

PLANNING COMMISSION

Minutes

February 21, 2008

I. ROLL CALL

Fred Walstrom	Absent
Andrew Bowman	Present
Jack Deegan	Present
Jeff Ford	Present
Mary Ellen Hughes	Present
Laura Kors	Present
Sheryl McCleery	Present
Peter Sears	Absent
Sara Smith	Present

Also present were City Planner Larry Nix, City Attorney Jim Ramer and City Manager Fred Geuder.

Acting Chair Jack Deegan called the meeting to order at 6:00 p.m.

II. MINUTES

Motion by Hughes, seconded by Bowman, to approve the minutes of the January 17, 2008, regular meeting, as presented. Motion carried.

III. PUBLIC COMMENT AND CORRESPONDENCE

None.

IV. NEW AND OLD BUSINESS

A. Public Hearing on Proposed Special Land Use, Specialty Restaurant, 771 State St., Frank Foster

Frank Foster reviewed his proposal to place "Top Notch" pizza in the former garage portion of the building. He noted that he would have eight seats as required by the zoning code; he would enclose a dumpster on southwest corner of the lot; and he noted that the business was not a franchised business.

Deegan asked the City Manager to read the correspondence that had been received.

The City Manager read letters into the record from:

1. Sally Richardson 777 Washington Comments in opposition to the plan.

2. Barry and Patricia Bowen Clark & Traverse Comments in opposition to the plan.

(Note: Copies of the letters are attached to the file copy of the minutes.)

Foster further commented that a plan to develop a building adjacent to his property at the southeast corner of Traverse & Clark had already been approved. His request was simply to allow him to use his entire building in a productive manner.

No public comment was received from the audience.

Deegan closed the Public Hearing.

- B. Consideration SLU-2008-01, Specialty Restaurant, 771 State Street

Deegan asked Planner Larry Nix to review the proposal.

Nix noted that the parcel (and in fact the whole block) is zoned B-2, General Business.

Nix said that the proposed use falls under the category of a Specialty Restaurant, which is permitted in the B-2 District (as well as the CBD and B-1 districts), but must be considered as a Special Land Use. A Special Land Use allows the Planning Commission more latitude in setting conditions for such approval. Nix noted the numerous other uses that are possible at this location.

Nix noted that the additional use requires three (3) designated parking spaces, and there would be two with the existing paved area in the back, so one (1) additional space would need to be added along the north side of the building. Nix noted that a tree(s) would need re-location.

Nix also noted that the width of curb cut to Clark St. at that location was only 12', so cars would not be able to pass each other, and it might be worth considering widening that approach to 18'.

Nix acknowledged that traffic will be heavy at certain times because of the proximity to the school and to the IGA, but noted that this block and the block to the west are zoned commercially, and has been planned as such for a very long time. Nix noted that the earlier use of this building was much more limited than the zone allows.

Nix stated in response to the comments received in the letters that limiting markets for a specific type of business, whether it be a pizza place or a bank, is not something the City should be doing. The decision to go into business is market driven.

He acknowledged that the proposed use will add some traffic to this area, but did not feel that it was an unreasonable amount for this business district.

Nix noted that the driveway from the back of the building where the pizza place will be exits directly opposite the backyard of the house at State and Clark, and the garage of the house at Clark and Traverse is the closest portion of that lot.

In response to the question concerning the school, Nix said that while he did not know for sure, most Middle Schools have closed campuses for lunch.

Nix also noted that the applicant had provided responses to the standards for a Special Land Use. Nix also said it was his opinion that the proposal in front of the Commission was consistent with meeting the standards of a Special Land Use.

Nix suggested that if the Planning Commission was inclined to give approval to this request, he would suggest the following conditions be added to the approval:

1. The applicant must provide three parking spaces (adding one along the north side of the building) and the driveway to Clark Street must be widened to 18', and these changes must be completed by June 1, 2008.
2. A dumpster location in the southwest corner of the property (behind the two parking spaces) must be completed and fenced in (a minimum 5' high fence, with a gate) by May 1, 2008.
3. Some section of the fence along the west side of the property from the Clark Street right-of-way must be removed to allow for clear vision for cars leaving the parking area.
4. The tree(s) in the way of the additional parking space must be relocated on the property.
5. The exhaust vent/fan for the ovens must be located on the south side of the building.

Deegan asked the Commissioners if they had any questions.

Sara Smith asked Foster what hours they planned to be open. Foster said they would be open 11:00 a.m. to 9:00 p.m.

Smith also asked Foster whether the exhaust vent/fan would go to the south. Foster said that had been the plan anyhow.

Laura Kors asked Nix whether the applicant was asking for anything not permitted by the code. Nix said the request was within the code.

In response to a question, Foster said lighting for the sign would not change, and any new lighting for the entrance in the rear would be carriage lights only.

Motion by Bowman, seconded by Deegan, to approve SLU-2008-01, a Specialty Restaurant for Frank Foster at 771 State, noting that the conditions for a Special Land Use have been reviewed and been determined to meet the standards, and approval is subject to the following conditions:

1. The applicant must provide three parking spaces (adding one along the north side of the building) and the driveway to Clark Street must be widened to 18', and these changes must be completed by June 1, 2008.
2. A dumpster location in the southwest corner of the property (behind the two parking spaces) must be completed and fenced in by May 1, 2008.
3. Some section of the fence along the west side of the property from the Clark Street right-of-way must be removed to allow for clear vision for cars leaving the parking area.
4. The tree(s) in the way of the additional parking space must be relocated on the property.
5. The exhaust vent/fan for the ovens must be located on the south side of the building.
6. The applicant will work with the City Manager, and the City Manager is authorized to review and approve proposals for meeting the above conditions.

Motion carried, 7-0.

- C. Public Hearing on a Proposed Amendment to the Special Land Use, Conditional Zoning Approval and Planned Development Permit for the Condo-Hotel at 266 East Main Street and the Bay Street parcel immediately South (Harbor Springs Hotel, LLC)

Prior to opening the Public Hearing, Deegan asked the City Attorney to explain the reason why the Planning Commission needs to consider this approval again.

City Attorney Jim Ramer noted that following Planning Commission and City Council approval of this project in 2007, the neighbors to the west, David & Mary Wood sued the City to block the project.

After negotiations between the Woods and the developer Rob Mossburg, a compromise design was agreed upon. The City then worked out an agreement that was satisfactory to both parties and the City which required that the Planning Commission and City Council go through the same process as had originally been done in order to amend the plan and approvals for the project.

If the Planning Commission and City Council approve the changes, both the Woods and the Developer have agreed that the litigation would be ended.

If either the Planning Commission or the City Council do not approve the changes, both the Woods and the Developer have agreed that there would not be a new lawsuit, and that these proceedings could not be used in the existing lawsuit.

Andrew Bowman noted that he had a conflict of interest and would not be participating in either discussion or a vote on the changes.

Mr. Deegan asked Rob Mossburg to review the plan changes.

Mossburg noted that the areas of change to the plans that have been agreed upon with the Woods are essentially all on the Bay Street portion of the project. As Mr. Ramer noted, the building was notched out on the corner nearest the Woods providing for a setback of approximately 32' for the first 32' from Bay Street along the Wood's property line. The building is also set back further from Bay Street, and the first part of the building is a porch.

The structure coming out from the Main Street portion of the building is now three stories, instead of two, and the roof deck has been eliminated. Each of the three stories in the "L" now has one three-bedroom unit, for a total of three units. The original building had four two-bedroom units in the two stories.

The lower level parking now provides for 34 parking spaces instead of 33.

Mossburg respectfully asked that the Planning Commission approve the plan changes that have been agreed upon.

The City Manager noted petitions received with over 100 signatures in support of the project changes.

Deegan asked for public comment.

Pete Wallin, whose parents own the house across Gardner Street, asked that the Planning Commission again consider making a recommendation to the City Council that Gardner Street be made one-way south from Main. He emphasized that the street is narrow to begin with, and there was an occasion when RV's were parked on opposite sides of the street, leaving only 16' of passage. He also noted how bad the parking situation was during the auction of the fixtures at the hotel.

Dr. Bruce Ohmart, who owns the building across Gardner Street at Main, stated that he agreed with Mr. Wallin's comments on the street issues. He also noted that plan changes had not made a significant difference for him.

Tom Grier, the attorney representing the Woods, noted that his clients had approved the site plan and building changes that were being presented at this meeting.

Norbert Dierson complimented Mr. Mossburg for working out the details to resolve this situation. He also noted that site distances coming out onto Main are not good, particularly with a speed limit of 30 mph, which he feels is too high.

With no further comment, Deegan closed the Public Hearing.

D. Consideration of Amended Approvals for the Proposed Condo-Hotel (Harbor Springs Hotel, LLC)

Deegan asked if there were any Conflict of Interest issues.

As noted earlier, Bowman recused himself due to his conflict.

Jeff Ford noted that he had reviewed his situation from last year with the City Attorney and had been advised that since nothing had changed since 2007 in terms of this issue, he would be able to participate.

The City Attorney noted that he had discussed the issue with Ford, and given that no factors in this had changed since 2007, the approval to participate for Ford which had been approved by the Commission still stood, and no further action was necessary.

Deegan asked whether any resolutions had been drafted for consideration.

The City Attorney and City Manager said that they had written draft resolutions, and the City Manager distributed them to the Commission for review.

Deegan then asked the City Attorney to review the resolutions.

Ramer noted that there are three resolutions.

1. A resolution approving an amendment to the Special Land Use approval of January 30, 2007.
2. A resolution recommending City Council approval of the offer to amend the Conditional Rezoning for the Bay Street parcel.
3. A resolution recommending City Council approval of the offer to amend the Planned Development approval of 2007.

Ramer reviewed each of the Resolutions individually.

Ramer noted that the resolution to amend the Special Land Use approval reviews the standards of a Special Land Use and states why the proposed amendment to the Site Plan meets those standards; the resolution approves the new site plan, while keeping in force all conditions of the prior approval; and approval of the amended Special Land Use is contingent upon City Council approval.

Ramer noted that the second resolution recommends that the City Council approve the offer from Mr. Mossburg to amend the conditional rezoning of the Bay Street parcel. This offer, if accepted by the City, would make the rezoning of the Bay Street parcel from TR to CBD only valid for the Site Plan/Special Land Use approved by the City. Mr. Ramer noted that Mr. Mossburg had submitted to the City a written proposal dated February 19, 2008, offering that the conditional rezoning previously approved for the Bay Street Parcel could be amended to provide that the structures, improvements and uses of the Bay Street Parcel would be limited to the structures, improvements and uses contained in the proposed amended Site Plan.

Ramer noted that the prior Planned Development approval must also be amended by resolution because the applicant is also asking for a portion of the hotel on Bay Street to be up to 39' tall and to be three stories. The resolution reviews the standards for such approval and states why the proposed amended plan meets those Planned Development standards and recommends that City Council approve the amended Planned Development agreement.

Deegan asked Planner Larry Nix for his comments.

Nix noted that the amended plan is consistent with the zoning code. The new plan does provide for 34 parking spaces, including those for small cars. The project does now have three three-bedroom units, but there will still be eight lockout units available.

Nix noted that the Commission could look at the one-way street request, but suggested it be done separate from these resolutions. He felt that the traffic issues raised did make sense.

Deegan said the City Council could address the one-way street issue.

Following a short discussion, Deegan asked if there was any motion.

Motion by Kors, seconded by Hughes, to approve the following three Resolutions:

**RESOLUTION APPROVING AMENDMENT
TO
SPECIAL LAND USE APPROVAL**

WHEREAS, Robert Mossburg III, Manager of the Harbor Springs Hotel, LLC (“the Applicant”) has submitted an application (including an amended Site Plan dated January 25, 2008 (the “amended Site Plan”)) to amend the Special Land Use Approval granted by the Planning Commission on January 30, 2007, which approved the establishment of a Condo-Hotel on site parcel numbers 24-51-15-13-165-001 (the “Main Street Parcel”) and 24-51-15-13-176-123 (the “Bay Street Parcel”); and,

WHEREAS, the Applicant has also submitted an offer to amend the Planned Development and Conditional Rezoning Agreement between Harbor Springs Hotel and the City of Harbor Springs dated June 21, 2007, and recorded June 21, 2007 at Liber 1092, Page 792, Emmet County Records (the “Zoning Agreement”), to be consistent with the amended Site Plan; and,

WHEREAS, the Applicant has also submitted an application to amend the Planned Development Approval granted by the City Council on March 5, 2007; and,

WHEREAS, a public hearing was held on February 21, 2008 at the Harbor Springs City Hall on the proposed amendment to the Special Land Use Approval, and on the proposed amendment to the Zoning Agreement, and on the proposed amendment to the Planned Development Approval, at which public comments were received; and,

WHEREAS, the amendment proposed to the Special Land Use Approval is of such location, size and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood and/or vicinity and applicable regulations of the zoning district in which it is located because the changes proposed increase the west set back of the building on the Bay Street Parcel, and eliminate the roof deck use, and the architectural style of the proposed structure on the Bay Street Parcel blends with buildings in the area; and,

WHEREAS, the amendment proposed to the Special Land Use Approval is of a nature that will make vehicular and pedestrian traffic no more hazardous or congested than was previously approved, since the number of condominium units on the Bay Street Parcel (3) is less than was approved in the Special Land Use Approval (4); and,

WHEREAS, the amendment proposed to the Special Land Use Approval is designed, subject to the terms and conditions herein, as to the location, size, intensity, site layout and periods of operation of any such proposed use to eliminate any possible nuisance emanating there from which might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke or lights because the changes proposed increase the west set back of the building on the Bay Street Parcel, and eliminate the roof deck use; and,

WHEREAS, the amendment proposed to the Special Land Use Approval is such that the proposed location and height of buildings or structures and location, nature and height of walls, fences and landscaping will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value because the changes proposed increase the west set back of the building on the Bay Street Parcel, and eliminate the roof deck use; and,

WHEREAS, the amendment proposed to the Special Land Use Approval will relate harmoniously with the physical and economic aspects of adjacent land uses in connection with prevailing shopping habits, convenience of access by prospective patrons, continuity of development, and need for particular services and facilities in specific areas of the City because it complements existing restaurant and retail uses existing in the area, provides a short walk from the marina areas and is within walking distance to all events and business areas in the CBD area;

WHEREAS, the amendment proposed to the Special Land Use Approval will be so designated, located, planned and operated that the public health, safety and welfare will be protected because all setback and height requirements of the City have been met or exceeded, all normal public services will be utilized to service the building, and adequate parking will be provided for patrons;

WHEREAS, the amendment proposed to the Special Land Use Approval will not cause substantial injury to the value of other property in the neighborhood on which it is to be located and will not be detrimental to existing and/or other permitted land uses in the zoning district because the changes proposed increase the west set back of the building in the Bay Street Parcel, and eliminate the roof deck use.

NOW THEREFORE, IT IS RESOLVED that the Planning Commission hereby approves the application to amend the Special Land Use Approval for the Condo-Hotel on parcel number 24-51-15-13-165-001 and 124-51-15-13-176-123; such approval being subject to:

1. Subject to all applicable provisions of the City of Harbor Springs Zoning Code and the terms and conditions of the RESOLUTION RECOMMENDING AMENDMENT OF THE ZONING AGREEMENT and the RESOLUTION RECOMMENDING APPROVAL OF THE AMENDMENT TO PLANNED DEVELOPMENT APPROVAL of today's date.
2. Subject to the amended Site Plan;
3. Subject to all terms and conditions of the Special Land Use Approval made on January 30, 2007, except as modified by, or inconsistent with, the amended Site Plan; and specifically modified as provided herein:
 - a. Thirty-four (34) parking spaces shall be provided as compared to thirty-three (33) parking spaces as provided in the January 30, 2007 approval.
 - b. There shall be no roof deck.
4. This amendment to the Special Land Use Approval for this Project is contingent upon approval by the City Council of an amendment to the Zoning Agreement for the Bay Street Parcel to be consistent with the amended Site Plan, and, further contingent upon the approval by the City Council of an amendment to the Planned Development Approval to be consistent with the amended Site Plan, including height and story variances to 39' and 3 stories for the building to be located on the Bay Street Parcel.

**RESOLUTION RECOMMENDING APPROVAL
OF
THE OFFER TO AMEND THE CONDITIONAL REZONING AGREEMENT FOR
THE BAY STREET PARCEL**

WHEREAS, the Planning Commission has approved amending the Special Land Use Approval for the Condo-Hotel to be established on the Main Street Parcel and the Bay Street Parcel consistent with the amended Site Plan, subject to conditions; and,

WHEREAS, the Applicant has also submitted an offer to amend the Zoning Agreement to provide that the Condo-Hotel would be constructed, located and used on the Main Street Parcel and Bay Street Parcel only in accordance with the amended Site Plan; and,

WHEREAS, the proposed amendment to the Zoning Agreement would comport with the recommendations of the City of Harbor Springs Master Plan and the Bay Street Parcel is served by public utilities; and,

WHEREAS, the proposed amendment to the Zoning Agreement is consistent with the approved use for the property; and,

WHEREAS, the impact on nearby property will not be a detriment to the public health, safety and welfare of the City of Harbor Springs;

WHEREAS, a public hearing was held on February 21, 2008 at the Harbor Springs City Hall on the proposed amendment to the Zoning Agreement and related applications at which public comments were received.

NOW, THEREFORE, IT IS RESOLVED that the Planning Commission recommends that the City Council amend the Zoning Agreement to provide that the Bay Street Parcel shall be constructed, located and used only in accordance with the amended Site Plan.

**RESOLUTION RECOMMENDING APPROVAL OF THE APPLICATION
TO
AMEND PLANNED DEVELOPMENT APPROVAL**

WHEREAS, the Applicant has submitted an application to amend the Planned Development Approval for the Main Street Parcel and the Bay Street Parcel;

WHEREAS, the subject site is greater than half an acre in land area; and,

WHEREAS, the Applicant would serve as a single proprietor to bring the development to fruition; and,

WHEREAS, the applicant is proposing to amend the Planned Development Approval to construct a Condo-Hotel on the Bay Street Parcel up to 39 feet and 3 stories in height; and,

WHEREAS, the Planning Commission recommends that the City Council find that the proposed amendment to the Planned Development Approval would result in benefits to the public at large such that the proposed height variation is appropriate because the project architecture is aesthetically pleasing to guests, pedestrians, tourists and the community at large, a quality facility will offer an attractive place for guests, and vehicular and pedestrian traffic will be improved through a better organized site; and,

WHEREAS, the Planning Commission recommends that the City Council find that there are dedications of open space within the proposed project, as amended, that make a better site development than if the strict application of the height and story limitations were adhered to because a green space planned for the southeast corner of the property will replace an existing parking area, provide a respite area for guests and visitors and provide limited restricted opportunity for social functions; and,

WHEREAS, the Planning Commission recommends that the City Council find that the amendment proposed to the Planned Development Approval promotes desirable economic development in the Central Business District to such an extent, and the economics of the project

are such, that a variation from a strict application of the height and story limitations is appropriate under the circumstances because year round guests and visitors will have a quality facility to stay in, new jobs will be created, additional retail and service space will be added to the downtown inventory, and increased tax base for the City will result; and,

WHEREAS, the Planning Commission recommends that the City Council find that the amendment proposed to the Planned Development Approval would promote the health, safety and welfare of the City of Harbor Springs because the changes proposed increase the west set back of the building on the Bay Street Parcel, and eliminate the roof deck use; and,

WHEREAS, the amendment proposed to the Planned Development Approval project will not cause the interests of adjacent property owners to be damaged or injured, because the changes proposed increase the west set back of the building in the Bay Street Parcel, and eliminate the roof deck use;

WHEREAS, the Planning Commission has approved a Resolution entitled, "RESOLUTION APPROVING AMENDMENT TO SPECIAL LAND USE APPROVAL pertaining to this application;

WHEREAS, the Planning Commission finds that amendment proposed to the Planned Development Approval would meet the standards of Article 21, being Special Land Use Approval, of the Zoning Code, as stated in the "RESOLUTION APPROVING AMENDMENT TO SPECIAL LAND USE APPROVAL";

WHEREAS, the Planning Commission finds that the amendment proposed to the Planned Development Approval would meet the intent of the Planned Development Overlay to promote context-sensitive development that is compatible with adjoining structures and which continues the City's historic appearance.

NOW, THEREFORE, IT IS RESOLVED that the Planning Commission recommends that the City Council approve the amendment proposed to the Planned Development Approval, such approval being subject to:

1. Subject to the terms and conditions of the RESOLUTION RECOMMENDING APPROVAL OF THE AMENDMENT TO THE CONDITIONAL REZONING AGREEMENT and the RESOLUTION APPROVING AMENDMENT TO SPECIAL LAND USE APPROVAL of today's date; and
2. Subject to the Zoning Agreement being amended in accordance with an amendment to be written by the City Attorney in accord with the Zoning Code and provided that such amendment must be approved by the City Council of the City of Harbor Springs prior to taking effect.

There being no further discussion, the Chairman asked that a roll call vote on the motion to approve the foregoing three Resolutions be taken, and the following votes were cast:

AYES: Kors, Smith, Deegan, McCleery, Hughes, Ford
NAYS: None
ABSTAIN: Bowman
ABSENT: Walstrom, Sears

The Secretary /Clerk declared that the three **RESOLUTIONS WERE ADOPTED, 6-0.**

Mary Ellen Hughes commented that everyone involved in the process of resolving this issue should be commended.

After a short discussion, a motion was made by Hughes, and seconded by Deegan, to recommend to City Council that Gardner Street from Main to Bay Street be made one-way south, at the time of the beginning of the construction of the new hotel. Motion carried.

V. Member Comments

None.

VI. Adjournment

The next regular meeting of the Planning Commission is scheduled for March 20, 2008.

There being no further business to come before the Commission, the meeting was adjourned at 7:05 p.m.

Frederick W. Geuder, City Manager