

ITEM NO. 5 SPECIAL USE PERMIT FOR 804 PENNSYLVANIA ST (MKM)

SUP-15-00261: Consider a Special Use Permit for a *Bar* located at 804 Pennsylvania St. Submitted by Flint Hills Holdings Group LLC, for Ohio Mortgage LLC, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. Tom Larkin showed an updated exhibit on the overhead. He provided background on the project. He said he had yet to attract an operator due to their concerns about the pending variables with the Special Use Permit process. He said food trucks would remain a staple of the concept and food would be sold from inside the building as well. He said he met with neighbors and tried to address their concerns. He drafted an operator agreement that he proposed to be separate from the Special Use Permit that touched upon things that were not relevant to the Special Use Permit. He said the agreement would include such things as using washable silverware instead of disposable silverware, trash cans painted by Van Go, and additional recycling reciprocals. He said efforts had been made to reduce noise concerns. He said he was invested in the Bistro and the neighborhood and was in it for the long run. He felt the Special Use Permit was a good compromise for both the Bistro and the neighborhood. He said the use was consistent with the area.

PUBLIC HEARING

Mr. Phil Collison, East Lawrence Neighborhood Association, said he was ready for the item to go to litigation. He expressed concern regarding the closing time, food service, and noise. He stated the Special Use Permit was getting close but he wanted something measurable so that it would be easy to determine. He said he was looking forward to having a restaurant at that site. He liked the aspects of a restaurant over the aspects of a bar. He hoped the Special Use Permit could get to some standards that the neighborhood could live with and allow it to be a successful restaurant.

Ms. KT Walsh expressed concern about food being served, noise, and the closing time. She felt they needed to protect downtown from becoming Aggieville in Manhattan. She stated noise was an issue and the neighbors on New Jersey Street were concerned. She felt the noise ordinance needed to be tweaked and possibly include a decimal level that was appropriate for residential areas.

Ms. Peggy Robinson expressed concern about the noise level and emissions from food trucks. She also wondered about the 3 hour time limit for the food trucks.

Mr. Arch Naramore said the plan was bad.

APPLICANT CLOSING COMMENTS

Mr. Larkin said regarding the food sales requirement the 55% was removed because they needed to be able to have a measurable that was observable. He said that was where the idea for having a substantial food item at all times was set up. He said having substantial food items for sale at all times requires staffing, inventory, and infrastructure. He stated there was no incentive not to push food sales once the parameters were in place. He said he had every reason to try and sell as much as he could. He said selling food items would keep people on the property longer to buy beverages. He said regarding noise from food trucks, the site plan required power for them to plug into so they wouldn't have to use generators.

COMMISSION DISCUSSION

Commissioner Sands asked the applicant why the 55% food sales was unachievable.

Mr. Larkin said it wasn't necessarily unachievable but it was hard to sell that to an operator using food trucks as a model because there was not a precedent showing how much they could sell. He stated the food truck concept was not healthy enough in Lawrence because there weren't enough places to sell yet.

Commissioner Britton asked staff for the dates of when they saw this item in the past.

Ms. Miller said the rezoning was before them in 2011 to rezone from CS to RM12D and there was a non-conforming duplex there at the time. She said in 2013 it was rezoned back to CS and the applicant requested the bar use. She said staff recommended setting standards on it and that was when they opted to have two years to meet the 55% food sales. She said in May of 2015 the applicant came back with the request and staff recommended the Special Use Permit rather than putting standards on the zoning.

Commissioner Kelly said he struggled with this item. He said he was comfortable when Planning Commission was charged with land use and looking at the Development Code, but he was uncomfortable when an applicant asks for Planning Commission to remove conditions so their business can work. He said one neighbor might say 11:00pm is too late for music while another may say no music at all. He felt that was a tricky role for them to balance. He said one thing he struggled with was the idea that the choice was given for the applicant to either accept the 55% rule or become a bar with conditions of the Special Use Permit. He said if the applicant doesn't want either he would be inclined to vote against it. He said the neighborhood wanted food and there were some provisions for food. He said a win-win outcome almost never happens for both sides of an issue.

Commissioner Sands said food trucks were small businesses that were required to provide proof of sales for taxes so he was confused as to why they can't participate in tracking sales.

Commissioner Britton said from a business proposition they were afraid to make the investment of being there and signing an agreement to be there for a certain amount of time if they would have to meet the 55% and get the receipts from the operators.

Mr. Larkin said the City cannot request the sales reporting to IRS for food trucks. He said there would be multiple businesses operating at the Bistro.

Commissioner Culver said a lot of progress had been made in trying to create a compromise with the invested parties. He said the conditions protected the neighbors but also allowed for an operator at that site. He felt there was still some disconnect on the operating hours and what could be used outside. He said he was struggling with the fact that limiting it would make it harder for an investor to feel confident that they were able to competitively build a business. He said food sales would be part of this without over-structured requirements. He asked about any benefit to putting a timeframe on it.

Mr. McCullough said generally the investment to go in and construct a facility like this moves it away from a timeframe. He said the applicant could always request to revise the Special Use Permit to change the framework in the future, if needed.

Commissioner Britton said he was bothered that they had seen this item three to four times. He felt noise could be the main impact on the neighborhood and wanted to mitigate that.

Commissioner von Achen said she was satisfied with the food issue. She said the hours of operation boiled down to what kind of noise would be going on during those hours of operation. She said to her the amplified music was the sticking point.

Commissioner Kelly looked up the recent George Clinton concert and said it ended at 10:00pm. He said he was encouraged that the applicant was willing to restrict the number of days. He felt they should reduce the amount of music time. He said he was satisfied with the food sales.

Commissioner Britton asked the applicant if the food trucks would run off power and not generators.

Mr. Larkin said yes.

Commissioner Sands asked if the engine to the food truck would be turned off as well.

Mr. Larkin said yes.

Commissioner Butler inquired about the hours of operation.

Mr. Larkin said they intended to open for breakfast and if food trucks wanted to be there we would encourage that. He said the idea is to have the food truck rotate. He said the hours would be dependent on the operator but generally 7:00am-2:00am and food trucks would most likely not be there the entire time.

Commissioner Struckhoff asked if the applicant preferred to omit the operation hours from the restrictions. He said that would mean people would be on the porch until the truck left at 2:00am.

Mr. Larkin said yes.

Commissioner Struckhoff said he was comfortable with food conditions. He thought the live music needed some tweaking. He said regarding the operating hours on the outside he struggled with that. He said the nearest residence was a block away on New Jersey Street.

Mr. Larkin said he would like the food trucks to be on site to the end of the establishment hours. He said if the inside was open and the patio was not there would be weird in between section going on. He said they did not intend for anything other than conversation to be going on outside.

Commissioner Culver suggested looking at reducing the times and days of the week that amplified music would be allowed. He said he would support reducing the time for amplified music and operating hours of outdoor seating. He felt that could be the best way to protect the neighborhood from noise.

Commissioner Struckhoff suggested possible restrictions during weeknights. He said a food truck parked on Pennsylvania facing north/south might provide a buffer between the patio and houses on New Jersey Street. He said he liked the idea of people sitting outside and less amplified music overall.

Commissioner Britton said he would be uncomfortable allowing amplified music for multiple nights. He suggested adjusting condition D to say live music allowed Thursday-Saturday until 9:00pm. He said he would support this with that change to amplified music. He suggested getting rid of the restrictions on the outdoor seating area and let it stay open until closing.

Commissioner Kelly suggested that exterior amplified music on the outside shall cease at 9:00pm.

Commissioner Britton said he struggled with ambient level and how to enforce or define that. He said a bar/socializing area without music would be pretty dull.

Mr. McCullough said staff worked with the noise ordinance all the time and that police ticket people and bars for being too loud. He said a condition to go by would be helpful.

Commissioner Britton said if you're in a nearby house/structure and can hear the music after a certain time then it's too loud.

Mr. McCullough said the idea behind the condition for ambient music was to create atmosphere, not music to get up and dance to or karaoke to.

Commissioner Sands said the sound ordinance for vehicles was 50'.

Mr. John Gascon said the rail track was 100' away from his home and that he was not concerned about the noise from this particular endeavor.

Ms. Robinson said she loved the sound of the train. She said the George Clinton concert and Replay Lounge that were mentioned were downtown.

Commissioner Britton suggested amplified live music be allowed Thursday-Saturday until 9:00pm and Sunday until 8:00pm. He said all other music shall be kept to an ambient level, not perceptible beyond 50' of the subject property. No amplified music Monday-Wednesday.

Commissioner Struckhoff suggested amplified live music be allowed Friday and Saturday until 10:00pm but said he was comfortable with 9:00pm. He said the nearest house was almost 200' away on New Jersey Street.

Commissioner Britton suggested getting rid of condition 3C.

ACTION TAKEN

Motioned by Commissioner Britton, seconded by Commissioner Sands, to approve a Special Use Permit, SUP-15-00261, for a *Bar* at 804 Pennsylvania Street subject to the following conditions:

1. Prior to release of the Special Use Permit for issuance of a building permit the applicant shall provide an executed site plan performance agreement to the Planning Office.
2. Any physical changes to the site which are required as a result of this Special Use Permit must be reviewed and approved by the Historic Resource Commission prior to the release of the site plan for building permits.
3. The following standards apply to this use:
 - a. Occupancy. No more than 75 persons may be within the outside dining area at any one time. The interior of the building is limited to no more than 44 persons by the Fire Code. (The site shall be signed with this occupancy limit.)
 - b. Seating. The number of tables and chairs, as shown on the approved site plan, shall be provided to patrons during all hours that the outside dining area is open, including during Temporary Special Events.
 - c. Operating Hours. ~~The outdoor seating area shall be closed (unoccupied) at 11:00 p.m. Sunday through Thursday and 12:00 a.m. Friday and Saturday. Business hours inside the building are unrestricted.~~
 - d. Sound Level. Amplified live music on the outside dining area shall **be permitted only on the following days and times: Thursday through Saturday until 9:00 p.m. and Sunday until 8:00 pm.** ~~cease at 10:00 p.m. Sunday through Thursday, and at 11:00 p.m. Friday and Saturday.~~ Other music (live acoustical and digital or stereo sources) **is permitted at any time but must be kept to ambient levels, not perceptible past 50 ft from the property line.** ~~shall be kept at an ambient level after those times.~~
 - e. Outside Seating Area. A 4 ft high railing should be installed along the 18" wall around the outdoor seating area to clearly demarcate the area and prevent patrons from spilling over into the parking area.
 - f. Food Sales:

- i. Food shall be available for purchase at all times the establishment is open. The food may be provided within the building or by food trucks on site.
 - ii. The food shall consist of menu items more substantial in nature than the typical nuts and/or popcorn offered at bars. Items such as pastries, breakfast food, sandwiches and sides, or meals will meet the intent of this requirement.
4. Provision of a revised site plan with the following changes:
- a. Addition of a note listing the standards applied with this SUP to the *Bar* use.
 - b. Addition of a note listing the revised restricted uses per Zoning Ordinance No. 9101.
 - c. Addition of a 4 ft high railing along the 18" high wall around the outdoor seating area.

Commissioner Butler asked if other music would only be Thursday thru Sunday.

Commissioner Britton said other music, at an ambient level, would be allowed at all times not perceptible past 50'.

Unanimously approved 7-0.

DRAFT