



Village of South Russell

5205 Chillicothe Road
South Russell, Ohio 44022
440-338-6700

PLANNING COMMISSION MEETING Record of Proceedings April 8, 2021 at 7:30PM

Members Present: Steve Latkovic, Chairman, James Flaiz, Dennis Galicki, Mayor William Koons, Ph.D., Elisa Budoff

Other Officials: Bridey Matheney – Solicitor, Dave Hocesvar, Building Official, Ruth Griswold, Board Secretary

Visitors: Mike Cipriani, Danny Jenks, Karen Reingard, Amy Armour

Meeting called to order by the Mr. Latkovic at 7:32p.m.

Ruth Griswold conducted roll call.

Mr. Flaiz motioned to approve the minutes from March 11, 2021. Mr. Galicki seconded. On roll call vote, motion carried unanimously.

AGENDA ITEM 1: CASE# PC 21-07: As required by Section 3.05(b) of the Zoning Code, Mr. Paul Beegan of Beegan Architectural Design is requesting the Planning Commission schedule a date for a public hearing to review their proposal for a gated patio seating area outside of Augie's Restaurant, 5210 Chillicothe Road, Unit G.

Mr. Latkovic asked Ms. Matheney to explain the procedures necessary for a Conditional Use Permit. Ms. Matheney stated that since Augie's is applying for approval for an outdoor restaurant, that is actually considered retail and requires a Conditional Use Permit. The Zoning Code process dictates that a public hearing is set within 60 days of the application. She said the only action that can be taken tonight is to set a hearing date, and not a review of the outdoor patio and restaurant.

Mr. Latkovic asked for clarity as to why this submittal is required to obtain a Conditional Use Permit. Mr. Hocesvar said that since they want to serve food and beverages outside of the building, they need approval for a Conditional Use Permit. Mr. Latkovic confirmed that this is needed even though the existing restaurant itself is not a Conditional Use. Ms. Matheney stated that is correct.

Mr. Latkovic asked Ms. Matheney if the special hearing could be set for the next regularly scheduled Planning Commission meeting. Ms. Matheney said yes, but that there also must be a separate published legal notice for

that meeting, and that contiguous property owners, as well as the applicant, must all receive 20 days advance notice of such meeting.

Mr. Latkovic said he would like to set the public hearing date for May 13, 2021 at 7:30pm, and asked board members if they had any objections. There were none.

Mr. Flaiz motioned to have the public hearing at the next regularly scheduled Planning Commission meeting on May 13, 2021. Mr. Latkovic seconded. On roll call vote, motion carried unanimously.

AGENDA ITEM 2: CASE# PC 21-08: Mr. Paul Beegan of Beegan Architectural Design-Applicant and Owner's Representative-Proposed interior expansion of Augie's Restaurant-5210 Chillicothe Rd-Unit G

Mr. Latkovic asked the applicants to introduce themselves and tell the board about their proposed expansion. Mr. Michael Cipriani introduced himself as the landlord representative, and Mr. Danny Jenks, as the owner of Augie's. Mr. Paul Beegan, of Beegan Architectural Design, who was attending via Zoom, introduced himself and Amy Armour, also of Beegan Architectural Design who will be presenting the Augie's expansion for the board.

Ms. Armour started the presentation by thanking the board and said that their firm has been very excited to work with Augie's and are very proud that they have been able to withstand the past year with all the challenges of Covid. They are excited to see them expanding, prospering and helping with the economic development of the Village. She referred to the plans and indicated the expansion would include moving into the former hair salon that has relocated to a different space in the shopping center. The purpose of the expansion is to increase the seating area, bringing the number of seats to 64 in the dining room area and 6 at the bar area, for a total of 70 seats.

Mr. Latkovic said the proposal would basically double the existing space and asked what the present seating capacity was. Mr. Jenks said right now it is around 30, but it was pretty tight, especially with Covid restrictions in place. Mr. Latkovic noted that all the expansion would be for serving space, since they are not adding any additional kitchen space. Mr. Jenks said they would be enlarging the kitchen slightly, but it would be at the back wall area. Mr. Latkovic asked if the whole interior would be remodeled as part of the overall project. Mr. Jenks said yes, they are improving the entire space.

Mr. Latkovic then addressed the parking at the plaza. Ms. Armour indicated there are a total of 80 parking spaces. Mr. Flaiz said he knows the plaza is borderline on the parking situation, but Augie's is more of an evening destination. Sleepy Rooster is closed at that time, Hair World is not busy then and the bridal shop is not impactful. He went on to say that he understands there is a parking concern, but that it works well between the businesses since Augie's customers will be using the parking lot when most of the other businesses are not. Mr. Hocevar agreed, and said that is a good point. He said per the zoning code, Hair World and the bridal boutique each require 7 parking spaces, which would not be utilized for those businesses.

Mayor Koons confirmed that a 70-seat capacity restaurant would require 35 parking spaces; Mr. Hocevar said that is correct.

Mr. Latkovic noted that there is parking in the back, and a rear entry to the restaurant. He asked about the new door in the front of the building, and how it would be utilized. Mr. Jenks said that will be used as their new take-out door.

Mayor Koons asked Mr. Jenks if they anticipate any issues with the expansion. Mr. Jenks said he did not foresee any issues.

Mr. Latkovic asked board members if they had any additional comments or questions there were none.

Mayor Koons made a motion to approve the interior expansion of Augie's Restaurant as submitted. Mr. Galicki seconded. On roll call vote, motion passed.

Old Business:

Mr. Latkovic asked Ms. Matheney for guiding rules regarding the minutes taken at a meeting. Ms. Matheney said Section 121.22 of the Ohio Revised Code indicates minutes are required to be taken. The Village can enact ordinances in addition to that, for instance, stating that all meetings must be recorded. She added that the minutes do not need to be verbatim, they can be summarized as long as they describe exactly what took place during the discussion. She said all meetings must have minutes, whether it's a special meeting or a regularly scheduled meeting.

Mr. Latkovic asked what if a meeting was never "called to order". Ms. Matheney said the Village does follow Robert's Rules of Order, but that is not necessarily required by Ohio law. Mr. Latkovic asked what if no one in that meeting, that was called or not called, ever actually said anything. Ms. Matheney said there should still be minutes, reflecting who was present, that there was no discussion, and when it ended, even if there was not an adjournment.

Mr. Latkovic referred to a copy of the minutes from a special Building Committee meeting, and said he found it bizarre, since the meeting was never called to order, at least not during the Zoom call, and no one ever actually spoke, at least not as part of their role during that special Building Committee meeting, and yet there are minutes that selectively take things out of the Planning Commission meeting and put them into one page.

He then referred to the 11 pages of detailed Planning Commission meeting minutes from the March 11, 2021 meeting and compared it to the supposed Special Building Committee meeting one page summary, that selectively talks about what was said at the Planning Commission meeting. He said this was very disturbing and asked the Mayor, as Chair of the Building Committee, how this would happen, as it is a complete misrepresentation of everything. He went on to say, if someone were to ask what happened at the Special Building Committee meeting, the Building Committee minutes do not represent an accurate summary.

Ms. Matheney said that technically two meetings took place at the same time: The Planning Commission meeting and the special Building Committee meeting. The meeting minutes from the Planning Commission are those that were approved tonight, and the other meeting minutes, which she was not sure were approved or not, are from the special Building Committee meeting.

Mr. Flaiz said the Building Committee held a meeting, but never convened the meeting, no members spoke, and they never adjourned the meeting, but yet they created minutes from the meeting, which were, in his opinion solely intended to criticize the Planning Commission.

Ms. Matheney said as long as they noticed it as a special meeting of the Building Committee, the whole committee was there, but they do not necessarily have to speak. She said they are required to create minutes for a special meeting.

Mr. Flaiz said that as the Planning Commission, they could then have a special meeting during a council meeting, not appear on video, not convene the meeting, attend but not say anything, not adjourn the meeting, then create minutes to criticize council.

Mr. Latkovic said he did not even know the Building Committee was at the meeting and said this should not be going on in the Village and asked what the purpose of it was. Had their minutes indicated they were there but did not speak, he would understand. He said Jim summed things up perfectly, in that they selectively pulled things out of the meeting just to criticize and said this is the least productive thing that should be happening in the Village. He said he is trying to run the Planning Commission efficiently and resolve a number of things. He

said this should be an embarrassment and is not representative on how this Village should be run and didn't know what Chris Berger's intentions were in doing this, together with his statement to Council.

Mr. Flaiz said that in addition to the minutes, the chair of the Building Committee made a statement that was critical of his assessment of the Building Committee's role in managing the building department. He went on to say that the Building Committee is comprised of two former social studies teachers and one lawyer. He said between the three of them they do not have a fundamental understanding of the separation of powers and the roles of an executive branch official and a legislative branch official. He feels with their backgrounds, there should be an understanding that two council members should not be directing the executive motions of the building department. He went on to say that the Planning Commission is trying to straighten out issues and address some problems that were discovered by their all-volunteer board. He said instead of properly addressing them, the Building Committee has become an apologist for the Mayor and is trying to cover up everything. He said he believes Dave is doing the best job that he can, given the limited engagement that the Village has contracted with him, and that Ruth is doing a good job and things are improving, but that he still has serious concerns about leadership and direction.

Mayor Koons asked what specific performance issues Mr. Flaiz has with the building department. He said the Building Committee is not apologizing for him, because he has nothing to apologize for. He went on to say that there has been vast improvement in the building department, and that he takes the title of Building Department chair very seriously, and that they have accomplished a lot. He said there has not been one complaint, either from residents, contractors or business owners about the building department. He noted there was a record set last year with 334 permits and almost \$94,000 of revenue. He went on to agree that there were some issues and mistakes that were made. He asked Mr. Flaiz to spell out the nineteen issues so they could be addressed at the May meeting.

Mr. Flaiz asked if Mayor Koons would authorize an audit of all the residential permits for the last three years, because that would likely show another disaster. He went on to say that they only looked at a very small window of commercial permits and discovered a multitude of problems, and of thirty permits, nineteen of them had problems. He said this points 100% to a leadership and management issue, and that the Mayor has never accepted responsibility for the issues. Mr. Flaiz said he has been very willing to go through the items with the Planning Commission and retroactively fix the problems, one of them being the Rotary Sign that Mayor Koons illegally had put up.

Mr. Galicki said there is no further documentation needed regarding the nineteen issues; what is lacking, and has been lacking, ever since the solicitor identified those issues is corrective action, so they do not occur again. The issues remain unresolved because the Planning Commission requested, but have not seen, policies and procedures put into place to avoid future mistakes. He went on to say if there are no problems, Mayor Koons should welcome anybody taking a look at the books and conducting a forensic audit that would take a look at money trails. He said if the findings are positive, then the answer is put to bed. But the obfuscation and the continued effort to try and keep outside eyes from the building department has only caused more questions, not only among Planning Commission members, but members of Council as well.

Mayor Koons said he has never tried to keep outside eyes from the building department, and upon receiving the public records request in October, before any administrative assistant was hired, he fulfilled it the best he could, and kept nothing back.

Mr. Latkovic said it's important to keep in mind that upon reviewing the information presented as a result of the public records request, it was immediately determined to be insufficient, thereby prompting their request to the solicitor to conduct the audit. He said he is very disappointed in the Mayor's response tonight. When looking at the totality of it, he has been taking this job seriously, without picking sides, and wanted the process of getting to the bottom of things to go as smoothly as possible. He wanted to see a plan to have the deficiencies addressed and a solution determined to serve the residents in the best possible way. He said the document that was

provided to the Planning Commission regarding the nineteen items never explained how the processes were going to be corrected, and no admission of error or accountability was ever taken. He said the Mayor continues to take no responsibility for any of the shortcomings, and at the first meeting when everyone was ready to go over the items, the Mayor had sent Dave home, making the review impossible. Mr. Latkovic said he doesn't know whose fault all this is, but that the Mayor is in charge, and whether all the permits are right or not, the way he has conducted things have made the Planning Commission feel as if things are trying to be hidden. He then asked Mayor Koons if he approved the Building Committee meeting minutes, to which the Mayor responded no. He said this has become to feel like one big game, but at the end of the day, some permits were wrong, the Planning Commission didn't review and approve some things they should have; those things are fixable. Mr. Latkovic said the Mayor is doing things he does not find appropriate, and he's defending them. He said he has tried to make this as streamlined as possible, but the Mayor can't even take accountability for the items he knew should have come before the Planning Commission, such as the Rotary. He said as the Planning Commission, they have no power to do anything about the audit, or the building department, but he does have the ability to run the Planning Commission until his term is up. He said they will keep trying to understand and correct what they can. He implored the Mayor to step back and take a look at this. The Planning Commission needs to have an understanding of how the Village will ensure reviews come to them when required and asked the Mayor if he had anything to present to them tonight.

Mayor Koons said, moving forward, the building department will be doing three things differently; one of them is to complete the loop after an application is submitted and make sure that application is followed up on after an appearance before the Planning Commission. He said that would take care of the first six or seven applicants who applied to the building department and went before the Planning Commission, but never took occupancy. He said there were no procedures in place for termination, and that will be part of the forms when they apply.

He said the second thing is to discontinue having Planning Commission review signs in the Village, since that is something the Planning Commission should not have to deal with. Mr. Latkovic asked if that were something the Planning Commission would need to take action on to amend the zoning code; Mayor Koons said yes, it would take an amendment to the zoning code. Mr. Flaiz said the Planning Commission amends the zoning code, not the Building Committee. Mr. Latkovic confirmed that Mayor Koons would make a proposal to the Planning Commission to discontinue sign reviews. He said the third one is looping in new businesses with the fire code inspection process, with the assistance of the Fire Marshal. He said he would go through all the items on May 13th.

Mr. Flaiz said that the Planning Commission in general, and Steve in particular, has been asking, for months, for a flow chart and for specific procedures the building department would have to prevent future issues, which is how they wanted to see this addressed moving forward. He said no proposed zoning change has been presented at a Planning Commission meeting, and that the Mayor, Council and the Building Committee have given them none of those items. Instead of coming up with a flowchart and written policies and procedures, the Building Committee concocted minutes and the Building Committee chair presented a four-page written statement to Council criticizing the Planning Commission. Mayor Koons said they would see something on May 13th.

Mr. Flaiz addressed Ms. Matheney regarding Augie's Conditional Use application and said that under the B-2 zoning, restaurants are not a permitted use and not even a Conditional Use, so technically restaurants are not permitted in the plaza. Yet, the Planning Commission approved Sleepy Rooster, and Augie's has been there for a very long time. He said he believes the Planning Commission should seriously consider rezoning the plaza and the Village Hall campus, due to the events that occur there such as the Farmer's Market. He said he fully understands the issue of spot-zoning but asked which is worse: changing those two parcels to a B-1 or allowing restaurants in a B-2 district.

Ms. Matheney asked Mr. Flaiz if his proposal would be to change those two parcels from a B-2 to B-1. Mr. Flaiz said yes, it would be to rezone the plaza and the Village campus to B-1, and perhaps include MC Art

studio. They could then issue Sleepy Rooster and Augie's their Conditional Use permits to operate their restaurants. He said by doing that, it would be legal. He went on to say that the other restaurants, such as Burntwood Tavern are operating under a Conditional Use, which was confirmed by Dave Hocevar.

Ms. Matheney said restaurants are technically not defined in our current code, rather, the definition of Retail seems to fit restaurants. Mr. Hocevar agreed. Ms. Matheney referred to Chapter 5 in the Business District, indicating that restaurants are a Conditional Use in a B-1 District, but also one of the permitted uses in the Business District is Retail, and retail sales include "...baked goods, confectionaries, groceries, meats, foods, dairy products, etc..." and also "...serving and consumption of food and beverages..." which describes a restaurant. It also says, "places where food or beverages are not consumed within a building may be permitted if a Conditional Use Permit is granted." Ms. Matheney stressed there is no specific definition of a restaurant in the code, therefore they may want to amend the code to eliminate the word "restaurant", or to define restaurants.

Mr. Flaiz said B-2 does not allow Retail, but it allows Personal Services, so technically Sal's should not be operating. He then referred to page 54 under Conditional Use regulations and the only Conditional Use permitted in a B-2 is a Bed and Breakfast, whereas permitted Conditional Uses in B-1 are "*Residential, Gas Stations, Restaurants, Commercial Amusements, automotive sales, mortuaries...*".

Mr. Latkovic asked when this was adopted, and Ms. Matheney said she wasn't sure, but that there have been many updates, although they may not all be reflected in the Codified Ordinances on the website. She said on the Conditional Use regulations, if you go to the B-1 District and look at what is permitted, it does say restaurants are a Conditional Use in the B-1 District and Retail is permitted. She went on to say that maybe there is just an inconsistency in the code.

Ms. Budoff asked what businesses are currently in the plaza that do not need a Conditional Use Permit. After discussion, it was determined that only Hair World falls under Personal Services. Ms. Budoff said the MC Art Studio also has a daycare, and Mr. Flaiz said that is also allowed also under B-2.

Ms. Matheney said because there have been piecemeal updates to the code, she would highly recommend a review of the entire code. She said there are some inconsistencies, and there are some references that do not have definitions. Mr. Flaiz suggested that, under the existing code, the cleanest thing to do would be to rezone the plaza, Village campus and the Art Studio to B-1 and then grant Conditional Use permits to Augie's and Sleepy Rooster, with no appearance necessary. Ms. Matheney agreed that would be the easiest solution. She asked if they were also considering rezoning the vacant property belonging to the Village on the southwest corner of 306 & Bell. Mr. Flaiz said that in his opinion, that vacant lot should be considered in the rezoning as well.

Mr. Latkovic said prior to next month's meeting, it would be helpful if Bridey could send them some recommendations regarding any glaring problems in the zoning code that deal with the issues they have discussed. He said from his perspective, it does make sense to rezone these areas, and he thinks it would be helpful to have some time to consider that and be able to refer to information in front of them, such as a parcel map, and review the suggestions.

Mr. Latkovic asked for any new business.

Ms. Matheney referred to the fencing rules in the Residential District, Section 4.01(b)(4) of the Zoning Code. She said the Building Committee has had some discussions regarding fencing along side and rear lot lines, requiring the fencing to be set back at least 3' from the property line. She said there is a question as to whether this should be changed. Mayor Koons said homeowners have expressed their preference to have the fence right on their property line, so as to not have any property on the other side of the fence to maintain. Mr. Flaiz said he recalled that the point of the 3' buffer was to allow for maintenance issues. Mr. Hocevar said that was probably part of it, but that South Russell is one of the only communities in the area requiring a 3' buffer, and he has

many residents complaining about the requirement, and agrees that looking into revising that would be a good idea.

Mr. Flaiz said other communities where residents have limited yard area may allow the fencing to go right on the property line, but that is not the case in South Russell. He said if the fence would be right on the property line, any maintenance of the fence, whether it's for painting or repair, would necessitate trespassing onto the neighbor's property. He went on to say that a resident always has the option of obtaining a variance if they do not want to install their fence 3' off the property line.

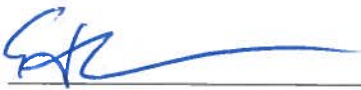
Mr. Latkovic asked if residents are primarily installing decorative split rail fences, or privacy fences. Mr. Hocevar said the styles vary, but regardless of type, there are never any positive comments about the 3' requirement. Mayor Koons said they will be getting an application for a 6' board on board fence that is proposed to be right on the property line, and they will be sent to the Board of Zoning Appeals. Mr. Latkovic confirmed that neighbors would be notified and said he would be curious as to how the neighbors feel about it.

Mr. Flaiz expressed concern as to how the fence would be installed or maintained without trespassing, as well as the number of lawsuits between neighbors due to property line issues. He said because of the 3' buffer in South Russell, those issues do not come up.

Discussion followed about the issues surrounding fence placement and ordinance changes. Mr. Latkovic said he could see both sides of the issue, and if they move towards changing the requirement, a public hearing would be held, and people would be made aware of the hearing and should be strongly encouraged to attend.

Mr. Flaiz said he did not agree on zoning changes for individual property owners, and that if one has special circumstances that require a variance, that is what the Board of Zoning Appeals is for. If the requirement is changed, the neighbors would not get any notification of the fence being installed on the line. Mr. Latkovic said perhaps they could differentiate between fence types, as to where they would be allowed, perhaps a split rail fence would be okay on the line, but not a solid privacy fence.

Mr. Latkovic asked the board members for any other new business. There being no further business, Mr. Latkovic adjourned the meeting at 8:40pm.



Steve Latkovic, Chairman

5/13/2021

Date



Ruth Griswold, Board Secretary

5-13-2021

Date