



**Board of Zoning Appeals & City Planning Commission Minutes
Tuesday, January 7, 2020
7 P.M.
Council Chambers**

Members Present: David E. Weiss, Mayor, Chair
Rob Zimmerman, Council Member
Joseph J. Boyle III, Member
Kevin Dreyfuss-Wells, Member
Joanna Ganning, Member

Others Present: Joyce G. Braverman, Director of Planning
William M. Gruber, Director of Law
Daniel Feinstein, Senior Planner

The meeting was called to order by Mayor David E. Weiss at 7:00 P.M.

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Mayor Weiss indicated this is Mr. Zimmerman’s last meeting as a City Planning Commission member. He has been a very distinguished member of the Planning Commission since 2012 as a representative of City Council. He expressed the Board’s gratitude for Mr. Zimmerman’s insight and wisdom provided the City Planning Commission and as a bridge to City Council. Thank you for your service.

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Approval of the December 3, 2019 Meeting Minutes.

It was moved by Dr. Ganning and seconded by Mr. Boyle to approve the minutes with corrections.

Roll Call: Ayes: Weiss, Zimmerman, Boyle, Dreyfuss-Wells, Ganning
Nays: None

Motion Carried

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#2025. Tapas Lounge/Bar – 16704 Chagrin Boulevard:

Continuation of a Public Hearing was held on the request of Kenneth Gibson, Tapas Lounge/Bar, 16704 Chagrin Boulevard, to the Board of Zoning Appeals and City Planning Commission for a Conditional Use Permit for a lounge/bar and for a variance to the parking requirements. The

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applicant proposes to establish a lounge/bar in this former retail space. This case was continued at the July 2019 meeting for more information and in order for the applicant to apply for the Conditional Use Permit. The lounge/ bar is proposed as a similar use to the brew pub/wine bar conditional use category in the CM Commercial Mixed Use zoning district. The lounge/bar is the primary use with a kitchen and sit-down dining also provided. The applicant proposes hours of operation Monday through Thursday from 11 a.m. to 12 midnight and Friday and Saturday from 11 a.m. to 1 a.m., with peak hours projected from 9 p.m. to 1 a.m. on Friday and Saturday. A parking variance is required since the use requires 23 parking spaces by code, but has no on-site parking. A shared public parking lot serves the businesses behind the south side of Chagrin commercial area, and there is on-street parking on Chagrin Boulevard

Mr. Feinstein showed slides of the site. He stated this is a continuation of a request for a Conditional Use Permit and a parking variance. The applicant proposes to establish a lounge/bar in a former retail space. The case was continued from the July 2019 meeting for more information and in order for the applicant to apply for a Conditional Use Permit. A lounge/bar is proposed as a use similar to a brew pub/wine bar which are listed conditional uses in the CM Commercial Mixed Use zoning district. A parking variance is also requested as there is no on-site parking. This use requires 23 parking spaces. A shared public parking lot serves all the businesses behind the south side of Chagrin and Chagrin Boulevard has on-street parking. Some of the additional information requested from the prior meeting has been submitted. Two major items are missing: 1) there is no explanation of how the use is similar to a wine bar or brew pub; and 2) there is no description of how the use meets the standards for Conditional Use Permits. These issues were outlined in multiple letters to the applicant. Staff does not support this request.

Ms. Braverman outlined a history of zoning and land use in the city relative to bars. Since the 1970's there have been no bars allowed as a primary use in the city. As of 2013, an exception was added to the zoning ordinance to allow only brew pub or wine bar uses. Those exceptions were added to the CM Commercial Mixed Use zoning district. There are specific definitions of those uses reflected in the zoning code so that it is a very specific use. There has been one use, to this time, that has been approved as a use similar to a wine bar. This approval was located in the Van Aken District development. A restaurant with an upstairs bar space was planned in the B-1 building for first and second floor uses, but the restaurant was developed as a separate first floor only tenant. The second floor space was specifically designed for a use similar to a wine bar. There is no precedent for any use similar to a brew pub or wine bar in the Chagrin/Lee neighborhood.

Mr. Gruber indicated there are standards in the codified ordinances, both when applying for a use that is similar to another use in the zoning ordinance, and then standards for a Conditional Use Permit. One of those standards is to follow the purpose of the land use ordinance. The use that is being applied for must be determined as similar to a use that is listed in the zoning ordinance. As was mentioned, the City has approved only one such similar use. That use is in space designed and built as a bar. It is located in the same building as the restaurant on the first floor. There are no single or two family homes nearby in the Van Aken District. The City approved that application in a very narrow, distinct manner, in a very specific neighborhood, so it would not have a negative impact on the surrounding area.

Mr. Dreyfuss-Wells asked about the difference between a restaurant and a bar.

Ms. Braverman explained the primary use of a bar has been determined by the Zoning Administrator. There are many restaurants that may have a bar as a part of the offerings, as an accessory use. In these cases the primary use is a restaurant with a bar as a small part of the business.

Mayor Weiss said the action before the Board is not whether the primary use is a restaurant or bar. It is whether the proposed use is similar to a wine bar or brew pub, as well as a parking variance. This application was continued from a meeting last year, where the applicant was asked to provide additional information. The parking variance is only relevant if the use is approved.

Ken Gibson, 3517 Antisdale Avenue, said he has been interested at this property since October 2017. He inquired at that time about the zoning for the property. He then submitted plans for building improvements the following year. He never knew he needed zoning approval, or that there was any zoning problem. The city approved his building permits and allowed him to work on the property. He has changed the plans since the last meeting. He has removed some seating along the wall and added high top tables. He moved additional seating within the space as shown on the floor plan, which also shows the dimensions of the bar area as built.

Mr. Zimmerman asked how the work was allowed to commence in the space without zoning review.

Mr. Feinstein explained that initially some demolition work began without a permit. The Building Department stopped that work. Plans were then submitted to address the violation, but they did not get any zoning review, and a permit was issued by the Building Department.

Ms. Braverman explained a human mistake was made that the zoning review was not completed at the time the Building permit was issued for the interior of the space.

Mayor Weiss asked about the use and when it was proposed.

Mr. Gruber said a letter was sent by the zoning administrator on April 24, 2019 explaining the regulations. There were additional letters sent in June that also explained the definition and determination of the proposed primary use being a bar/lounge and the ability to appeal that determination. There was a letter sent that explained the code requirements for 'similar use' in the conditional use standards. No information has been submitted by the applicant to explain that condition.

Dr. Ganning asked the characteristics that differentiate between a restaurant and a bar.

Mr. Feinstein said he made the determination that this is a bar/lounge based on which use is primary to the space. Based on the information submitted regarding the amount of projected sales, the floor layout, the number and type of seating relegated for each type of use, the food menu, the hours of operation, and the expected peak times of use, it was determined a bar/lounge is the primary use.

Mr. Zimmerman said the applicant has applied for the Conditional Use Permit. Has the applicant addressed the issues that were raised at the June 2019 meeting?

Mr. Gruber said the applicant has applied for a Conditional Use Permit but they have not addressed any conditional use standards.

Ms. Braverman agreed the application was received, but the content submitted does not address the issues of conditional use standards.

Mr. Boyle said there has been no explanation of the use nor how it is similar to a wine bar/brew pub.

Mr. Zimmerman said the Board is not obligated to make that decision. They are to review what is submitted by an applicant.

Ms. Braverman said there has been no written explanation of how the use is similar to a listed conditional use, nor submission of how that use meets the Conditional Use Permit standards.

Mayor Weiss said they would first need a comparison of how this use is similar to a wine bar/brew pub, then they could consider how the use could be considered similar, using the standards outlined in the zoning ordinance for a Conditional Use Permit. That is how this process should work.

Ms. Braverman said normally a letter is submitted in writing to address those standards. No such letter was submitted in this instance.

Mayor Weiss said he would like an explanation of the layout of the space and floor plan. He does not understand the information submitted. There seems to be two different schemes shown in the packet.

Mr. Gibson explained where 6 new tables are proposed, and how the bar size was increased in the work that was completed compared to the submitted floor plan. It is not the same size as in the original plans done by the architect. The bar is larger. He explained he has spent approximately \$120,000 on this project, renovating the space.

Mayor Weiss asked if the architect's drawings are accurate to the space that is built.

Mr. Gibson said no, the bar has been extended. The architect has not been retained to officially revise the plans. He showed plans and notes he created that were submitted, and pictures to the Board to show them the intended layout and floor plan of the space.

Mayor Weiss said he understands what is being shown in the pictures, and on the sketches drawn by the applicant. The hand sketches are not the same as what is drawn on the architectural plans that were originally submitted.

Mr. Gibson said he expects liquor sales in this business to be 50 percent of sales. This would be an even split with food sales. He operated a business in Cleveland Heights for 15 years running a restaurant.

Mayor Weiss asked the applicant to clarify which menu is proposed. The hand written version?

Mr. Gibson said yes, it is a "keep it simple" kind of menu.

Mayor Weiss opened the Public Hearing.

Ms. Endrei, 16811 Kenyon Road, said she is passionate about her neighborhood, but also passionate about her home. Touch of Italy is already a nuisance and hardship for the residents on the south side of Chagrin shopping center. She has lived in her house, which backs up to parking lot and commercial buildings, since 1996. She has had to call the police many times. Sometimes she loses sleep worrying about what goes on in this parking lot. There is loud arguing. She has heard gunshots. She grew up in Shaker Heights and wants to live in this area close to a business district. The proposed use seems similar to Touch of Italy. That business is already a concern for her own and her children's safety. If this commercial area has another bar, it would be difficult for the residents adjacent to the parking lot. She understands the Van Aken District is a very separate commercial district without houses backing directly up to it. This district has people sleeping directly behind the parking lot. She has had glass bottles, and other objects thrown over the fence into her yard. A restaurant may be fine, but something that has late night hours and acts like a bar, is not what she wants. She hopes the city would not approve such a use in that commercial district.

Mayor Weiss asked if being a nuisance is part of meeting the land use ordinances for the city.

Ms. Braverman said yes, there are standards for Conditional Use Permits and number 3 is that no nuisances will be created because of the use proposed. This use would be close to single and two family homes. There have been issues with odor and trash in that parking lot.

Mayor Weiss asked if the Van Aken District is further from single family homes than this proposed use.

Ms. Braverman said yes, the Van Aken District is only close to apartment buildings, which are across the street not adjacent to the property.

Ellery Smith, 4359 Northfield Road, said he is a minority partner in this business. He is sorry for the issues the resident has raised about Touch of Italy, but they should not be held accountable for that business or the issues associated with it. They will be only dealing with an older population. They will control the crowd. The crowd will not be a problem for the neighborhood. They have done a lot of work on this space already, and should be allowed to continue and open their business.

Mr. Gruber indicated that Mr. Gibson brought up the fact that he operated a business, restaurant/bar, in Cleveland Heights. In fact, in November 2013 Cleveland Heights declared a public nuisance against that business to shut it down. That public nuisance was appealed to the Cleveland Heights Appeals Board which modified the order and allowed the business to remain open pending the owner making changes to the operation and no further nuisance complaints. A few months after that order was issued, there were other nuisances reported at the property and Cleveland Heights revoked the occupancy permit. There was litigation afterward and a settlement of that case in 2017 where the applicant did agree to never have a liquor license and run a business in Cleveland Heights again.

Mr. Gibson said he sold that business 2 years before that issue came up to a different group of owners. He did not own it, but then he took it back over to try to keep it from going out of business. In fact, a fight happened between two 50 year old men right after the order from the appeals board. The City of Cleveland Heights then shut it down.

Mr. Gruber said the documents he has indicate the owner of record is Mr. Gibson and it is his signature on the settlement from litigation.

#2045. Shaker Redo LLC – 3700-3704 Lee Road:

A Public Hearing was held on the request of Nick Fedor, Shaker Heights Development Corporation, representing Shaker Redo LLC, 3700-3704 Lee Road, to the Board of Zoning Appeals and City Planning Commission for a Conditional Use Permit for a Local Sign District and a sign variance. The applicant proposes to utilize a blade sign, wall signs and window signs in order to provide signage for this commercial building at the corner of Lee and Nicholas Roads. A Local Sign District is required in order to utilize blade or projecting signs. There is one blade sign proposed on the Lee Road side of the building in order to identify businesses in this redesigned building. The blade sign is proposed to extend above the flat roof of the building. Code does not allow a sign to extend above the cornice line of a building. Council confirmation of a Conditional Use Permit is require

Mr. Feinstein showed slides of the site. He stated this is a request for a Conditional Use Permit for a Local Sign District to the sign requirements. The applicant proposes a Local Sign District for this corner property with three (3) tenant spaces. A local sign district allows a projecting sign and other specialized signs. The applicant proposes to renovate the building façade, which has been approved by the Architectural Board of Review. A projecting sign is proposed extending above the roofline. The signage plan for the building includes a projecting sign, painted wall signs, individual letter wall signs, secondary window signs and portable sidewalk signs. The Local Sign District differs from current code by allowing a projecting sign, two secondary window signs at a slightly larger size and portable sidewalk signs. Staff supports the request in part with the conditions listed in the Staff Report.

Nick Fedor, Executive Director SHDC, 3558 Lee Road, said this is a request for a Conditional Use Permit. He is also present with architect, Elicia Gibbon, designer of the sign package. The context for this application is that the SHDC acquired this property in April 2019. There are two tenants, Process Canine, at the corner, Barbara's Magic Hair Salon, and the third tenant space is vacant. All of the tenants have been involved and support the redesign of the sign package for the building, as well as the façade redesign. They hope with the new building design and sign package to provide momentum of other updates to buildings along Lee Road.

Elicia Gibbon, 3012 Chadbourne Road, showed a 1960 image of the building. She said there are clay tiles underneath the applied fake stone currently on the façade. The plan is to completely renovate the façade of this building. The redesign includes splitting the building into two, with the middle section with vertical rain screen elements. It includes a projecting sign that pops out of that element. The Architectural Board of Review has approved the redesign of the building and supports the proposed signage. There are many other buildings along Lee Road which have signs perpendicular to Lee Road. Most of those buildings have signs that are ground mounted monument signs. There is no space for that type of sign at this building. They propose several types of signage. They are accepting of the conditions as proposed by staff that would limit the size in square feet and how far such a sign could project from the wall. They also accept the idea that there are no signs in the right-of-way on the ground.

Mayor Weiss asked for an explanation of the center, trellis, element of the building.

Ms. Gibbon explained how it is constructed, how the texture is preferred, and its color.

#2046. Shaker Lakes Nature Center – 2600 South Park Boulevard:

A Public Hearing was held on the request of Jodi McCue, Environmental Design Group, on behalf of the Nature Center at Shaker Lakes, 2600 South Park Boulevard, to the City Planning Commission for improvements to public land in order to replace the Stearn's Trail. The Nature Center is reconstructing the trail with essentially the same layout. This includes sections of wood boardwalk, bridges, benches, platforms and a tree house. A new trail entry feature is proposed in the Nature Center parking lot as well as new entries at both South Park and West Park Boulevards. The two West Park entries will be connected with a 3 foot wide mulch path that extends to the Shaker Boulevard sidewalk. Council approval of improvements to public land is required

Mr. Feinstein showed slides of the site. He stated this is a request for improvements to public land in order to renovate the Stearn's Trail at the Nature Center. The trail is being constructed in essentially the same layout with new boardwalks, bridges, platforms and benches. Other features include redesigned entries and connecting paths at the South Park and West Park Boulevard trail entries. The two West Park Boulevard entries are proposed to be connected with a 3 foot mulch path. There are two possible locations for a future treehouse. There is a new entry in the Nature Center parking lot and moving the trash and recycling center away from that renovated trailhead. The Architectural Board of Review approved the trail features and a new shed near the dumpster, with some conditions on the shed color scheme. Staff supports this request with the condition that the West Park Boulevard mulch path remains on Nature Center property, not in the right-of-way.

Kay Carlson, Nature Center Executive Director, explained they are a private non-profit that leases 20 acres of property at the intersections of South Park/Shaker Boulevard/West Park Boulevard. They do not receive tax money income. They derive their livelihood from donations. They service up to 117 schools, 12,000 children, each year. They have 3,000 children in programs other than through schools. They have outdoor classrooms as well as their main building. In 2017 they restored the outdoor classrooms. In 2018 they completely renovated the All People's Trail. The third phase of development is to renovate the Stearn's Trail on the southern portion of the property. This includes new trail heads inside the parking lot, and updates to the trail itself. This trail features boardwalks, platforms and bridges, and was constructed in the 1980's. It is certainly showing its age.

Jodi McCue, Environmental Design Group, showed the plans and the location of the various spaces in the parking lot and where the dumpster would be located and a shed installed. They have added one section of asphalt coming off the new parking lot trail entry feature that would be handicap accessible. They will renovate the areas on the trail with new platforms and bridges as shown in the plans to create their outdoor classroom areas. There will be a treehouse proposed in the middle of the site, much further than 75 feet to the property line. They don't know exactly which tree it will be on yet, but are working on that.

Mr. Dreyfuss-Wells asked if the tree house would be accessible for the handicapped. He suggested that closer to the building would be better.

Ms. Carlson indicated they are now proposing that that be in the site that is much closer to the building. They are evaluating the trees to see how they might build on it.

Mayor Weiss indicated there seems to be a future signage proposal for the project.

There being no further business, the meeting was adjourned at 8:30 p.m. The next meeting will be February 4, 2020.



David E. Weiss, Chair
Board of Zoning Appeals
City Planning Commission



Daniel Feinstein, Secretary
Board of Zoning Appeals
City Planning Commission