

WICKLIFFE PLANNING COMMISSION
May 7, 2009

Vice Chairman Yohe called the meeting to order at 7:30 p.m.

PRESENT: Bochenek, Grasser, Margalis, Yohe, Building Commissioner Raymond F. Sack, Jr., City Engineer Formica, Assistant Prosecutor A. J. Stempuzis, and Pauline Drake, Architect, of CT Consultants. Also attending the meeting were Mayor Thomas W. Ruffner and Chief of Police Randy E. Ice.

EXCUSED: McGraw

3. Joseph Myers for Albkos Properties LLC, request for lot construction, parking lot approval for the construction of an addition on west side of building, a freezer and an outside dock, located at 30022 Euclid Avenue, in a General Business District.

Mr. Sack's letter of April 30, 2009 is attached., addressing the following four items: 1) Agreement for parking lot lease; 2) No trucks running or refrigeration units running. (Noise Ordinance), before 7:30 a.m. or after 9:00 p.m.; 3) Do not use parking lot across the street to turn in, or around, or park; and, 4) Parking lot shall be constructed as the 2009 drawing submitted. Mr. Sack also stated his recommendation to the applicant to combine both parcels for consolidation.

Mr. Formica's City Engineer's Review Comments dated May 7, 2009 is attached, noting that the plan has been reviewed and is approved with his comments attached, as follows: 1) In 2004, Planning Commission approved a parking plan which would eliminate two curb cuts on Euclid Avenue. To date, the parking reconfiguration has not been performed. A copy of the 2004 plan was included in this submittal; 2) We recommend crack sealant be applied to the parking areas prior to re-striping; and, 3) This property (building) does not have a sufficient number of parking spaces. The neighboring property owned by the O'Brien's is currently being used for parking and satisfies the required number. A copy of the agreement between the property owners was requested of the applicant.

Lt. Leovic's Certificate of Review Letter dated April 13, 2009 is attached with his General Comments.

A.J. Stempuzis administered the oath to Joseph Myers, on behalf of Albkos Properties LLC.

Vice Chairman Yohe noted that there should be two motions: one for the consolidation and one for the parking lot approval, etc. So moved by Mr. Grasser for approval of the consolidation plan for Permanent Parcel Nos. 29-B-003-C-00-014-0 and 29-B-003-C-00-015-0, as shown on Sheet 1 of 1 by Aztec Engineering, dated April 22, 2009, and the accompanying Lot Survey dated April 21, 2009. Seconded by Councilman Margalis.

Roll Call, Ayes: Bochenek, Grasser, Margalis, Yohe
Nays: None. Motion carried and approved.

The next issue to be addressed is parking lot approval for construction of an addition on the west side of the building, a freezer and an outside dock. Mr. Sack commented that there are two separate owners showing on the prints; namely, William and Linda O'Brien, who own two parcels. A long term lease is required for the Planning Commission in order to avoid future problems dealing with parking issues. In addition to the four comments in Mr. Sack's letter of April 30, 2009, the proposed plan shows one Entrance and one Exit.

Mr. Joseph Myers said that additional cooler space is need and is planned to be added inside a masonry building at the rear, with a sloped roof and asphalt shingles, made of split face block the same color as the other side of the building, with the loading dock leading into it. The glass atrium on the side of the present building will be removed and the driveway behind the building widened, with expansion of the sales area of the building, s well. The existing board on board fence will be extended. Mr. Sack said that BZA granted a variance of approximately 80% for the side yard and a bit less than 50% the rear yard of this property. The compactor is only used for cardboard products, pursuant to Mr. Myers. The parking spaces on the west side of the building were discussed and Councilman Margalis suggested eliminating those spaces and keep those spaces in front of the building for handicapped and other.

Vice Chairman Yohe called for a motion. So moved by Councilman Margalis that the request by Joseph Myers for Albkos Properties LLC, for lot construction, parking lot approval for the construction of an addition on the west side of the building, a freezer and outside dock, located at 30022 Euclid Avenue in a General Business District, be approved, with the following conditions:

- 1) That Items 1 through 4 on Building Commissioner Sack's letter dated April 30, 2009 (attached) be followed and included in that Item 1 is that the owner must produce a Lease Agreement with the property owners of the two lots in the east for parking lot space;
- 2) That the three (3) items and conditions listed on the letter from CT Consultants, City of Wickliffe Engineer's Review Comments for May 7, 2009 (attached), be followed; and, particularly, that the entire parking area be crack sealed before re-striping;
- 3) That the items on the letter from the City of Wickliffe Bureau of Fire Prevention, dated April 13, 2009, (attached) also be followed, and the Drawing that was accepted by the Planning Commission in 2004, dated March 23, 2004, be part of the Plan and show the parking plan approval and all improvements on that be followed. Also on the Applicant's Drawing dated March 2009 that showed the improvements and the Architectural, this new Drawing, Sheets 1 SP and Sheets 1 of 2. Seconded by Mr. Grasser.

Roll Call, Ayes: Bochenek, Grasser, Margalis, Yohe
Nays: None. Motion carried and approved.

4. Michael DelBalso for The Barrel Room Winery, for a Conditional Use Permit for Tabled Agenda Item from the November 2008 meeting, regarding property located at 28932 Euclid Avenue, in a General Business District.

Vice Chairman Yohe called for a Motion to remove this Item from the Table. So moved by Mr. Grasser and seconded by Councilman Margalis.

Roll Call, Ayes: Bochenek, Grasser, Margalis, Yohe
Nays: None. Motion carried and approved.

Mr. Sack's letter of April 30, 2009 is attached, noting two comments: 1) Shall scrape and paint building in front of Convenience Store (under the overhang); and, 2) Repair broken glass in window and doors. Mr. Sack also noted that this Agenda Item was advertised for two consecutive weeks in The News Herald and all contiguous property owners were notified in writing, with about 150 letters hand delivered.

Mr. Formica's Engineer's Comments for May 7, 2009 are attached. Comments from the previous meeting have been amended to the Plans, with an attached letter dated April 21, 2009 from Pauline Drake, Architect for CT Consultants, Inc. comments regarding a proposed sound reduction plan submitted by the Applicant.

Ms. Drake's letter dated May 5, 2009 is attached, dealing with clarification of her opinion on the noise levels from the outdoor entertainment referenced in her letter dated April 21, 2009. Discussion followed regarding decibel levels at the outsource and proposed materials to be used for reduction of noise level.

Councilman Margalis noted there are two issues: Parking and sound, and he suggested dealing with each individually. Vice Chairman Yohe first addressed the parking plan approval. Mr. Sack noted the letter from The Barrel Room Winery dated March 17, 2009 regarding Proposed Sound Control Plan. Also attached are letters from Powertrain Automotive (23 spaces), Finest Lines Tattoo Studio, Inc. (December 2, 2008) (33 spaces), and Fifth Third Bank (January 26, 2009) (32 spaces) regarding parking. There are also 32 parking spaces on the Winery's lot, with an additional four (4) spaces on 1522 E. 289th Street, used for employees only.

Jeff Black, Esq., Attorney on behalf of The Barrel Room Winery, 38109 Euclid Avenue, Willoughby, Ohio 44094, commented that there are a total of 97 parking spaces available, but only 75 spaces are required. In addition, The Barrel Room will provide complimentary valet service, as needed, which will reduce The Barrel Room's actual spots by two. It is noted that M. Black is an officer of the court and it is not necessary that he be sworn in by Mr. Stempuzis.

A.J. Stempuzis administered the oath to Joe DelBalso, 8375 Morley Road, Concord, Ohio. He explained that the two spaces to be eliminated are those in front of the building. Landscaping proposed call for rocks to be removed from the middle of the sign, which will allow planting of flowers. Mr. Sack said that the Sign Review Board approved this proposal. Mr. DelBalso, said that asphalt overlay is proposed to meet the deadline of two years from date of occupancy.

Councilman Margalis explained that since this is a new parking plan approval condition, the previous parking plan does not comply.

Ms. Yohe asked Ms. Drake for further commented it would be her understanding that by reducing noise level by 10 decibels would cut the noise level in half; also that ground material plantings might help to improve conditions. Mr. Black, Esq., said his client hired an expert, Marc Rubin, Assistant Director of Environmental Health and Safety at Case Western Reserve, to develop a sound control plan. Mr. Rubin's Proposed Sound Control Plan for Barrel Room Winery is attached, dated 03/17/2009, a plan to reduce noise levels on the outside patio, which provides several recommendations; ie, raising the fence to 8 ft. in height behind the stage area, add sound board to the interior of the fence behind the stage, add sound board to the east block wall extending 3 x 5 feet west beyond the stage, add 4 to 6 speakers to spread out the sound (eliminate the speakers supplied by bands) and offering more control of the sound levels on site. Also, add foliage to the south side of the fence, where possible. Ms. Drake's letter of April 21, 2009 in response indicates the proposal appears to reduce the noise to an acceptable level. These suggestions from Ms. Drake will be implemented by the Applicant. Mr. Black noted that the City Ordinances dealing with noise will be enforced. Live outdoor music is proposed for Thursdays, 7:00 p.m. to 10:30 p.m., Fridays and Saturdays, 7:00 p.m. to 11:30 p.m., Sundays, from Noon to 9:00 p.m. (or 11:30 p.m. if the following Monday is a national holiday). Live music is not planned for every Sunday.

For the record, letters in support of this Applicant are attached, as follows: Letter dated May 7, 2009 from Patrick S. DeMay, sheets with approximately 90 residents who have signed a Petition in support of live music outside.

Ms. Yohe called for a motion to open the meeting to audience participation. So moved by Ms. Bochenek; seconded by Councilman Margalis.

Roll Call, Ayes: Bochenek, Grasser, Margalis, Yohe

Nays: None. Motion carried. Audience participation began at 8:39 p.m. (approx. 40 minute limit)

1. Alice Stamey – 28900 Euclid Avenue, Wickliffe. She does not understand how 33 spaces can be considered at Finest Lines, as it closes at 11:00 p.m. on Friday and at 10:00 p.m. on Saturday. The front parking lot is usually full. There are two large boats in their back parking lot, taking up at least two parking spaces.

2. Cheryl DeVor - 1375 E. 289th Street, Wickliffe. She is concerned with parking and asked if there is a lot on the west side of the houses that are along E. 289th Street? Are they parking there or are they using it as valet parking? She was told that is a Ganley lot and cannot be used. She stated she did not want the business to shut down; she likes the place. Her main issue is noise level issue during school season.

3. Tony Cornacchione – 28780 Park Drive, Wickliffe, a lifelong resident. Fence runs parallel to street. 10 cars parked there mostly park perpendicular to fence. Problem is that E. 289th is the narrowest street, delivery trucks are crushing culverts under the driveways and busted

up catch basins. Parking lot behind on west side of street, coming out of gate there is a traffic problem. On noise level (totally ridiculous) City park orchestras – Concerts quit at 8:30 p.m.? He said they should enclose outdoor area and this should have never been allowed to happen.

4. Janet Jones – 28755 Alton Avenue, Wickliffe. She has lived in this house for 22 years. Noise, bars, trucks, loudspeakers. She asks the Commission to strongly consider what is allowed to go in. Consider residents. Don't let something to on that you cannot reverse to protect your residents. She also asked if the Conditional Use is approved, but nothing can be done to appease the residents, what happens? Ms. Yohe said the Applicant is still subject to the noise abatement issue referred to in the City of Wickliffe Ordinances.

5. Dennis Cornacchione – 28780 Park Drive, Wickliffe. He is represents his sister, who lives on E. 289th Street. He does not so much have a problems with the bar, but the allowance of what has been happening as the problem. He opened up the East Side Market. He commented on his opinion with regard to zoning ordinances and noise ordinances, his opinion that police were not allowed to respond to certain things based upon preferences that were given to the Police Dept. on his conditions, (referring to Building Commissioner). He further asked if this was built to be a winery or a bar/restaurant. His sister lives across the street about 60 feet distance from business. The noise level keeps her up and her daughter. He commented that from a residential point of view it is totally unacceptable.

6. Joan Kraft – 28865 Alton Avenue, Wickliffe. She feels the noise ordinance should be enforced as to music. Other people on Euclid Avenue will also say, “if they can have it, why can't we have it?”

7. Christy Natalia – 30501 Ridge Road, Wickliffe. She lives near Pine Ridge Country Club, and she often has to close her windows and turn on her window air conditioner due to parties and music until 2:00 a.m. sometimes. But, as a resident she has to way her options. She is proud of Wickliffe and says The Barrel Room Winery is a viable business that moved into Wickliffe. An option would be to “kick them out and maybe open another Dollar store or a tattoo shop.”

8. Jack Hoose – 28806 Hazel Avenue, Wickliffe. He said the noise is no different from the bands at the high school, pool or anything else. He feels the Applicant is trying to appease the noise ordinance and nobody is giving them an opportunity.

9. Charles Stamey – 28900 Euclid Avenue, Wickliffe. He asked if there is a City Ordinance against a speaker being on outside of a building? Ms. Yohe responded: referring to a Memo from William C. Gargiulo, Director of Law, dated April 29, 2009 to Mayor Ruffner and Council President Margalis, with attached letter dated September 15, 2008, (both attached). She cited City of Wickliffe Codified Ordinances that considers noise control: 509.03(a)(2) Disorderly Conduct (and others). It is her opinion that the City does not have an ordinance prohibiting this based upon Mr. Margalis' review of the City Ordinances. Councilman Margalis also cited Chapter 1313.23(A)(1)(C) and (A)(1)(F) dealing with amusement, recreation, etc., and said the Applicant has a right to come before the Planning Commission to ask for a right

to allow for their usage request. If Chief Ice gets a call, he asked if the police could go to the resident and not to the business establishment.

10. James DeVor – 1375 E. 289th Street, Wickliffe, on North side of Euclid Avenue. He lives about a quarter mile away from the building and can hear the band. His questions is, why would you disallow semis to park at the East Side Farmers Market on Euclid Avenue, but allow a band to play live outside in a residential area? Ms. Yohe explained that the Planning Commission is not dealing with a property that is zoned residential, but are dealing with an area which “abuts” a residential area. That is the reason for a Conditional Use. She further explained the City has Ordinances regarding the abatement of nuisance and disorderly conduct related to noise. Chief Ice can answer questions regarding this issue.

11. Patty Dragolich – 29829 Arthur Avenue, Wickliffe, a 23-year resident. She feels it is important to focus on the quality of the city. She feels The Barrel Room is a classy place that stands out on Euclid Avenue, which needs to be revamped. It is nice to see a nice establishment and not a “dive bar”. She further said when she has been at the Winery and the police come and tell the band to stop, it does. There has never been a problem. Her husband is a musician – give them a chance.

12. Mr. Tony Cornacchione also questioned the lot parcel between E. 289th and Euclid Avenue and asked if all of the addresses where you live represent legal residence? Would the addresses on Euclid be called a business? A zoning map was referred to, showing the areas of General Business and a one-family where homes are located. Mr. Cornacchione asked to see a copy of the original Permit. Ms. Yohe responded that the original permit was granted on its drawings and its plans at the Planning Commission level. She further stated that the decision at that time was made on the plans that were presented to the Planning Commission. Mr. Stempuzis said the Applicant has obtained all Permits through the City and the County. He further asked if there could be a committee to meet between the business and the residents.

13. Ray Fuerst – 28876 Alton Avenue, Wickliffe. Councilman Margalis responded in regard to the paving of the parking lot, November of 2009 is the deadline for the first approval when the Applicant took occupancy. Mr. Fuerst asked how the stockade fence was installed along E. 289th Street. He also has an issue with the noise level issue. He said the music is good but his windows rattle. He feels soundproofing will not correct the issue. His letter dated March 16, 2009 is attached for the record.

14. Wilbur Jones – 1711 E. 289th Street, Wickliffe. He expressed his opinion that he appreciates everything the Bar is doing to defuse the situation with the sound. He is a musician (drummer); there is a difference between decibels and frequencies. Low frequencies are the cutting issue. He said he has school age children and has an issue with music on Thursdays and Sunday until 11:30 p.m. He is in support of the business.

15. Judy Tirabasso – 1802 E. 291st Street, Wickliffe. She said The Barrel Room Winery is one of the classiest restaurant/bar here in Wickliffe. She understands the noise level issue; give them a chance. She hates to see another closed up store in Wickliffe.

16. Mark Perusak – 2151 Larchmont Drive, Wickliffe. He understands the emotion attached to this issue. He has enjoyed this business since they have opened and feels they are open to ideas. They are trying to work with the residents.

17. Mr. Heiss – 1624 Dennis Drive, Wickliffe, a resident for 27 years. He is a chef at The Barrel Room Winery. He commented that the establishment is presented as a restaurant/winery, same as Vittorio's, with good food and entertainment inside and outside. It is something that is bringing business into the city. We need to encourage the businesses and work together.

Ms. Yohe called for a motion to close audience participation. So moved by Ms. Bochenek; seconded by Mr. Grasser.

Roll Call, Ayes: Bochenek, Grasser, Margalis, Yohe

Nays: None. Motion carried. Audience participation closed at 9:26 p.m.

Ms. Yohe asked Chief Randy Ice to explain the Police Department's perspective. If there is a complaint, an officer will come to the business; if the music is too loud they are told to either turn it down or off. If not, then they will issue a citation. If the issuing of a citation continues, the business will be at risk for a financial consequence. He further stated that the installation of sound barriers would not affect the Police Department's response.

Hours of operation was discussed. Applicant agreed with outdoor bands ending at 10:30 p.m., as was done last year. Councilman Margalis noted that the Applicant has presented a plan that will hopefully work. Mt. Carmel has a Festival in the Summer that plans until 11:30 p.m. or Midnight; the Fest has a band which can be heard across the City. He also noted the East Side Farmers Market had a guitar player outside for people sitting outside to enjoy it. If there is a problem with noise, he suggests the resident first contact the owner of the business before contacting the police. Ms. Yohe clarified for the residents (prior to making the motion) that, although the Commission is considering hours of operation, that does not preclude complaints being made to the Police Department during the hours of operation. Thus, if they do have music during the hours of operation that are set by the Planning Commission, and yet you are find the level offensive and some residents may want to talk to the owners first, but may not feel satisfied, then you go to the Police. They will not be precluded from addressing the situation simply because they are performing music during the hours of operation.

Ms. Yohe called for a motion. So moved by Mr. Grasser that the request by Michael DelBalso for The Barrel Room Winery, located at 28932 Euclid Avenue, Wickliffe, Ohio, in a General Business District, for a Conditional Use Permit regarding Parking and Outdoor Bands on Patio and Pavilion, is recommended for approval, with the following conditions:

- 1) The plan be approved, with a parking tabulation of 99 spaces, and 97 spaces during the valet period, as shown on Sheet SP with a last date of November 12, 2008, and a Site Plan, which also has a tabulation of the needed parking spaces on it.
- 2) As also noted on the Plan, there shall be a 1-1/2" asphalt overlay which shall be completed by October 31, 2009.

- 3) Applicant's letter dated March 17, 2009 (see attached) states there will be additional plantings in between the rocks and as approved by the Sign Review Board.
- 4) The Barrel Room Winery Sound Control Plan shall be instituted, as provided by Marc Rubin in his proposed plan dated March 17, 2009, with the follow up comments in Architect Pauline Drake's letters dated April 21, 2009 and May 5, 2009 directed to Mr. Raymond Sack, Building Commission, including the recommendations by Mr. Marc Rubin located in the Conclusions section that states as follows: "If the sound outside of the control zone still remains offensive, a divider wall can be installed to reduce the amount of sound allowed to reflect off the north block wall. This divider should be covered in sound deadening material and placed to reduce the amount of sound allowed to reach the north block wall."
- 5) The hours of outdoor musical operation from Memorial Day to Labor Day shall be as follows:

Thursday – 7:00 P.M. to 10:30 P.M.

Friday & Saturdays – 7:00 P.M. to 10:30 P.M.

Sunday – Noon to 9:00 P.M. (Holiday weekend - Noon to 10:30 P.M.)

After the Labor Day weekend, Sunday outdoor music shall be permitted only from Noon to 6:00 P.M.

These times and days must remain in compliance with all City of Wickliffe Ordinances regarding noise. For clarification on dates, prior to Memorial Day, outdoor music is only allowed on Friday and Saturday – no Thursday or Sunday.

Seconded by Ms. Bochenek

Roll Call, Ayes: Bochenek, Grasser, Margalis, Yohe
Nays: None. Motion carried and approved.

5. Raymond Sack for City of Wickliffe, is requesting specific changes in Chapter 1323, Fences, and advertising as a public open meeting for changes in Chapter 1323. A letter dated April 14, 2009, with a copy of the Ordinance No. 2009-12, attached.

Ms. Yohe called for a motion to open for audience participation. So moved by Mr. Grasser; seconded by Ms. Bochenek. No audience participation. Mr. Grasser moved to close audience participation; so moved by Ms. Bochenek.

Roll Call, Ayes: Bochenek, Grasser, Margalis, Yohe.
Nays: None. Motion carried.

“Mr. Grasser moved that the Planning Commission recommend to Council the adoption of Ordinance No. 2009-12, An Ordinance Amending Chapter 1323-Fences of the Codified Ordinances of the City of Wickliffe, Ohio, as presented to the Planning Commission on May 7, 2009. Ms. Bochenek seconded the motion.

Roll Call, Ayes: Bochenek, Grasser, Margalis, Yohe
Nays: None. Motion carried”

11) Approval of March 5, 2009 meeting minutes. Ms. Bochenek moved for approval; seconded by Mr. Grasser.

Roll Call, Ayes: Bochenek, Grasser, Margalis
Abstain: Yohe. Minutes approved “AS READ”.

12) Adjournment. So moved by Councilman Margolis; seconded by Mr. Grasser..

Roll Call, Ayes: Bochenek, Grasser, Margalis, Yohe
Nays: None. Meeting adjourned at 10:00 p.m.

Lynne Yohe, Vice Chairman

Carol A. Zofchak, Secretary