

**OFFICIAL PROCEEDINGS OF THE
BOARD OF ADJUSTMENT AND APPEALS**

REGULAR SESSION

SHAKOPEE, MINNESOTA

MARCH 3, 2011

MEMBERS PRESENT: Mangan, McQuillan, Klemm, Magin, Seidensticker, Collins and Gorton.

MEMBERS ABSENT: None.

STAFF PRESENT: Mark Noble, Planner II
R. Michael Leek, Community Development Director

1. ROLL CALL:

Chair Mangan called the meeting to order. Roll call was taken as noted above.

Chair Mangan introduced new Board member Joe Collins. Mr. Collins gave the Board a brief overview of his background.

2. APPROVAL OF THE AGENDA:

Motion: Magin/Seidensticker moved to approve the agenda as written.

Vote: Motion carried 7-0.

3. RECOGNITION BY BOARD OF ADJUSTMENT AND APPEALS OF INTERESTED CITIZENS:

Chair Mangan recognized anyone in the audience wishing to speak on any item not on the agenda. There was no response.

4. APPROVAL OF THE CONSENT AGENDA:

The following item was considered as part of the Consent Agenda.

Item #5: Approval of the Minutes of the February 3, 2011 meeting.

Motion: Magin/Seidensticker moved to approve the Consent Agenda.

Vote: Motion carried 7-0.

5. APPROVAL OF THE MINUTES OF THE FEBRUARY 3, 2011 MEETING.

Action for this item took place under the Consent Agenda.

6. PUBLIC HEARING – CASELOG #11001: AN APPLICATION FOR CONDITIONAL USE PERMIT TO ALLOW AN EVENT CENTER TO PROVIDE PUBLIC AND PRIVATE EVENTS TO INCLUDE ALCOHOL AND LIVE MUSIC IN THE HIGHWAY BUSINESS (B1) ZONE. SUBJECT PROPERTY IS LOCATED AT 810 WEST 1ST AVENUE.

Mr. Noble presented. Mr. Noble offered that Jose Cobos, on behalf of Salon Latino, has applied for a Conditional Use Permit (CUP) to allow an event center at 810 1st Avenue East (formerly known as Yarusso's Hardware). He added that the area of the lease space is

approximately 9,400 square feet, and would be available for public and private parties such as wedding receptions, dances, live music events, and charity events. He presented and discussed the site and floor plan for the proposed project.

Mr. Noble expressed that an event center is considered a Minor Commercial Recreation use in the B-1 Zone, according to the Zoning Ordinance. He noted that the applicant proposes to have the facility available every day, except that alcoholic beverages would not be allowed to be served on Sundays. He pointed out that they are pursuing a liquor license, and intend to construct a bar and stage for events planning to rent out this space.

Mr. Noble stated that the applicant is proposing that the event center be open until 2:00 a.m. He expressed that no activities are planned to occur outside of the building, except for a potential smoking area along the west side of the property. He added that the applicant is not proposing to prepare food on the site; they plan to notify users of catering service providers available to serve their events.

Mr. Noble stated that other city departments and outside agencies have been notified of this proposed CUP. He offered that the City Fire Marshall/Inspector provided a memorandum with 21 comments/conditions should this use be approved.

Mr. Noble pointed out that the City Administrator and City Clerk have provided comments noting that this business will require an on-sale intoxicating liquor license in order to serve intoxicating liquor on the premises, to be permitted for Monday through Saturday only. He added that the City Clerk also noted that the sale of food is not presently proposed (catered food is proposed); but that if proposed at a later date, appropriate licensing from the State Department of Health and installation of required kitchen equipment would be required.

Mr. Noble expressed that Jim Grampre, the City Building Official, commented that additional rest room details are needed, should this project be approved. Mr. Noble noted that Mr. Grampre stated that IBC (International Building Code) Chapter 29 addresses plumbing fixtures to occupancy count, and that he will need further detail on the kitchen area. He added that the City will need a precise layout of the seating area and aisle width measurements.

Mr. Noble stated that Shakopee Public Utilities commented that the site is presently served with municipal water and electric, and if the proposed use requires any changes to the present service levels, that the applicant shall contact them.

Mr. Noble offered that Centerpoint Energy commented that there is a natural gas main that runs down the vacated alley which is active and is serving this area.

Mr. Noble pointed out that staff has heard from several of the adjacent property owners who have expressed concern with the potential for excessive noise (from within the building, and outside during and after hours) and traffic/parking issues. He expressed that additionally, staff notes that the City and County have a substantial investment in transit vehicles on site; thus a security concern with the perceived increase in traffic on the property generated by customers of the event center. He noted that staff has incorporated the applicable conditions from other departments and agencies into the draft resolution of approval.

CONSIDERATIONS

City Code Section 11.36 (Highway Business Zone), Subd. 3. A. lists the proposed use as a conditional use, with two (2) standards that the Board should consider in their determination. Those standards are as follows:

1. Shall be located adjacent to an arterial or collector street as identified in the comprehensive plan; and
2. Shall have parking screened from adjacent residential zones.

It was noted that in this case, staff has determined that the proposed project would comply with both standards.

It was added that although this use does plan to serve/dispense alcohol and have live entertainment, the Planning Department determined that it did not meet the definition of a Class II Restaurant nor a Tavern, which were more restrictive in their locations adjacent to residential zoned/used land, and hours of operation. Adjacent to the south is land zoned and used for residential purposes.

It was noted that the submitted site plan identifies a building presently occupied by 2 establishments in addition to the proposed use; Scott County Transit and Fabulous & Thrifty. It was added that those 2 tenant spaces utilize approximately two-thirds of the total building. Mr. Noble pointed out that the site plan does not accurately identify the total number of parking spaces on site (previously stripped for 94 spaces: however, 26 of those spaces are utilized by transit vehicles). He expressed that if the appropriate number of parking spaces were to be designated for each of the tenant spaces, that would translate into approximately 31 spaces for the tenant space of the event center, 14 spaces for the Fabulous & Thrifty lease space, and 49 spaces for the Scott County Transit Center space. It was added that Scott County Transit is anticipated to continue leasing this space until at least 2013. Mr. Noble stated that the floor plan for the event center identifies 31 tables (with at least 152 seats), a 2,500 square foot dance floor, a stage and bar area, an office, and a kitchen and storage areas. It was noted that based on the current city standards for parking, the event center would require a minimum of 102 spaces (based solely on the seating and dance area, not including the stage, bar and kitchen areas).

Mr. Noble offered that staff is recommending approval of this request, subject to the following conditions:

1. Any proposed signage at this site (temporary, permanent and/or replacement) requires approval of city sign permits.
2. The applicant must provide the Building Official with additional rest room details and further details on the kitchen area, and a precise layout of the seating area and aisle width measurements. This information shall be provided prior to building permit approval.
3. This business shall require an on-sale intoxicating liquor license in order to serve intoxicating liquor on the premises, to be permitted for Monday through Saturday only.
4. Should the applicant propose the preparation and sale of food on the premises (catered food is proposed), appropriate licensing from the State Department of Health and installation of required kitchen equipment would be required.

5. Seating and/or dance floor area shall not exceed the requirements for providing of 31 parking spaces. Parking requirements are based on one (1) space per every three (3) seats, and one (1) space per every 50 square feet of dance floor area.
6. All events held within the building shall cease operation no later than 2:00 a.m.
7. Security personnel shall be responsible for clearing the parking lot of guests within 15 minutes of closing for the evening.
8. Security personnel shall be on duty any time that there is alcohol being served.
9. There shall be no events held in the parking lot.
10. There shall be an annual review of this permit in the Spring of 2012, 2013 & 2014.
11. The applicant shall be responsible for all Sewer Accessibility Charges (SACs) and Water Accessibility Charges (WACs) required by the Metropolitan Commission and Shakopee Public Utilities (SPUC).
12. All trash containers shall be located within trash enclosure(s) and shall comply with the City Code standards, which state that they shall be stored within the principal structure, shall be totally screened from public view by the principal building, or stored within an accessory structure constructed of building materials compatible with the principal building, enclosed by a roof, and served through swinging doors or an overhead door on tracks.
13. The applicant shall contact Shakopee Public Utilities if the proposed use requires any changes to the present service levels.
14. A Seating Plan shall be included in the Fire Safety and Evacuation Plan required in Minnesota State Fire Code (MSFC) 404.3. (MSFC 408.2)
15. A Fire Safety and Evacuation Plan shall be submitted to the Shakopee Fire Department for review and approval. Quarterly drills are required. (MSFC 404, 405 and 406)
16. The occupancy address shall be posted at exterior doors. Refer to Shakopee Fire Department Policy #01-2000 for details. (MSFC 505)
17. The building owner shall install a fire department key box. The order form is available from the Shakopee Fire Department.
18. The tenant shall provide to the Shakopee Fire Department a minimum of 1 master key for the space. (MSFC 506)
19. The tenant shall comply with all applicable Shakopee Fire Department Policies.
20. An evaluation of the fire sprinkler system shall be completed based on the proposed occupancy. A qualified engineer shall perform the evaluation to determine that the fire sprinkler system is properly designed to protect the proposed tenant/hazard classification(s). Results of the analysis shall be provided to the Shakopee Fire Department prior to tenant occupancy of the structure. Should the evaluation determine that the fire sprinkler system is not properly designed for the proposed tenant/hazard classification(s), the system shall be upgraded prior to tenant occupancy.
21. The canopy area on the north side of the building shall not be utilized for storage or placement of combustible materials unless appropriate fire protection is provided under the canopy.
22. Permits are required for any fire protection and fire detection systems work.
23. A fire protection system is required for Commercial Cooking Operations in accordance with the Minnesota State Fire Code and NFPA 96.
24. The proposed tenant space shall be provided with a minimum of one (1) fire alarm strobe notification device. This device shall be connected to the building fire alarm system. When no fire alarm system is present, the device shall be connected to the waterflow switch on the fire sprinkler system.

25. The tenant shall provide emergency vehicle access to the site during construction. Access to be approved by the Shakopee Fire Inspector.
26. The contractor shall post occupant load of assembly areas.
27. Means of egress from assembly areas shall be provided with panic hardware as defined in the MSFC.
28. Means of egress shall be identified and proper illumination provided.
29. A building permit will be required as the proposed tenant is a change of use from previous tenant.
30. Improvements shall be in compliance with all applicable codes and standards.
31. No outside seating and/or outside alcohol consumption is allowed.

FINDINGS

Section 11.85 (Conditional Use Permits), Subd. 1 (Criteria for Granting Conditional Use Permits) states that, "In granting a conditional use permit, the Board of Adjustment and Appeals shall consider the effect of the proposed use upon the health, safety, and general welfare of the occupants of surrounding lands and the City as a whole." The Board of Adjustment and Appeals shall not grant a Conditional Use Permit without making certain findings. The criteria required for the granting of Conditional Use Permits are listed below.

Criteria #1 The use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nonsubstantially diminish and impair property values within the immediate vicinity;

Finding #1 The Board has received no evidence that the use will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the immediate vicinity, provided the conditions identified in the approved resolution are met.

Criteria #2 The establishment of the conditional use permit will not impede the normal and orderly development and improvement of surrounding vacant property for uses allowed in the area;

Finding #2 The Board finds that the establishment of the conditional use permit will not impede the normal and orderly development and improvement of surrounding vacant property for uses allowed in the area, provided the conditions identified in the approved resolution are met.

Criteria #3 Adequate utilities, access roads, drainage and other necessary facilities have been or will be provided;

Finding #3 The Board finds that adequate utilities, access roads, drainage, and other necessary facilities exist to serve the proposed use, provided the conditions identified in the approved resolution are met.

Criteria #4 The use is consistent with the purposes of the zone in which the applicant intends to locate the proposed use; and

Finding #4 The Board finds that the use is consistent with the purposes of the Highway Business (B-1) Zone.

Criteria #5 The use is not in conflict with the Comprehensive Plan.

Finding #5 The Board finds that the use is not in conflict with the Comprehensive Plan, which guides the subject property for commercial related uses.

The Board asked questions and offered their feedback regarding the proposed Conditional Use Permit.

David Yarusso, owner of the subject building, approached the podium. Mr. Yarusso offered that the applicant approached him with the idea for an event center at the subject site. He added that the applicant said they would take good care of this site, keep it clean, etc. He noted that he agreed it was a good idea and he would like this Board to consider it.

Jose Cabos, applicant, approached the podium.

Andre Saucedo, approached the podium. Mr. Saucedo offered that he has been helping Mr. Cabos out with the paperwork for this CUP request. He noted that he and Mr. Cabos have been looking around Shakopee for a place to have an event center and noticed that the subject location has been vacant for at least a couple of years, and that is why they went to Mr. Yarusso. He added that right now, people go out of town for events that this event center would hold, so therefore this would benefit the whole community, not just the Latino community. Mr. Saucedo expressed that this would be a place where people could come to have fun, listen to live music, have parties, weddings, etc. He offered that the applicant is applying for a liquor license so there can be a bar at the subject site as well.

Mr. Saucedo explained where and how the catering would take place in the building during special events.

Mr. Cabos offered that most of the activity on the subject site will occur during the weekend.

Mr. Saucedo talked about the exterior smoking area that is being proposed as part of this CUP. He noted that there will be security guards inside and outside of the subject building.

Mr. Saucedo pointed out that there will be no more than 150 people at these specific events, therefore the subject site will never be “packed”.

Mr. Saucedo noted that there is some remodeling that needs to take place at the subject site before the event center could open, but if all goes well the applicant hopes to have it up and running by the end of April or beginning of May 2011.

Discussion took place regarding parking at the site in relation to what the building maximum occupancy would be.

It was noted that the applicant is not proposing any additional signage at the subject site as part of this request.

Mr. Saucedo noted that he has not spoken to any of the surrounding residential property owners, but that he does not see noise being an issue for them, since they are pretty far away from the subject site. Mr. Leek and Mr. Noble offered that there have been concerns expressed from property owners near the subject site regarding the noise and traffic that would be coming from the site.

Chair Mangan recognized anyone else in the audience wanting to address this item.

Pete Eide, 811 East 3rd Ave., approached the podium. Mr. Eide offered that he lives behind the building on 3rd Avenue and that he has lived there for 30 years. He added that prior to living at this location, he lived behind Hater's Bar on 1st Avenue. He noted that therefore he has had the experience of living near a bar. He expressed that he is concerned about alcohol and parking at the site as well as trash and noise that would be coming from the site. Mr. Eide expressed that this Board needs to consider this request openly and fairly. He added that he isn't for this operation, but he's not against either.

Chair Mangan recognized anyone else in the audience wanting to address this item. There was no response.

Motion: McQuillan/Seidensticker moved to close the public hearing.

Vote: Motion carried 7-0.

Motion: Gorton/Seidensticker moved to approve Resolution No. PC11-001, a resolution approving the Conditional Use Permit to allow a Minor Commercial Recreation Facility at 810 1st Avenue East, with conditions as presented, and move for its adoption.

Mr. Klemm offered that he would like to offer an amendment to the motion to include adding condition #32, stating that the doors in the subject building shall not be propped open during business hours.

Ms. Gorton and Mr. Seidensticker agreed with adding this amendment to the motion.

Mr. Magin expressed that he feels that this use will be a good fit for the subject area. He noted that he doesn't see this type of use competing with what is already around the subject area. He added that he does have some concerns regarding parking on the subject site, but he feels that the applicant is putting good effort into resolving these types of issues.

Mr. Collins pointed out that he agrees with Mr. Magin and that this is a great opportunity to bring people into the city of Shakopee.

Mr. Seidensticker stated that he is willing to support what is being proposed, but that he hopes that there are good control measures to prevent any major problems in terms of people consuming alcohol and leaving the facility.

It was pointed out that this site would be reviewed again for compliance in 2012.

Vote: Motion carried 7-0.

7. **BOARD REVIEW OF THE CONDITIONAL USE PERMIT FOR VEHICLE SALES FOR CAMAUTA'S IMPORT AUTO WORLD LOCATED AT 804 FIRST AVENUE EAST, IN THE HIGHWAY BUSINESS (B1) ZONE. (TABLED FROM 1-6-11 MEETING)**

Mr. Noble presented. It was pointed out that on November 4, 2010, the Board conducted a review of the Conditional Use Permit (CUP) that pertained to the property noted above. It was

noted that at that meeting, the Board requested that staff prepare the necessary documents to consider the revocation of the CUP for their consideration at the December 9, 2010 meeting. It was added that at the December 9th meeting the Board requested that Mr. Camauta provide a plan of action by December 28th for the access closure on Minnesota Street, fuel storage tank removal, impervious surface removal, and tree planting. It was expressed that Mr. Camauta provided a letter on December 28th stating that he would comply with the conditions, but did not give completion dates. Mr. Noble stated that at the January 6, 2011 meeting, the Board asked that Mr. Camauta provide clear deadlines for when the unmet conditions would be satisfied.

Mr. Noble offered that on February 22, Mr. Camauta submitted a letter and site plan outlining his plans for completion of the conditions. He noted that Mr. Camauta is proposing to complete work during the County Road 101 construction and gave deadlines for completion of October 15, 2011 for the removal of 1200 square feet of impervious surfaces, planting of 5 Black Hills Spruce Trees, removal of the northerly access to Minnesota Street, and removal of the underground fuel storage tanks. Mr. Noble expressed that it appears to staff that Mr. Camauta has met the other conditions of the resolution and has arranged for compliance with Condition #3 regarding providing a sidewalk easement to Scott County.

Mr. Noble noted that the applicant has provided a drawing for the Board's review showing where the proposed playground area will be located as well as the proposed location for the tree plantings at the subject site.

Mr. Leek offered that if this Board doesn't feel that the information provided by the applicant is responsive, the Board should consider the resolution before them, which would revoke a vehicle sales operation on these premises. He added that if this Board feels that the timelines set forth in the letter provided by the applicant are responsive to what the concerns have been of this Board over the last several meetings, the Board either needs to take no action or offer a motion accepting the timelines and requesting that staff come back to this Board after those deadlines and report on the success of those tasks being completed.

The Board asked questions and offered their feedback regarding this Conditional Use Permit.

Discussion took place regarding how the reconstruction of Highway 101 will affect the timelines set forth by the applicant.

Discussion took place regarding the plantings being proposed at the subject site.

Jesus Camauta, applicant, approached the podium to answer the Board's questions. Mr. Camauta offered that he is eventually planning on removing the canopies at the subject site, but that his main priority right now is the removal of the tanks from the site. He added that he will take care of the maintenance of the canopies until they are removed.

Motion: Magin/Seidensticker moved to direct staff to come back with a review of the completion of the conditions that are outstanding at the November 2011 BOAA meeting and direct staff to work with the applicant prior to the planting season on alternative species for the landscape area on the subject site.

Vote: Motion carried 7-0.

8. ELECTION OF OFFICERS FOR 2011.

Chair Mangan opened the floor for nominations for Chair of the BOAA.

Commissioner Seidensticker nominated Commissioner Gorton as Chair. Chair Mangan called for additional nominations 3 times.

Seidensticker/McQuillan moved for a white ballot for Commissioner Gorton for Chair of BOAA. Motion carries 7-0.

Chair Mangan opened the floor for nominations for Vice Chair of the BOAA.

McQuillan/Gorton move to nominate Commissioner Klemm as Vice Chair of the BOAA. Chair Mangan calls for additional nominations 3 times.

Magin/Seidensticker moved for a white ballot for Commissioner Klemm for Vice Chair of the BOAA. Motion carries 7-0.

Commissioner Gorton nominated Commissioner Seidensticker as 2nd Vice Chair of the BOAA. Chair Mangan calls for additional nominations 3 times.

Gorton/Magin moved for a white ballot for Commissioner Seidensticker for 2nd Vice Chair of the BOAA. Motion carried 7-0.

Chair Gorton took over conducting the meeting.

9. OTHER BUSINESS:

Mr. Leek expressed that there will be a LEGO 301 meeting on May 10, 2011 that will focus on economic development principals and exercises. He encouraged the members of this Board to attend. He added that he will provide this Board with more information at a later date.

10. ADJOURN:

Motion: Mangan/Magin moved to adjourn the meeting.

Vote: Motion carried 7-0. Meeting adjourned at 8:31 p.m.

OFFICIAL PROCEEDINGS OF THE PLANNING COMMISSION

REGULAR SESSION

SHAKOPEE, MINNESOTA

MARCH 3, 2011

MEMBERS PRESENT: Mangan, McQuillan, Klemm, Magin, Seidensticker, Collins and Gorton.

MEMBERS ABSENT: None.

STAFF PRESENT: Mark Noble, Planner II
R. Michael Leek, Community Development Director

1. ROLL CALL:

Chair Magin called the meeting to order. Roll call was taken as noted above.

2. APPROVAL OF THE AGENDA:

The Agenda was approved as written.

3. RECOGNITION BY PLANNING COMMISSION OF INTERESTED CITIZENS:

Chair Magin recognized anyone in the audience wishing to speak on any item not on the agenda. There was no response.

4. APPROVAL OF THE CONSENT AGENDA:

The following item was considered as part of the Consent Agenda.

Item #5: Approval of the Minutes of the February 3, 2011 meeting.

Motion: Mangan/Seidensticker moved to approve the Consent Agenda.

Vote: Motion carried 7-0.

5. APPROVAL OF THE MINUTES OF THE FEBRUARY 3, 2011 MEETING.

Action for this item took place under the Consent Agenda.

6. ELECTION OF OFFICERS FOR 2011.

Chair Magin opened the floor for nominations for Chair of the Planning Commission.

Commissioner Gorton nominated Commissioner Klemm as Chair. Chair Magin called for additional nominations 3 times.

Gorton/Mangan moved for a white ballot for Commissioner Klemm for Chair of the Planning Commission. Motion carried 7-0.

Commissioner Magin passed the gavel to new Chair Klemm.

Chair Klemm opened the floor for nominations for Vice Chair of the Planning Commission.

Gorton nominated Commissioner Seidensticker as Vice Chair of the Planning Commission. Chair Klemm called for additional nominations 3 times.

Magin/Mangan moved for a white ballot for Commissioner Seidensticker for Vice Chair of the Planning Commission. Motion carried 7-0.

McQuillan nominated Mangan as 2nd Vice Chair of the Planning Commission. Chair Klemm called for additional nominations 3 times.

Magin/Gorton moved for a white ballot for Mangan for 2nd Vice Chair of the Planning Commission. Motion carried 7-0.

Chair Klemm took over conducting the meeting.

7. OTHER BUSINESS:

There was no other business.

8. ADJOURN:

Motion: Magin/Gorton moved to adjourn the meeting.

Vote: Motion carried 7-0. Meeting adjourned at 8:35 p.m.