

PLANNING COMMISSION
Wednesday, May 16, 2018

#1 Call to Order

Planning Commission Chair Headley called the meeting of the Brainerd Planning Commission to order at 6:00 p.m. in the City Hall Council Chambers.

Noted present were Commissioners Antolak, Burslie, Gorham, Headley, Wussow; and Council Liaison Lambert. Noted absent was Commissioner Marohn. Also present was City Planner Ostgarden, and Administrative Specialist Bestul.

#2 Approval of Agenda

MOTION AND SECONDED BY COMMISSIONERS LAMBERT AND WUSSOW, DULY CARRIED, TO APPROVE THE AGENDA.

#3 Approval of Minutes of the Regular Meeting held on April 18, 2018

MOTION AND SECONDED BY COMMISSIONERS LAMBERT AND GORHAM, DULY CARRIED, TO APPROVE THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 18, 2018.

#4 New Business

A. Public Hearing – Conditional Use Permit – Sarah Hayden Shaw, Owner of Sage on Laurel, 606 Laurel Street to Construct a Non-Enclosed Area (Patio) for Dining with Alcohol Service Adjacent to the Restaurant

City Planner Ostgarden explained the outdoor patio, technically described in the zoning ordinance as “non-enclosed premises to provide outdoor food and alcohol service” is a Conditional Use in the B-3 Central Business District. The patio is anticipated to be a seasonal use only with planters serving as patio barriers. There are special standards associated with this type of conditional use which follow with the owner’s responses shown below:

Non-enclosed areas for dining and/or serving alcohol when accessory to a restaurant and/or bar provided that:

1. *The applicant submits a site plan in accord with Section 5 of this ordinance that includes information demonstrating the location and type of all tables, refuse receptacles, and wait stations.*
 A site plan with information about compliance with outdoor dining with alcohol is provided.
2. *Access shall be provided only via the principal building.*
 Access is through the side door of the restaurant only, except for the emergency only exit.
3. *The size of the area is restricted to thirty (30) percent of the total customer floor area within the principal structure.*

Yes. The customer floor area in the restaurant is 2950 sf. The patio area will be 32 by 20, or 640sf. which is 22%.

4. *The area is screened from view from adjacent residential uses in accordance with Section 20 of this Ordinance.*

There are no main floor adjacent residential uses. There are second story apartments above the Sage on Laurel building, the VFW, and the Hockey House building, but none of the windows in any of these apartments face the lot the patio will be located in.
5. *All lighting shall be hooded and directed away from adjacent residential uses in accordance with Section 18 of this Ordinance.*

N/A. See 2nd paragraph of activity description.
6. *The applicant demonstrates that pedestrian circulation is not disrupted as a result of the area by providing the following:*
 - a. *Minimum clear passage zone for pedestrians at the perimeter of the restaurant shall be at least five (5) feet without interference from parked motor vehicles, bollards, trees, tree gates, curbs, stairways, trash receptacles, street lights, parking meters, or the like.*
 - b. *Overstory canopy of trees, umbrellas or other structures extending into the pedestrian clear passage zone or pedestrian aisle shall have a minimum clearance of seven (7) feet above sidewalk.*

The patio space does not overlap or in any way interrupt the sidewalk or pedestrian walkways.
7. *The area is surfaced with concrete, bituminous, decorative pavers or may consist of a deck with wood or other flooring material that provides a clean, attractive, and functional surface.*

The bituminous surface will be maintained.
8. *Storage of furniture shall not be permitted outdoors between November 1 and March 31. Outdoor furniture that is immovable or permanently fixed or attached to the sidewalk shall not be subject to the storage prohibition of this section. However, any immovable or permanently fixed or attached furniture shall be approved as part of the conditional use permit application.*

No problem.
9. *Additional off-street parking may be required pursuant to the requirements set forth in Section 22 of this Ordinance based on the additional seating area provided by the area.*

There is ample on street parking as well as private parking owned by the Sage on Laurel as well as the adjacent municipal parking lot.
10. *Closed lid refuse containers are to be provided.*

Will be provided.

11. *So as to deter the free passage of any person or substance beyond the barriers of the non-enclosed areas, a Barrier at a minimum of thirty-six (36) inches made of wood, vinyl, wrought iron, brick or natural stone, planters or other approved material shall be provided.*

Barrier Openings shall be spaced such that visibility is allowed but the passage of an alcoholic beverage through an opening to a person that is not within the non-enclosed area is prohibited.

Barrier Openings shall be spaced such that visibility is allowed but the passage of an alcoholic beverage through an opening to a person that is not within the non-enclosed area is prohibited.

Barrier will be a combination of the existing black metal fencing (wrought iron look) in some areas and in other areas will be made of connected planters. These planters will be galvanized steel stock tanks. Both will be 3 ft tall (taller once the plants are in place).

Please see the submitted patio diagram and notes for detail.

12. *The primary access and egress will be from the main premises or structure and no other access or egress will be allowed other than those required as emergency exits. The outdoor sale area will be defined or structurally constructed so as to prohibit the free passage of any person or substance beyond said area.*

The design complies with this, with the exception of the emergency exit, which will be latched from the inside.

Please see the submitted patio diagram and notes for detail.

13. *Smoking in the area, if allowed by the business owner, is permitted provided the area is in compliance with the Minnesota Freedom to Breathe Act of 2007.*

Yes. Smoking will only be permitted in certain areas of the patio.

14. *The Building Official shall review the suitability of the area in light of the applicable fire, building, and life safety codes and the adequacy of the proposal to provide for the safety of persons on the premises.*

We have been in communication with the Building Official during this project and will continue to do so until completion.

15. *There shall be no amplified live music allowed in the area except in the case of special event, which requires a permit from the City. Music shall be kept to a level that is not intrusive to surrounding property.*

Live music on the patio will be acoustic only unless we have a special event in which we would apply for a special permit from the city. Ambient dining music will be limited to 75 decibels at the speaker, which is the average decibel level of an acoustic guitar and will not be heard at any adjacent business or residence.

16. *All licenses required for serving alcohol specified in city code Chapter XIII shall be obtained.*

All liquor license requirements will be met.

City Planner Ostgarden stated the owner is present tonight and she can give the commission more details of the proposed patio.

The Chair opened the public hearing at 6:05 p.m.

The Chair recognized Ms. Sarah Hayden Shaw, 606 Laurel Street who is the owner of Sage on Laurel. Ms. Shaw explained there are double doors located on the east side of the building with one to allow access to the building and other one will serve the patio exclusively. There will be no access to the patio without going through the restaurant. The existing wrought iron fencing will serve as part of the border along with large galvanized stock tanks which will be used as planters which will be raised off the ground several inches. The patio is designed to be seasonal and removal of the planters and furniture will take place at the end of summer. The area will return to the private owned parking for Sage staff in the winter.

Ms. Hayden Shaw indicated the patio will have 11 small tables and one larger table with patio umbrellas and 30 chairs. There will be an exit consisting of a gate that will be latched from inside the patio to allow exiting in the event of an emergency but will not be accessible from the outside area.

Ms. Hayden Shaw does not plan on having amplified live entertainment other than acoustic type music. If there becomes a situation that they would like a live event, they will complete a Special Event Application with the City. The hours that are planned to operate the patio would be lunchtime to dusk as no outdoor lighting is currently planned. The restaurant is described as a restaurant serving gourmet food with alcohol available, not just a typical bar setting. A designated area will be created for those who smoke as not to interfere with others.

Commissioner Burslie asked if the patio will become a permanent patio in future plans. Ms. Hayden Shaw indicated she is not able to make that decision until the first season comes to a close but would appreciate the ability to do so if so desired.

City Planner Ostgarden recommended if people are on the patio, that they be served by the staff rather than being able to place an order inside and take it out to the patio. Ms. Hayden Shaw indicated that is a reasonable request, but there may be times a person orders a drink at the bar and brings it out themselves.

Ms. Hayden Shaw noted along the wrought iron fencing installed by the City is a three-foot strip for landscaping in front of the fence to help alleviate the issue of passing drinks through the fence.

The Chair recognized Mr. Mark Persons, 10032 Island Drive, Brainerd who is not directly opposed to the patio, however is opposed to losing parking spaces. Mr. Persons stated if the patio is approved, three parking spaces will be eliminated. The downtown area is already in an overstressed parking situation. Mr. Persons commented there needs to be more parking, not less.

The Chair recognized Mr. Steven Shepherd, owner of Shep's on 6th, 315 South 6th Street. Mr. Shepherd has owned his business for 22 years and stated there is a need for parking downtown and to lose more parking is a bad idea. Mr. Shepherd thanks Ms. Hayden Shaw for all the work she has done downtown with renovations and supporting downtown. Mr. Shepherd indicates the need for security is greater than the fence and planters that are being proposed, as alcohol could get into the wrong hands without a higher security fence.

The Chair recognized Ms. Hayden Shaw to respond to the comments. Ms. Hayden Shaw stated the three parking spaces are privately owned by Sage on Laurel. There will be no loss of public parking spaces with the patio being constructed. The restriping that will be done in the parking lot will actually add spaces for public parking. Ms. Hayden Shaw indicated since the business is a restaurant that has shorter hours than a typical bar, the problems with security should be minimal. The conditional use permit requirement of having at least a 36" high barrier is being met.

The Chair closed the public hearing at 6:27 p.m.

Commissioner Wussow stated the report states the hours of operation to be "11am daily to close..." The suggestion would be to not indicate specific hours in case an earlier use is needed. Commissioner Wussow questioned if the B-3 district requires parking which City Planner Ostgarden confirmed that it does not.

Commissioner Burslie mentioned the applicant said that the ordinance has a three-foot requirement for the barrier. City Planner Ostgarden stated this is a minimum requirement; if the commission is concerned with a potential issue with alcohol being distributed outside the perimeter, there is the ability to require more in the conditions. A conditional use permit does allow future adjustments if needed such as higher barriers if problems do occur.

Commissioner Lambert questioned a designated outdoor smoking area is allowed. City Planner Ostgarden stated it is up to the business owner to have such an area. However, state law indicates a distance must be followed from an entrance to the establishment.

MOTION AND SECONDED BY COMMISSIONERS BURLIE AND LAMBERT, DULY CARRIED, TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT FOR THE OUTDOOR PATIO BASED ON STAFF FINDINGS OF FACT, MOVING NUMBERS 8, 12 AND 14 FROM THE FINDINGS TO CONDITIONS AND ADDING THE FOLLOWING CONDITIONS:

8. All lighting shall be hooded and directed away from adjacent residential uses in accordance with Section 18 of this Ordinance, however no exterior lighting is planned.

12. So as to deter the free passage of any person or substance beyond the barriers of the non-enclosed areas, a barrier at a minimum of thirty-six (36) inches made of existing black metal fencing (wrought iron look) and a buffer of deciduous shrubs adjacent to the fence interior along Laurel Street and the other areas will be planters of galvanized steel stock tanks. Both will be 3 ft tall (taller once the plants are in place). Barrier openings shall be spaced such that visibility is allowed but the passage of an alcoholic beverage through an opening to a person that is not within the non-enclosed area is prohibited.

The barriers should provide a sufficient deterrent to passing liquor to outside the area, or people attempting to access the area without going through the restaurant. Based on the layout of the tables, the nature of the business being a restaurant and the limited hours this area should not be crowded with an excessive number of people, where maintaining the integrity of the space would begin to be a problem.

14. There shall be no amplified live music allowed in the area except in the case of special event, which requires a permit from the City. Music shall be kept to a level that is not intrusive to surrounding property.

Live music on the patio will be acoustic only unless there is a special event in which they would apply for a special permit from the city. Ambient dining music will be limited to 75 decibels at the speaker, which is the average decibel level of an acoustic guitar and will not be heard at any adjacent business or residence.

1. ~~Alcoholic beverages need to be served by the staff of Sage on Laurel and ordered by persons over the age of 21.~~
2. The southeast corner of the parking lot needs to maintain ample distance from the patio barrier for vehicles to maneuver.
3. A permanent patio shall be allowed in the future if constructed within the proposed patio area.

Commissioner Wussow stated when alcoholic beverages are served out on the patio, it would be extremely difficult to monitor the requirement of having only the staff able to bring them on the patio. The customers would be going in and out and would probably order them at the bar themselves.

City Planner Ostgarden stated he does not think it's a good idea for any establishment to allow a person to order alcohol inside and take it out of the building.

MOVED AND SECONDED BY COMMISSIONERS BURSLIE AND LAMBERT, DULY CARRIED, TO STRIKE NUMBER ONE SHOWN ABOVE FROM THE CONDITIONS.

Commissioner Burslie stated the business is already required to follow state liquor law to verify age requirements.

B. Kingwood Street Study Committee

City Planner Ostgarden asked if there are any volunteers that would like to be a part of the committee. Commissioner Burslie and Commissioner Gorham volunteered for the committee.

#5 Public Forum

The Chair opened the public forum at 6:44 p.m.

No one came forward.

The Chair closed the public forum at 6:44 p.m.

#6 Old Business

A. Comprehensive Plan Update – Review Comprehensive Goals and Strategies

City Planner Ostgarden will postpone this to the next month, as the Steering Committee will be meeting on Tuesday, May 22, 2018 and more information will be available for the update.

#7 Commissioners' Questions/Comments

Commissioner Antolak apologized to the commission for his lack of attendance to the Planning Commission meetings due to a conflict of interest on Wednesday nights.

Commissioner Burslie asked if any solutions have been discussed regarding the ongoing downtown parking issues. There have been multiple business owners that have expressed concern to the lack of parking.

Commissioner Lambert agreed with Commissioner Burslie and indicated in the past there was a Parking Commission that would meet. The problem has been an ongoing issue for years.

Commissioner Gorham indicated the College Drive project installed pedestrian lights and crosswalks which improved this problem on that street. Commissioners Burslie and Lambert agreed these should have been planned for south 6th street during the construction.

Commissioner Gorham explained the parking issues take place at peak hours, such as The Bridge of Harmony that sees a lot of after school and evening customers. The VFW events take a lot of parking as well after 5:00 p.m. A business owner sees empty parking spaces as capacity and the ability to have customers able to visit their establishment.

Commission discussion took place regarding parking and how it is viewed differently.

#8 City Planner's Report

City Planner Ostgarden announced there will be a “Basics of Planning & Zoning” training session on June 27th and “Beyond the Basics of Planning & Zoning” taking place on June 28th – both will be in Staples if anyone is interested.

#9 Adjourn

The Chair adjourned at 6:53 p.m.

Respectfully submitted,

City Planner