a variance to permit a nonconforming use (the proposed commercial parking lot) on the northern parcel if it remains in a residential district. The applicant would have to go through the zoning map amendment process in any case. The applicant could have sought to rezone the northern parcel only to C-1 to match the existing restaurant parcel and then seek variances to the buffer and other requirements or seek to rezone both parcels to the C-2 district and ask for approval of a Planned Development.

John Moores questioned if the other parcels between this area and Alpine Avenue should be rezoned. Mr. Sumner said that cannot be done unless those property owners request it. Dan Johnson said, technically, a recommendation can be made to Council to rezone any of those parcels they would like. Ohio law requires that those who are contained within a proposed rezoning, and within a certain distance, be notified. Procedurally, those properties would be involved without having asked for it. So, Planning Commission is allowed to do that if they so choose and it is a legislative action that Council is entitled to undertake.

In answer to a question from Ray Schafer about rezoning this whole area, Dan Johnson said the Master Plan is not specific in regards to the zoning relative to timing. It states that the parcels that Ms. Copenhaver owns and to the north are appropriate for commercial zoning and use, but it does not specify which district or when the change should occur. The Commissioners agreed to concentrate on the applicant's property at this time.

In response to a concern raised by Bev Gill regarding parking and the neighboring properties, Ms. Copenhaver said she has gotten signatures from all of the adjacent properties owners and they are all in favor of her plans. Dan Johnson said notices were sent out twice to nearby properties and no direct complaints to the City were received. Ray Schafer requested confirmation that the neighbors understood that it was going to be an open patio addition. Ms. Copenhaver confirmed. Mr. Schafer asked about the hours of operation and when the patio doors would be closing. Ms. Copenhaver advised the hours were 11:00 a.m. until 2:30 a.m. and the patio doors would close around 11:00 p.m.

There was discussion regarding outside entertainment. Ms. Copenhaver said they do have live bands inside their bar and do not anticipate having them outside. To answer the question regarding outdoor sounds, Dan Johnson said in the General Offenses section of Municipal Code Section 509.09 (b) states "no owner, keeper or manager or any person in charge or control of a hotel, nightclub, restaurant, dance, or amusement hall, tavern or other public place shall engage in or permit the playing of musical or other instruments, singing, loud talking or the making of other noises in or about the premises in such a manner to disturb the peace and quiet between 11:00 p.m. and 8:00 a.m. the next day." He said it does not state they cannot do it; it just cannot be loud enough to disturb the peace.

In regards to screening for headlights and lights, Ms. Copenhaver said they would be installing a privacy fence all the way around, including landscaping. Mr. Johnson said they have submitted a landscape plan which appears to satisfy the intent of the

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Code but does not exactly meet it. He said they have room to be completely compliant and will just need to make some adjustments.

Ray Schafer asked about parking compliance. Mr. Johnson explained that the City does not have control over the current developed state because it is nonconforming. If the proposed change is recommended, it appears the plans would either be compliant or may have to adjust slightly since two spaces fall within the minimum buffer area at the street. The City Engineer had some concerns over how tight some of the areas were but said it would actually meet the standard that are currently in place. The total number of required parking spaces for a restaurant is one space for every four seats. The proposed designs are very close to the edge of being complaint, but there are a couple of site plan elements that might cause them to have to reduce the number of spaces. If they do that, he does not know what their solution is to make up the difference.

John Moores asked if the Rumpke truck would be able to empty the dumpster. Ms. Copenhaver said that is done in the morning when there are no cars in the parking lot, so it is not a problem.

Bev Gill asked about the details of the privacy fence. Ms. Copenhaver said it is a standard 6-foot board on board privacy fence. Mr. Johnson said the Code states that any use in the C-2 district where is abuts an R-3 requires one large tree at 25-feet on center and a double row of evergreen hedge, a minimum 8-foot in height or a 6-foot wall, brick faced on both sides and 8 inches thick with the top course to be row lock and one tree to be 25 to 30-feet on center or a double row of staggered planting of evergreen trees. A wooden fence would not comply with that section of the Code, but can still meet the pattern intent with the evergreens. The fence was not detailed in the plan, but from he recalls from their discussions they were talking about a wood fence. It could be approved with a modification to the buffer yard plan, but does not meet the specific requirement of the Code.

Jim Sumner commented there seems to be a lot of detail missing from their submission in regard to fences and elevations. He was unsure if the building was going to be open or closed. Ms. Copenhaver said she was originally planning to do the project in phases, but Dan Johnson suggested that it all be done at once.

At this point, Chair Schafer opened the floor to public comments.

Beth O'Brien, who lives at 4616 Belleview Avenue, which backs right up to this property, said she has lived at this address for 14 years and this is the first time they have ever met one of the owners. They love what is being done to the bar, the idea of the porch and the privacy fence. She supports this project 100 percent. She did have a question regarding the shrubbery and who would be responsible if it falls on someone else's property. Mr. Johnson said generally the property owner on whose property it falls is responsible.

As there were no other comments, Chair Schafer closed the floor to public comments.

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John Berry said it is a step in the right direction and likes the idea of trying to address the other parcels since that is a targeted area for commercial revitalization. He had no strong objections.

Ray Schafer feels it fits what the comprehensive plan is suggesting and is satisfied since the adjacent property owners have been advised.

Jim Sumner said he appreciates the improvement and investment but is concerned about expanding a use that might impact the residential neighborhood, which surrounds this property on three sides.

Bev Gill had concerns with under-parking the facility. Dan Johnson described the theory behind Zoning Code parking requirements and noted that the requirement only controls how much development can occur on the site not the daily activity of where people actually park. The Building Code determines how many people may occupy the structure, which may be drastically different from the number of people on which the Zoning Code parking requirement is based. The Fire Marshall enforces the actual occupancy limitations on a complaint basis. The Zoning Code does not have any bearing on the actual occupancy of a building and no one checks where people actually park. The Zoning Code requirement is intended to ensure that the facility does not cause problems for the surrounding neighborhood, but there is no way to know if it will until it is actually in operation. He said that the reality is that there will probably be an ebb and flow. There will be times when all parking is contained on site because patrons actually come in groups of four or when the facility is not at capacity. There will be other times when it is crowded and the parking lot is full and patrons will find other places to park.

John Moores asked about making modifications to a nonconforming building. Mr. Johnson said the Code allows for expansions of nonconforming structures so long as the use is conforming. Jim Sumner added that as C-1, they can only expand the configuration to the point where it does not make it any worse and allow the building to encroach further into a required buffer. If it changes to C-2, they have the discretion to allow any configuration.

As there was no further discussion, Chair Schafer said he would entertain a motion.

DECISION: John Moores moved, Bev Gill seconded, to recommend to Council to rezone two parcels to C-2 Planned Commercial. A roll call vote was taken. Four members present voted aye, Jim Sumner voted nay. Motion carried.

**c. 9012 Blue Ash Road – Sandy’s Stagecoach Saloon, LLC**

Planned Development application for an addition to the existing building and to expand the parking and driveway areas at the site

PRESENT: Sandy Copenhaver – Applicant

Chair Schafer said both items were discussed together and asked if there was anything else that needed to be discussed.

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John Berry asked if a concept approval could be given. Dan Johnson said technically they do not have that option but that would essentially be tabling with recommendation to address specific items with details or changes.

Ray Schafer summarized that they would like to see details regarding the lighting plan, landscaping plan and just the overall package again, including the items that need to be worked out with City Staff. Jim Sumner would like to see clearer details, especially if it is going to be an open patio or enclosed building since that would help judge the noise impact on the neighboring properties.

Dan Johnson asked if there was a landscaping preference in terms of the wooden fence, the brick wall or evergreens. Ray Schafer asked Mr. Johnson to check in general other areas where a variance may have been granted.

DECISION: John Berry moved, Jim Sumner seconded, to table the submission for development at 9012 Blue Ash Road for Sandy's Stagecoach Saloon based upon discussion and request for applicant to return and address those concerns with more detail and with meeting all City Department requirements. A roll call vote was taken. All members present voted aye. Motion carried to table.

**ITEM 5: MISCELLANEOUS BUSINESS**

None

**ITEM 6: ADJOURNMENT**

DECISION: There being no further business to be discussed, John Moores moved, John Berry seconded, to adjourn the Planning Commission meeting. A voice vote was taken. All members present voted aye. Motion carried. The meeting was adjourned at 8:23 p.m.

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Ray Schafer, Chair

MINUTES RECORDED BY:

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Traci Smith