

PLANNING COMMISSION MEETING

May 14, 2013

7:00 P.M.

I. CALL MEETING TO ORDER

The meeting was called to order at 7:00 p.m. by Chairman Don Darby.

II. ROLL CALL

Members Present: Carolyn Ghantous, David Okum, Richard Bauer, Tom Vanover, Robert Diehl, Marge Boice and Don Darby

Others Present: Anne McBride, City Planner; Don Shvegza, City Engineer; William McErlane, Building Official

III. MINUTES OF THE REGULAR MEETING OF APRIL 9, 2013

Chairman Darby: We will accept a motion to accept the Minutes of the previous meeting as presented.

(Mr. Okum moved to adopt the Minutes of the April 9th, 2013 Planning Commission Meeting; Mr. Vanover seconded the motion and with seven "aye" votes from the Planning Commission Members the Minutes were approved as written.)

IV. CORRESPONDENCE

Chairman Darby: In your packets you received two items of correspondence Ordinance No. 12-2013, 153.533 Special Event Signs and a copy of the letter to Council, Zoning Code Amendment Regarding Recreational Vehicle Regulations.

V. OLD BUSINESS

(No Old Business presented at this meeting.)

VI. NEW BUSINESS

- A. Chairman Darby: The first item for New Business is Conditional Use Permit, outdoor seating at DJ's Sports Tavern, 380 Glensprings Drive.

Mr. Alan Chilson: I am a business partner with Dean Jiang. The reason we are here today is we are seeking a temporary permit for the construction of outdoor seating for the sport's tavern that is going in at 380 Glensprings Drive. We are here to address any issues that you may have.

(At this time Mr. McErlane, Ms. McBride and Mr. Shvegza read their Staff comments.)

Ms. McBride: One additional item that I would like to note; there isn't any information provided to describe how the area will be treated between the floor of the deck and the ground; will it have lattice work, or brick or will it be left open?

Mr. Okum: There are some questions that Staff has presented to you regarding the outdoor music venue and how that would be controlled and what type that would be.

Mr. Alan Chilson: There wasn't a plan to have an outdoor music venue; the music venue is indoor only.

Mr. Okum: So, there will be no outdoor music venue?

Mr. Alan Chilson: No, there is no plan for that.

Mr. Okum: O.K. And what type of skirting?

Mr. Alan Chilson: We were looking into just a standard lattice work to match the color of the deck.

Mr. Okum: Would that be like the cross-hatch lattice that you see on most residential decks?

Mr. Alan Chilson: Right. The ones that we were looking at had roughly a 2" X 2" gap in-between the lattices.

Mr. Okum: What about outdoor lighting for the area; it is a sizeable seating area. How do you plan on lighting that for safety issues?

Mr. Alan Chilson: Currently there is a pole lamp for the parking and there is also going to be some lights on the side of building, if we decide to have it open at the nighttime. If we decide to only have it for the indoor use during the night then there won't be any lighting and it just won't be used.

Mr. Okum: So, there is no additional lighting that is going to be added?

Mr. Alan Chilson: Not at this time.

Chairman Darby: Are you indicating that it won't be open in the evening?

Mr. Alan Chilson: It would be in use only if somebody is going outside to smoke but there wouldn't be anything served.

Chairman Darby: So, there wouldn't be any service after 6:00 p.m.?

Mr. Alan Chilson: Dusk.

Mr. Okum: So, the outdoor deck area will not be used for seating or service without coming back to us for a lighting plan for that area.

Mr. Dean Jiang: The highway pole light is very bright; we don't need any lighting there.

Mr. Okum: Will you be serving in the evening after dark?

Mr. Alan Chilson: No. The outdoor is specifically there mainly just for the smokers in the community. It is not intended that we are even going to be serving out there during the day. If somebody wanted to take their beverage outdoors with their cigarette then they would do that. But, as far as the outside, we weren't really planning to do that.

Mr. Bauer: Concerning the parking and what your plans are there for that deck and the drive lane, do you see yourself adopting what Mr. Shvezda has proposed there?

Mr. Alan Chilson: That is a feasible idea. We were looking this over and we knew we were going to lose that line of parking that is along that side; that was known from the beginning. As far as the exact design that he has there, something like that would work. I don't know if it would match that exactly but it would be marked on the ground with the directional arrows with the proper paint. The paint for the parking, I don't believe it has any paint there now. What we did have to do is put the arrows in to go along there. As far as the actual curb, we can put a curb in along

there and it might even address the landscaping issues as far as the percentage of the property that is going to lose landscaping versus what will be added with the curb and the berm that is inside of there.

Mr. Bauer: You are planning to adopt his suggestions to some degree but you might modify that to some other degree.

Mr. Alan Chilson: I haven't had a contractor out there to look it over and give me any feedback on it. Right now I am looking at this as it is feasible but I have to speak to a professional that does this work before I could say that we are definitely going with this or not.

Mr. Bauer: O.K., thank you.

Chairman Darby: Mr. Shvezda, are you comfortable with that response?

Mr. Shvezda: Obviously, they need to take a look at what works best for them and it would have to be a re-submittal of that detail of what is to be proposed and then we can take a look at it at that point.

Mr. Okum: That is a very large deck, compared to Mcalisters as an example which has a pretty large volume of outdoor dining lunchtime guest. Do you need that big of a deck for occasional outdoor dining and people that need to smoke? Do you feel that it is going to be a pretty big draw to the business? The business is a lot of square footage, there is a lot of building there.

Mr. Alan Chilson: There is not going to be a lot of seating on the inside. There will be some sporting areas on the deck side of the building and there is a section of the building on the northwest side that is going to be walled off. As a matter of fact a wall has already gone up for a break room area. The main draw is the outdoor decking, especially in the summertime. A lot of people like to sit out there and enjoy their beverage or just relax in the sun so we anticipate that if we don't use all of the space then we have it, and if we need it we would like to have enough space to accommodate all of the clients.

Mr. Okum: My understanding is that the outdoor dining service area will not be used during nighttime periods for purposes of service; providing food and drink out there. So, you won't have servers bringing food outside to guest, but a guest who has a drink in their hand or wants to smoke a cigarette can certainly do that; similar to what we have a Bargos, similar to what we have at a number of other restaurants that have outdoor areas.

Mr. Alan Chilson: That is correct.

Mr. Okum: And you feel that the overhead light off of the interstate is adequate lighting for the light safety issues for people, so that they won't trip and fall?

Alan Chilson: The interstate light does provide some but there is a parking lot light that is right on the other side of the parking.

Mr. Okum: So, it drops light right onto the deck?

Alan Chilson: Very significant light, yes.

Mr. Diehl: On the deck, when you walk outside, do you need to go up or down or straight out?

Mr. Alan Chilson: No, it would be a straight walkout.

Mr. Diehl: Are you putting any type of concrete barrier in front of the deck?

Mr. Alan Chilson: If it is required; anything that is required we will do. If there has to be a concrete curb as suggested in the report then that is what we will do. I

would have to speak to a professional in the field but if something has to go in it is not a problem.

Mr. Bauer: This question may be for Staff, is the lot for Beef O'Brady's a shared lot as far as parking?

Ms. McBride: I don't believe it is; I don't believe there is a cross parking easement but the applicant might know that better.

Mr. Diehl: You mentioned that part of the restaurant is being blocked off by a wall; what would be the new capacity of the sports bar that you have planned?

Mr. Alan Chilson: I don't have that number off of the top of my head. I know that the walled off section is about 20' X 30' and it is on the northwest corner. As far as the exact capacity of the tavern after that, I don't have that number.

Chairman Darby: At this time, it doesn't appear that there are any more comments; I would like to interject because this is a public hearing it is a requirement that we open it up for public comment. Is there anyone here who intends on commenting concerning this request?

(At this time Mr. Tom Drennen, owner of Beef O'Brady's restaurant, stood and was sworn in by Mr. Okum.)

Mr. Tom Drennen: I am the owner of the Beef O'Brady's that just recently opened next to this proposed location here. I was under very similar circumstances when I asked you for the same thing and we came across several roadblocks, as well. I want to make sure today that these roadblocks are also issued with the applicants that are here today; that was landscaping. We were under very strict conditions for the landscaping, what type of flowers and what time of year they could be planted by. That went through approval as well as the lighting. A concern I would have today is also the parking. We do not have shared parking; the parking lot lamp is considered my property. If I don't maintain it properly, is it going to lose lighting to their deck; that is a question that should be raised. I am not here to discourage them from building a deck by all means but I want to make sure that anything new that is being built in this area is to the City's standards and to all of the other businesses, as well. I think it is a good opportunity for us to be able to update that area, just like I did.

Chairman Darby: Would Staff like to comment?

Ms. McBride: I think specifically we worked with this applicant to come up with a plan that he could implement for his outdoor dining facility and that is basically what we have suggested that the Commission make as a condition, if you were to approve this deck. We have received nothing relative to landscaping or even an area where that can occur. That is one of the conditions that we would be recommending to the Planning Commission and we would work with that applicant just like we did with Mr. Drennen to come up with appropriate plant material and where it could be planted and when it could be planted.

Chairman Darby: And the issue of parking?

Ms. McBride: The City has parking requirements; but in terms of somebody parking in the Beef O'Brady's lot and then to go over to the applicant's property, that is going to be an issue for the two of them.

Mr. Tom Drennen: If they are approved today with a shortage of parking because of the expansion, I hope they are that busy and they are at capacity parking, then do they spill over into my parking and is that an issue for me? It is a question to think about, I am just here to observe, as well.

Mr. Diehl: I would like more clarification about the lighting.

Mr. Tom Drennen: There is a parking lot light there and there is a landscape divider that separates our parking spaces. There is currently a two-lighted light pole there; the question is whether it is mine or theirs. If it is mine, I really wish I knew. If it is mine and the light goes out and they are using that light to light their deck, if I don't decide to change that light in a couple of weeks, then does that propose a danger for them; that is my only concern there. If it is theirs, I am sure they would maintain it properly. If I am a couple weeks behind getting a single light that is in the back part of my parking lot, that I am not really not too concerned about, does that propose an issue for them?

Mr. Alan Chilson: In actuality, I believe the light pole is owned by the 380 property; if it is not then I would hope if the bulb did go out, for safety concerns that it would be replaced in a relative amount of time.

Mr. Diehl: Do you consider that light a part of the lighting of the deck?

Mr. Alan Chilson: Yes, it would light the entire deck. If additional light was needed then it would be implemented. At this time we didn't foresee the necessity for additional lighting.

Mr. Vanover: I am having a hard time swallowing the size of this deck and the seating out there. This isn't just for somebody to go out and smoke a cigarette or cigar with their beverage, the full intent is that they are going to be out there and to be honest with you it would be entertaining to see when it gets dark in June and July and August at 9:30 p.m., 8:30 p.m. and pushing back if they will go out there and clear the deck to make everybody come in, other than the ones that are out there smoking. I enjoy sitting outside; we have a few other restaurants in town that have outdoor seating and I do enjoy that and the weather. But in my mind this isn't a smoking deck, this is an additional service area for the restaurant and to think anything less than that, we are kidding ourselves. Obviously, with the size of it with twelve or fifteen four-tops; just in the furniture that is a lot of furniture for somebody to go out and light a cigarette. I think that my fellow Commissioners need to take this wide-eyed; this is, in my mind an extension of the operation inside.

Mr. Okum: Historically, when Chi-Chi's was there it was extremely popular and Perkins was there at the same time and they were very, very busy. Chi-Chi's went down hill and closed and then Perkins was obviously replaced by Beef O'Brady's but for a good number of years Perkins really didn't have much business. The site accommodated both businesses sufficiently. Whoever's light it is, that is for you gentlemen to work out. Certainly it is a light that needs to be maintained for the minimum lighting standards for the site for parking safety. Whoever's light it is, whether it is Beef O'Brady's or this business it doesn't matter. Expansion of the outdoor deck area is a nuance due to the prohibition on smoking indoors and businesses are finding an opportunity to expand with an outdoor venue. There is nothing wrong with that, it is just the way things have evolved. It happened at Pappadeaux; it was designed and approved in Springdale without an outdoor dining area and while building over the three and a half year period, they added an outdoor dining area, so that came through Planning Commission and was approved with conditions; the amount of sound, how the sound was handled, how the lighting was handled for the outdoor dining area and that was a full service dining area outdoors. If the applicant has indicated in this Conditional Use Variance request that there will be no outdoor service after dark, then that is the conditions of the Outdoor Conditional Use Variance. If they breach that then they are subject to being brought into this Commission again and the restrictions that need to be imposed upon that business need to be imposed and enforced. They understand that; they are going into it right now with an opportunity to expand their business, possibly add some dining area that they don't currently have and offer their customer base something that is different. Honestly both businesses should bleed off of each other and help each other more than hurt each other. The business that is there is a negative to Beef O'Brady's more than a help because it is a blight on that corner so as far as business success, we hope that both businesses do well. You find that happening in many areas, so it is not unusual. I do have some concerns about the overall landscaping of the site, I think that included in the motion we should address

any missing and damaged landscaping on this site that it is restored as it was approved by this Commission so that ties to it, along with any changes that are made. I am also going to be adding into the motion, to planning and review and implementation by owner, and parking and site plan conditions shall be reviewed and approved by Staff. We have skirting that the applicant will have to put on the base side of the deck; this deck is only going to be about 12" or 14" off of the ground; is that right?

Mr. Alan Chilson: Right. The parking lot side is roughly about two feet.

Mr. Okum: About two feet, so I was fairly close. The Engineer has recommended that based upon his layout of parking lot rearrangement that there would be an area to add some landscaping, that obviously would need to be reviewed by Staff and approved. They have also indicated that there will be no outdoor music venue, so that would be part of the motion. And that at this time they are not adding any outdoor lighting and there will be no outdoor service after dark; so those are the items that would be part of the motion along with Staff's comments.

Chairman Darby: We have another member of the audience that would like to speak; if you would stand and be sworn in.

(At this time Mr. Peter Panchal was sworn in by Mr. Okum.)

Mr. Peter Panchal: I am a co-owner at Howard Johnson's which is next door to the restaurant of the applicant. I hope they get the temporary license for the patio, that is great, but parking is a big issue for me as well. That bus that parks on the other side, that takes six spots, and that is on a shared easement for going in and out and that is fine but right now while the bus loads and unloads they are parking on my parking spots at my hotel and after this opens up that may be a very big issue for us. I fully understand that this is not about the parking for my side but it may cause more grief for me after the restaurant opens and the parking will become an issue. He and I have been discussing moving the bus to another location so that their cars aren't parking on my side. Not only are they parking on my side they are coming in and eating my breakfast in the morning; that is another issue all together. I would like if you would consider the parking or if you can help me out in anyway to make sure that my parking doesn't get used for them. I have been having numerous discussions with the police, the sheriff every time my side is getting filled up with their customers that are waiting there for the bus; especially when it rains they are under my canopy which doesn't look very professional for my customers. If you would consider all of that I would appreciate it.

Mr. Alan Chilson: As far as the bus goes, the bus does not belong to us. It is not a business that we are operating. We have spoken to the owner of the bus and we put him on notice, in short that the bus can't be there any longer. It is something that we have allowed because it was on the property but we don't have any profit gain from it. It really has nothing to do with us except for the fact that the gentleman asked if he could park it there. We have since told him that it has to be gone before we open. Wherever he locates it, that is his business; if the owner of Howard Johnson's decides he is going to allow him to put it over there, which it doesn't sound like he is, otherwise it is not going to be there. It is not an issue for us.

Mr. Dean Jiang: Mr. Peter Panchal from Howard Johnson's parks a truck all the time on my property. If the bus does not park there, then the truck should not be parked there overnight or whatever or anytime. Maybe forty or fifty times the big truck parks there and I said "You cannot park there", and he said "Howard Johnson's told me to park here and I have no choice". I all the time call the police but the police say it is not a big deal. You see right now how bad my parking lot is, big truck.

Chairman Darby: I, as well as my colleagues here are very sympathetic to the issues being described regarding trucks and busses but I am going to defer to Staff because I think we are dealing with some issues that would not be appropriate for us to try to codify in a motion.

Ms. McBride: Where we have two property owners and there are disputes over whose parking lot is whose, and there is no cross parking easements, that unfortunately is an issue between the property owners. Relative to the storage of the bus on the subject property, I think that can be part of any Conditional Use, because it is a Conditional Use and the Commission can put conditions on it. I do think that the Commission needs to reflect on the fact that you now have adjacent property owners on both sides saying to you that parking could be or is a problem and we are looking at granting a reduction in parking from 161 that would be required to probably to about 116 that would be provided. So, that is about 48 or 46 spaces and even though the deck is not going to be used in January, you have to kind of take that into account, as well. They are asking for a reduction in the number of parking spaces that are required and the Commission is hearing that parking could, may be an issue between these three properties so I think you do have to keep that in mind when you make a decision.

Mr. Okum: Ms. McBride and Mr. McErlane, the applicant has indicated that they are currently installing a demising wall inside the space, does that lower their occupancy? Obviously, no one is in there now eating but what type of adjustment to the overall space are we going to see by that demising wall that they are putting in?

Mr. McErlane: That is not a significant reduction; if you look at the last page of the submittal, it has an interior seating plan and has that wall that separates out a party room, they are showing 12 seats in there and they probably have netted out a loss of 18 to 20 seats. Our parking spaces are based on square footage, not on seats.

Mr. Okum: I understand but they are reducing the inside space down, right?

Mr. McErlane: No, not really.

Mr. Okum: Because they have turned that into a party room.

Mr. McErlane: About the only thing that they have reduced is they now have a 48 s.f. toilet room that has been taken out.

Mr. Okum: Oh, I see. O.K.

Ms. Boice: I still have some concerns about the size of the deck and the parking, when you have two businesses together. Also the lighting, when you say that you are not going to serve food out there after dark, when you are dealing with the public and public relations you are going to get somebody in there that is a little happy and is maybe going to argue with you and you might have a waiter that might say "o.k.", and then they are out there in the dark and it isn't well lit and now we get up and we are leaving and a possible fall. It is just not falling together for me; I have to be very honest.

Mr. Alan Chilson: I will reiterate again, that again it is a tavern first and not a restaurant. There will be drinking there, and there will be eating there, but again service will be discontinued in a timely fashion before dusk comes, in order to prevent that from happening. If somebody was to take a plate out there, obviously they wouldn't be scolded for it but it would be discouraged; it would be mainly for enjoying a beverage outdoors and for the smoking, as per the laws of Ohio. We do need an outdoor smoking area; the size was determined by the length of the building, the landscaping underneath it. As far as the lighting goes, the lighting that is currently there would be adequate for lighting that circumstance, if additional lighting was required then it would be installed. At this time the lighting that is there is more than adequate for just being outdoors. There are no trip dangers there, it is a flat deck, there is no up and down; it would just be for walking out and walking in. There are tables out there for people that would like to sit. As far as serving food after dark, I don't think that we have to worry about considering the enormous amount of space we have indoors, there is plenty of room for people to eat indoors and I can't imagine that a lot of people would want to be outside at nighttime with the lights on them and the bugs pestering them as they are trying to

eat their food. As far as the landscaping, the question of the maple tree was mentioned before, the deck will not be anywhere near the maple tree. The maple tree is not going anywhere, there won't be any damage to it. If fencing is required around the maple tree during the construction of the deck then we will install that. With regards to the parking; the current requirements for the inside of the restaurant is listed as 140 parking spaces and there is only 128 parking spaces on the property and I don't think in the past 30 years where it has had 128 parking spaces that it has been an issue and I don't foresee it becoming an issue at this point. We would have to be at maximum capacity where business is very good for any issues to come from that. As far as the parking differences with the tractor trailer or the bus; on our end the bus will be gone and it will be a non-issue for us, as far as tractor trailers; if a tractor trailer is parking on our property it most likely will be towed. Those are the only issues with the parking between the different tenants, then obviously if you have somebody that is your customer then you would advise them to stay on your property and in certain circumstances similar to this at a business I have in White Oak where customers were overflowing from one to the other, signs were posted advising that they would be towed if they were not a customer of the business and it has been enforced and it is a non-issue since it has been enforced. It just doesn't happen anymore, people don't want to get towed.

Mr. Bauer: Back to parking, I was just noticing that same thing where we are actually short parking as we stand right now by 12 spots. I am looking at the aerial photo and their diagrams and I don't see where you can add parking; does Staff have any comments on that?

Ms. McBride: At least this part of the Staff didn't look at opportunities to add parking. I think there is some question as to whether or not the parking that is out there even meets our design requirements today, in terms of isle width and so forth. To answer your question, we didn't look at that and I don't think the applicant did either.

Chairman Darby: There appears to be no other comments at this time, we are going to end the public hearing and move on.

Mr. Okum: In regards to the deck area; I commented earlier that I think the deck is fairly large for purposes of expanding business and I have heard comments from other Members of the Commission that indicated they felt the deck was large. The applicant has indicated that the purpose of the 56 s.f. deck was based upon the width of the building area there. If this Commission were to say that the deck was too big and you would reduce that down, what size would you reduce it down to?

Mr. Alan Chilson: Whatever would be required by the Commission.

Mr. Okum: Functionality, it needs to work.

Mr. Alan Chilson: It has to be at least a large enough size; I couldn't imagine having a deck the size of some of the others in the area, Beef O'Brady's for an example, it is a standing patio area. It would have to be more comfortable for the client than that. It would have to have enough room to be able to sit down and relax than just standing behind the fence. As far as the length of it, if we would have to reduce the size, we would be willing to do that. If it went down to a 10' X 20' area, then we would have to scratch the whole program. We would be willing to reduce the size, if it is necessary.

Mr. Okum: What I am seeing on your drawing is that the new door that is going in on the east side of the building, it needs about a 6' area there. There is probably about a 16' X 16' area behind that, that you could disregard in deck space and that would keep everything to the front corner because that gate going out to that exit there is a necessity, I think, and it also stays at grade. That would reduce the deck size down by 16' X 16' area. That would maybe bring the parking down; I don't think it will but it may help the parking just a little bit but it may also avail itself to dealing with Mr. Shvegza's design, slightly. Maybe not. But at least you can work through that. The other thing that I did observe by looking at the aerial view

of the site on Mr. Shveg zda's plan, if you look at the back of the building, if they were going on raw field area of parking, there is a large area in the back that nobody would want to park there; but accommodating-wise you could put parking spaces back there if you had to on the site that have not been utilized. I am not clear how that would work but at least you could accommodate some parking spaces on that back field. Is the back field still asphalt and still in good shape, or parkable?

Mr. Alan Chilson: It is parkable.

Mr. Okum: I should not say in good shape because it is old. The applicant has agreed to reduce the deck size 16' X 16' then?

Mr. Dean Jiang: That is too small.

Mr. Okum: Reducing the total by 16' X 16'. Taking 16' X 16' off of the deck.

Mr. Alan Chilson: Off of the southeast corner of the deck?

Mr. Okum: No, that would be the north corner.

Mr. Alan Chilson: Northeast corner.

Mr. Okum: Yes.

Mr. Alan Chilson: So you are suggesting that the section that goes toward the front door be removed?

Mr. Okum: No, not towards the front door, towards the back door.

Mr. Alan Chilson: You are right. I was just speaking to Dean about it and we had spoken about it previously about having the deck not extend so far off of the building so that we could reduce the deck size that way, and allow for more of the lane on that side.

Mr. Okum: Yes, you could. You could bring it down to probably 14'.

Mr. Dean Jiang: And not lose any parking maybe.

Mr. Okum: And it saves you money. You still get the same seating if it is a place to sit.

Mr. Alan Chilson: We were considering that as far as taking it down to a 12' and we had spoken about that previously; we are trying to get some input from this counsel first to see what our options would be. As far as removing the section of the deck to the left of the door as you walk out, which would be the northeast corner; that is a possibility also. If we brought it in so that it is 12' off of the building instead of 16' and remove possibly 16' off of the deck there, then I don't see that as being an issue.

Mr. Okum: So you are saying to reduce it down to 12'?

Mr. Alan Chilson: Right, because putting it out 16' was more of a comfort zone; it was more of an open space feeling that we were going for. If we took 4' off of it, it is not going to affect that greatly.

Mr. Diehl: Mr. Okum, does your motion address any concrete barriers, at all?

Mr. Okum: Yes, that is in Mr. Shveg zda's engineering recommendations.

Mr. Diehl: Thank you.

Chairman Darby: At this time the Chair is willing to accept a motion on this item.

Mr. Okum: I would like to move for Conditional Use Permit to be issued for 380 Glensprings Drive with the following conditions to include Staff or City Engineer or City Planner's recommendations. That all lighting or re-lamping of existing fixtures shall conform with our existing code and our City requirements. There shall be no accent lighting on the proposed additional deck area, or additional lighting. The landscaping conditions shall include any missing or damaged landscaping on the site shall be restored as it was approved by this Commission. Parking and drive and site plan conditions shall include plan review and implementation by the owner, be approved by Staff, what changes were recommended by the Engineer. Landscaping noted on the Engineer's report as a possible landscape area shall be reviewed and approved by Staff, as well. The deck base skirting shall be considered with residential type skirting and it shall be finished to match the deck railings and deck system. There shall be no outdoor music venue for the deck area. No outdoor lighting will be added to the deck area and there will be no outdoor service after dark on the deck. Busses on the site: Permanent parking of busses on the site shall be prohibited. Tractor trailer parking: Permanent parking of tractor trailers on the site shall be prohibited. Deck size: The deck shall be reduced down to approximately 16' X 16' from the rear door to the northeast side. A reduction of the deck from 16' to 12' off of the building.

Mr. Diehl: Mr. Okum, can you clarify for me once again about the lighting?

Mr. Okum: There shall be no additional lighting added and there shall be outdoor dining, outdoor service on the deck after dark.

Mr. Diehl: So, we are saying that we are o.k. with the lighting that is out there now?

Mr. Okum: I need a second on my motion first.

Mr. Diehl: I will second it.

Chairman Darby: It has been moved and seconded, the motion as presented.

Mr. Okum: Based upon what the applicant has presented there is an outdoor parking lighting fixture that is currently directly over top of this deck area that is going to give adequate lighting for emergency purposes. Since the deck cannot be used for service after dark, then there should be no other need for that other than emergency needs, or somebody going out to smoke a cigarette after dark. That would be no different than if that person walked out into the parking lot to smoke a cigarette in the dark; it is exactly the same situation.

Mr. Diehl: Clarification for the light that the gentleman from Beef O'Brady's mentioned, where did that fall in your motion?

Mr. Okum: That is an existing parking lot light that is required under our zoning code and it has to be maintained; is that correct Staff?

Mr. McErlane: Yes; it does but typically those parking lot lights have to be on when that particular business is occupied at night. So, if Beef O'Brady's were to close and this business were not and this is Beef O'Brady's light, they may turn it off.

Mr. Okum: And I agree with that but I think there must be some cross-access agreements for those parcels there. This couldn't have existed for thirty years without some type of an agreement on the development. Maybe not but for some reason I think there is something or they should reach some type of an agreement between themselves so that they can work together because obviously it is in their interest for both of them to have light there.

Ms. McBride: I agree with you Mr. Okum, I think there is likely cross-access but I would be surprised if there is cross-parking.

Mr. Okum: I seem to recall some discussion years ago over this site and sharing parking, I don't know who it was or when it was but I recall it.

Chairman Darby: We have a motion and a second.

Mr. Diehl: I don't want to seem knit-picky here but I think this has to be clarified before we can vote on something like this.

Mr. Okum: So, are you recommending that my motion be amended to include that the outdoor light be maintained and on at all off hours?

Mr. Diehl: I don't know.

Mr. Okum: It would be up to the applicant and Beef O'Brady's to resolve it. If we as this Commission set a condition on the site that there must be an outdoor parking lot light functional over this site, then that is up to the applicant to respond and provide that. It is not up to us to design it but it is up to him to respond and comply.

Mr. Diehl: I buy that.

Mr. Okum: So, you want me to amend my motion to include that?

Mr. Diehl: Yes.

Mr. Okum: Move to amend my motion to include that the outdoor lighting for the parking be maintained in working condition during operating hours of this business. (Mr. Diehl seconded the amendment to the motion.)

Mr. McErlane: I have one question for Mr. Okum; I think we understand the condition about permanent parking of the bus. I am not sure I understand what the intent of the condition for permanent parking of tractor trailers was. I don't think that addressed the neighbors issue or even the applicant's issue.

Mr. Okum: I understand, but at least there is a condition on the site that says there shall not be permanent parking of tractor trailers on this site.

Mr. Vanover: I thought temporary was the issue or overnight.

Mr. Okum: Short term, long term, I don't know what that is described as, so that is the reason I used permanent. I am going to amend my motion to say no overnight parking, I think that is much better.

(Mr. Diehl seconded this amendment and the vote from the Planning Commission Members was taken: Mr. Okum, Mr. Diehl, Mr. Bauer and Mr. Darby voted "aye"; Mrs. Ghantous, Mrs. Bois and Mr. Vanover voted "no".)

Chairman Darby: We have four "yes" votes and three "no" votes, in order to carry a motion must have five affirmative votes; the motion is denied. I just want to make sure everyone is clear, there were three votes cast against the motion and four votes cast affirmatively on the motion. It required five affirmation votes for passage; therefore the motion is denied. Question for Staff, procedurally what are the options of the applicant at this time?

Mr. McErlane: The applicant can appeal to the Court of Common Pleas to overturn your action or the applicant could modify his application and resubmit based on comments the Commission gave tonight.

Chairman Darby: The comments have been numerous and if the applicant chooses to resubmit there is plenty of fodder out there to reshape the motion to be in compliance with the concerns that were expressed tonight.

Mr. Alan Chilson: If I could hear the specific concerns that were in the minds of the Members so that I could address those.

Chairman Darby: At this point Sir, I am going to refer you to the Minutes of the meeting. They will all be right there in writing for you and those minutes will be available within a week to ten days.

Mr. Alan Chilson: Are there any specific things that we could address in the meantime, there were so many things that I would like to know what we could address to get this.

Chairman Darby: There were so many things so that is why, instead of us repeating that here I am going to refer you to the Minutes.

Mr. Alan Chilson: Thank you.

- B. Chairman Darby: Item B for New Business, Conditional Use Permit, Outdoor Seating at Mi Familia Restaurant, 318 Northland Boulevard. Since this is a Conditional Use Permit hearing, we will ask you to be sworn in please.
(Mr. Jose Galicia, business owner of Mi Familia and Mr. John Creasey, agent for the owners of the shopping center came forward and were sworn in by Mr. Okum.)

Mr. John Creasey: We are basically here for a similar request; it is outdoor seating but it is not a sport's bar, it is a family restaurant. We are actually going to serve food. It is not for smoking. We are just trying to encourage more opportunity for people who would like to come out and have a meal outside. We know we have some shortcomings as far as set backs, etcetera that we are going to have to address and landscaping that we would like to work with the City on that; I think there are three or four bushes that need to be removed. I don't know what the percentage of green space to building is currently, I don't know if the City would have something so that we can figure that difference out to make the green space up. As far as lighting on the exterior, we have eight lights already down lit on the front of the building, the front of the building is all glass and we feel that the lighting that is existing and in place, along with the pylon sign is going to be plenty of light. Not to say that we might not have individual table candles or something; that is definitely a potential. As far as the lattice work if there is an elevation change, we are planning on wood lattice. Those are just some of the things.

(At this time Mr. McErlane and Ms. McBride read their Staff comments.)

Ms. Boice: Whenever I see something that needs two variances, that is a knee jerker for me. With the steps into the parking lot, I don't think this is a really good plan as it stands right now. It seems to me there are too many "ifs" and "buts" and details that we don't know about.

Mr. Bauer: I, too, am concerned about the setback issue. With this coming out toward Northland Boulevard, I would like something that fits in with the rest of the center and that concerns me. The bigger concern is coming out into that setback from that area. Is that coming out anywhere near that telephone pole that I see in this picture?

Mr. John Creasey: That is actually off the corner of the building.

Mr. Bauer: That is in line with the building there, o.k. Is the grade there similar to the inside elevation of the floor inside the building?

Mr. John Creasey: The floor elevation is a little higher.

Mr. Bauer: So you would be stepping down?

Mr. John Creasey: No; it will actually be level with the floor elevation.

Mr. Bauer: O.K. And you said you were not adding any lighting to that outside area?

Mr. Jose Galicia: We have plenty of light outside on the awnings.

Mr. John Creasey: There may table lighting, décor lighting but that is not going to be intrusive.

Mr. Bauer: Ms. McBride, when you said 30', I am thinking it is extending 30'?

Ms. McBride: They have dimensioned it at 30', but I don't know 30' from what because we don't have the setback for Northland Boulevard on that plan and the setbacks are all from the road right of way, so it might be 30' to the pavement edge, it might be 30' to the right of way, irregardless a 50' setback is required.

Mr. Bauer: Do we know where 50' ends up being?

Ms. McBride: The plans aren't to scale.

Mr. Bauer: Would 50' come to the building?

Mr. McErlane: Based on the original drawings that we have, if you notice the front of the building that has a feature that extends out and actually if you look on the plan, you can see it extends out a little bit from the front and center of the building it is 50' to that area that juts out from the building which is 2' or 3' dimension there. If it is 20' from that particular part of the building that juts out; the building setback was supposed to be 50' when it was built, so that would put the deck at fairly close to 30'.

Mr. Okum: Just so I am right on this, Mr. McErlane, decks and porches without covers are still regulated by setback requirements from the public right of way?

Mr. McErlane: We have exceptions to those types of encroachments in residential districts, but not in commercial districts. I guess the question would be if the applicant had decided to change to a patio as opposed to a deck would it still need to meet the same setbacks?

Mr. Okum: That is what I am sort of thinking. If it was concrete with pavers and was at grade then would the setback requirements apply?

Mr. McErlane: The only other issue is the fencing that goes around it.

Mr. Okum: Which would encroach into the setback requirement area.

Mr. John Creasey: Could you do it with landscaping then?

Mr. McErlane: Could you do it with pavers, is what I am suggesting?

Mr. John Creasey: Instead of a fence.

Mr. McErlane: No, if you are serving liquor then I think the liquor board requires you to have some type of enclosure. Then the other issue with regard to the 1' deviation from the side is easy enough to resolve by cutting the deck back by a 1' or 2'.

Mr. Okum: But you still have the 50' issue, you can't get anything shorter. The difficulty also is, if a variance were granted by the Board of Zoning Appeals it stays with the land and applies to the property in use. The Conditional Use Permit would control the use of the area but not control the structure if it were approved by Board of Zoning Appeals for the setback structure. Once you allow the variance, a structure or a physical building element encroaching into that setback required area would be approved. It makes it even more difficult for us to administer or manage a Conditional Use Variance when a variance has been already granted for a setback requirement for a structure. The reason for a Conditional Use Variance is so that you have some control if there are breaches in that use, then you can put restrictions or deal with the restriction at a Commission level; noise and imposition on the

adjoining properties and all those things that are associated. The reason that you have the opportunity for Conditional Use Variances and then you add on to that a site variance through Board of Zoning Appeals and then it becomes a really complex situation. Based upon that, even though I would phrase a motion, I will be honest with you I will probably vote against it for that reason.

Chairman Darby: Let me interject at this time to the applicant. I think you have heard some rather discouraging comments up to this point and I think it is appropriate that I would advise you that you have some options. One of those is to move forward for a vote, and gauging from the discussion you can guess where that may go; you may choose to withdraw at this time for a later submission or we can move to continue the Conditional Use Hearing.

Mrs. Boice: I agree.

Mr. John Creasey: To continue it sounds like I don't have any choice; what am I continuing if you are not going to give me the setback allowance?

Chairman Darby: When I use the term continuance, we convened the public hearing for the purpose of the presentation and we would continue that. As far as the setback issues, those are some things that I think during this interim period I would advise you to work with Staff to see what we can do in that area.

Mr. Vanover: Thinking aloud through part of this; you have two parking spaces up front and you have an abundance or an overage in parking, that would eliminate coming down into a parking space if you eliminate a parking space. That might give you some flexibility to work into that; that is up to you guys. As it stands right now, I much like the rest of the Board am very much at a quandary because of the variance issues. We can't grant the variance, that is for the Board of Zoning Appeals and it creates a quandary really in the enforcement. What is bigger a pound of feathers or a pound of bricks, I don't know. That is really the issue. I like the concept of the outside and I have said I frequently enjoy that and during this time of the year and summer we typically make our choices because we enjoy the fact that we can sit out, so I understand that. It comes down that if you get a big enough shoe horn you can make things fit.

Mr. McErlane: I can understand the applicant's dilemma if they ask for it to be continued they would need to know what to come back with; and I guess obviously there is a lot of concern about setback which in this particular instance if the deck is to be placed there it may impact the setback. The other question would be, is a paver patio less obtrusive than a deck would be and is that something they might take into consideration? I think they need direction; if they should ask you to continue it, what should they come back with?

Mr. John Creasey: Yes. What would you recommend?

Mr. Okum: I think Mr. McErlane is right, if it is a paver patio type situation with adequate screening. And you suggested shrubbery around the fencing to beef up the landscape area out there in that grassy zone; it might be a positive to the site. I think those two parking spaces out in front there that are currently sort of blocking, they really detract from the look of your business. If that were taken out, because you are not short on spaces on this site, I would encourage some re-thought of how you address it. I see outdoor seating in very densely populated areas; it is extremely popular. How that would impact the people on Northland Boulevard or pedestrians walking, those are things to be concerned about. Proper landscaped and screened area to accommodate it; I would like to see it because I would like to see your business be successful. I think it would be good to have something like that, maybe not this big but something like that to compliment your business.

Mr. John Creasey: So, can we continue it with some help from the Building Department to give us some direction and maybe come up with some alternatives?

Mr. Okum: Legally, that is your right to request that.

Mr. John Creasey: That is what we would like to do then.

Chairman Darby: One last bit of input; I would ask that you strongly consider the 8th point under Ms. McBride's report; I have had some conversation with Staff and that is problematic with regard to the scale and dimension of the submittal.

Mr. Okum: Based on the applicant's request, I move to continue the public hearing to the next meeting date, June 11th, 2013.

(Mr. Vanover seconded the motion and with a unanimous "aye" vote from the Planning Commission Members the request was tabled.)

Mr. John Creasey: Thank you very much.

- C. Chairman Darby: The next item is Minor Improvements Regarding Planning Commission Approval, Building Elevation Color Change for Skyzone at 11745 Commons Drive.

Ms. Laura Knipfer: I submitted to you a proposal from my architect to do an exterior painting; it is kind of fun and fits the vibe of my business. I was asked to come here tonight to get your approval.

(At this time Mr. McErlane read his Staff comments.)

Mr. Okum: Are the rectangles within the limits of your occupied space?

Ms. Laura Knipfer: Yes.

Mr. Okum: I see it is over the first window on the left of the door and between the windows to the right. Is that your space?

Ms. Laura Knipfer: Yes.

Mr. Vanover: I don't have a problem with it; as a matter of fact I think it improves what is out there right now.

Chairman Darby: Any other comments?

(No additional comments were brought forward by the Planning Commission Members.)

Mr. Okum: Mr. Chairman, I would like to make a motion to approve the building elevation change as presented per exhibit DS-C1 submitted by the applicant and Staff's comments.

(Mrs. Boice seconded the motion and with a unanimous "aye" vote the request was approved.)

- D. Chairman Darby: The final item is Minor Revision to the PUD, Location and Signage for the Springdale Farm Market.

Mr. Jeff Tulloch: What we are doing is moving the location of the Farm Market to the south parking lot of Springdale Towne Center. This was occasioned because of some concerns that a number of the tenants on the north end had over the Farm Market taking up parking spaces. There is sufficient room on the south lot to accommodate. The Farm Market has gotten a little smaller, we are running somewhere around thirteen vendors and it will accommodate the proposed use. One comment I will make, we understand that the out lot property that sits right at the corner of Peach and Route 4 may be under contract for a restaurant use. Again, I haven't confirmed that but in the event that that would happen, it may be necessary to move the Farm Market into the public lot catty-corner from this property.

Mr. Okum: That wouldn't be ideal.

Mr. Jeff Tulloch: We actually brought some of the major vendors out and showed them what might have to happen and they were o.k. with it as long as we have some decent signage. But I agree with you Dave, it wouldn't be ideal because the exposure out on Route 4 is significant. As part of what I submitted, I also requested, in the prior approval there were two signs approved and I am asking for three signs, such that with the new location or if we do move it back into that public lot then we have some decent signage to show people where to go.

Mr. Okum: Based upon the application submitted and seeing there are no other comments, I move to approve the relocation of the Farm Market to the south section of the parking area to be adjusted accordingly by the applicant as needed. Signs to be approved as per submitted.

(Mrs. Boice seconded the motion and with a unanimous "aye" vote from the Planning Commission Members the request was approved.)

VII. ADJOURNMENT

Mr. Vanover moved to adjourn; Mr. Okum seconded the motion and the meeting adjourned at 8:35 p.m.

Respectfully submitted,

_____, 2013 _____
Don Darby, Chairman

_____, 2013 _____
Richard Bauer, Secretary