



ZONING BOARD OF APPEALS

April 3, 2018

A regular meeting of the City of Petoskey Zoning Board of Appeals was conducted in the City Hall Community Room on Tuesday, April 3, 2018. Roll was called at 7:00 P.M.

Present: Michael Karr, Chair
Mary Clinton
Ben Crockett
Chris Hinrichs
Jim Knibbs
Lori Pall

Staff: Amy Tweeten, City Planner
Rob Straebel, City Manager
Jim Murray, City Attorney

Also Present: Scott Morrison, Board Alternate
David Meikle, 422 E. Mitchell Street
Jack Turner, 321 E. Lake Street

Upon motion and support, the minutes of the March 6, 2018 meeting were approved 6-0, with corrections on pages 2 and 3.

Case #824 Continued Temporary Use Request for 425 Michigan Street

Staff provided an overview of the request for up to six food trucks from May 1st to October 31st at 425 Michigan Street and noted an amended plan provided for the meeting that incorporated the recommended three-foot landscaped area along Michigan Street. The Planning Commission did not make a recommendation on the plan although they had received an analysis of site plan review standards, wanting to wait until the ZBA took action on the temporary use request.

Board Member Pall reported that she had attended the Planning Commission meeting and that they did not want to take action because they did not feel it was a temporary use; that the request should go through the special condition use process; that the use did not meet the requirements of the B-2 District; that the site is a planning issue; and that the Commission had concerns about the new building becoming non-conforming.

Staff explained that she had used the Temporary Use Standards in Section 2004 (3)(e) for the location of food trucks on the property, which authorizes the ZBA to approve temporary uses for up to 12 months if the standards are met, and read the definition of Temporary Use: A use of property that is not the principal use and has a limited duration, such as a special event.

Board Member Clinton believed that it was the definition that was critical and that she did not feel the nature of the proposed use met the definition; that the improvements indicated that the applicant would come back after the twelve month period.

At this time, Board Chairman Karr requested a presentation by the applicant.

Mr. Meikle heard the concerns with the more permanent nature of pavement versus gravel, but that he was just trying to make the site better for the trucks; that he could have extension cords to the trucks but thought the individual connections were an improvement; that he believed the temporary definition was met; and that he was confused with the direction of the Commission as they want an ordinance to allow food trucks on public and private property but did not want to address his site.

The City Manager questioned the applicant on the length of the property for the food truck lot to which Mr. Meikle said he had wanted to build a three story building on the lot but that he couldn't find tenants at this time so until something more permanent was constructed he would likely return for a renewal of the temporary use.

The City Attorney clarified that by the definition under the ZBA temporary use authority, it was a one-year approval.

Board Member Knibbs asked whether there had been any public comment to which staff responded there had been no comment. Board Member Pall clarified that Pam Ovshinski had asked questions at the last meeting.

Board Member Pall noted the stage on the plan and that noise could be a concern, but she believed that the proposed 11:00 P.M. ending time would be within the ordinance. Mr. Meikle responded that he lived adjacent so he is sensitive to the issue.

Board Chairman Karr was concerned about the desire for more than a single-year use and the improvements being made create an expectation that future requests are granted, and making it more difficult for the ZBA to not approve a temporary use in the future. Mr. Murray responded that there can be no expectation of future approvals and that the applicant is at peril because the request is clearly for a temporary use that may only be granted for up to 12 months

Board Member Clinton struggled with the nature of the use as it was different from the farmer's market weekly event temporary use. She felt that the food trucks – due to their continuity and regularity on the site – make them the principal use and a permanent use and did not think the temporary use was the correct approval process.

Board Member Knibbs felt the building was the principal use not the food trucks.

Board Member Pall felt the request was a planning issue and that the Commission raised a concern with the new building becoming non-conforming once the principal building was removed.

Board Members Crockett and Hinrichs questioned the meaning of temporary use where the food trucks were concerned – was it the duration they were there, if they had to leave the site at the end of each day, or the fact that they do not require structural improvements.

The City Attorney did not believe the trucks constituted a principal use and they were for limited duration. He felt that previous cases could provide guidance as to the temporary nature of a use.

Mr. Turner, attorney for the applicant, responded that the ordinance is clear that it contemplates the use can be continuous up to one year, and that the temporary use removal is specified in the third standard of approval. He felt the Board needed to consider the food trucks separately from the building as it is the trucks that are the temporary use and they understand there are no guarantees beyond a twelve month approval.

Board Member Crockett did not understand why the Planning Commission did not give feedback, and he did not see anything on the plan that was truly structural. He felt the building demolition was significant and wondered if the temporary use approval would be incentivizing the demolition. He considered the best and worst case outcomes if the temporary use were approved.

Board Member Knibbs felt the demolition was a separate issue.

Board Member Karr was disappointed that the Planning Commission did not provide feedback and as such he felt it opened up what the Board of Appeals needed to consider for the request, including the site.

The City Manager asked the City Planner about the proposed food truck ordinance, and she responded that the ordinance is intended to allow food trucks on public and private property.

Board Member Clinton questioned why the request couldn't fall under open air retail.

Staff responded that in the B-2 District, the special condition use for open air business specifies "retail sales of plant material not grown on the site, lawn furniture, playground equipment, sporting goods and garden supplies", which describes the open air retail behind Meyer Ace Hardware, but does not include food trucks which is why the applicant was not directed to go through the special condition use process.

The City Attorney explained that with the special condition use there is vesting, but with a temporary use there is no vesting. He also clarified that the ZBA is not requiring the demolition of the building and did not believe that consideration of the temporary use was incentivizing the demolition.

Board Chairman Karr felt that while the Board is charged with looking at the temporary use, without input from the Planning Commission on the site, he questioned whether it was the Board's responsibility to delve into site issues.

The City Manager asked whether the Board could send it back to the Planning Commission to which Mr. Murray responded that they could send it there, but they can only ask, not require, the Commission to take action.

Staff noted the options spelled out in the agenda memo as to process and that the plan review per site plan standards had been provided to the Commission. She then read the staff recommended conditions of approval and noted that the Board has discretion on requirements to be considered.

Board Member Crockett questioned how the site conditions would be incorporated into the temporary use motion and the City Attorney responded that the temporary use approval can be subject to conditions.

The Board then turned to the list of temporary use review standards.

- (1) The use does not require the erection of any capital improvements of a structural nature.

Board Chairman Karr felt that this was a grey area as the removal of the building was structural, but the only other structural improvement was the utility hook-ups. Mr. Turner clarified that the standard is erection of capital improvements not removal.

Board Members Hinrichs and Crockett did not believe the improvements were structural in nature and felt the standard was met.

- (2) The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.

Board Member Hinrichs felt the issue of uses allowed in the B-2 District had been discussed and the proposed temporary use of food trucks qualifies. Board Member Clinton asked for clarification of Section 903(1) and if the use was not outdoor retail was it compatible with the B-2 District.

Staff responded that food service, outdoor dining – on public and private property – was allowed in the B-2 in addition to outdoor retail so she did not see food trucks as incompatible with uses permitted in the district.

- (3) The granting of the temporary use shall be granted in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.

Board members discussed the pros and cons of requiring improvements to be removed at the end of the permit period; that requiring removal of site fixtures at the end of each season may lead to lesser quality fixtures; that if it is truly temporary, the fixtures should be removed but if they will be coming back each year, why have them removed; that the trees will not be removed which is another indication that it is not a temporary use.

Mr. Meikle repeated that the request is for the food trucks from May 1st – October 31st and that he should be able to keep the other site features there as they were no different than the outdoor seating area for Palate Bistro. The bar in the building will remain open all year which is the principal use.

Board Member Crockett asked how the Board would have addressed the request if no site plan would have been submitted and if indeed the outdoor seating could happen without temporary use approval. Staff responded outdoor seating for the bar could occur without the temporary use permit and would not require site plan review, but that sidewalk dining is permitted through licensing and has its own requirements.

Board Member Pall asked whether buildings could be removed for outside dining and staff did not believe there was anything that prohibited demolition for this purpose and that one of the City Master Plan site concepts contemplated this very thing with a walkthrough between East Mitchell Street and Michigan Street.

Board Member Clinton asked about the pending food truck ordinance and whether it would allow the trucks without a temporary use permit; staff confirmed that was the intent.

- (4) All setbacks, land coverage, off-street parking, lighting and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the City of Petoskey, shall be made at the discretion of the Board of Appeals.

Board Chairman Karr read the staff recommendations for site changes. He repeated that it would have been valuable to have the input of the Planning Commission.

Board Member Clinton asked for clarification that because of the need for the temporary use for food trucks, the ZBA is allowed to place conditions on the site; staff confirmed.

- (5) In classifying uses as not requiring capital improvement, the Board of Appeals shall determine that they are either demountable structures related to the permitted use of the land; recreation developments, such as, but not limited to: golf driving ranges and outdoor archery courts; or structures which do not require foundations, heating systems or sanitary connections.

Board members felt this item had been previously discussed.

- (6) The use shall be in harmony with the general character of the district.

Board members felt this item had been previously discussed.

- (7) No temporary use permit shall be granted without first giving notice to owners of adjacent property of the time and place of a public hearing to be held as further provided for in this Ordinance. Further, the Board of Appeals may seek the review and recommendation of the Planning Commission prior to the taking of any action.

Notice was given.

In reviewing the site plan and recommended staff conditions of approval, the issue of the sidewalk along the west side of the fence was discussed. Board Chairman Karr agreed with the staff recommendation because with the gate adjacent to the drive aisle pedestrians would be walking into traffic, but felt the sidewalk should be five feet and raised from the drive aisle for better delineation and pedestrian safety.

The Board discussed whether, if a motion to approve were made, the approval could be for 12 months or until the new food truck ordinance is adopted, or for the duration of the request, being October 31. The City Attorney felt the approval should not be combined with the pending ordinance.

Board Member Crockett then made a motion to approve a temporary use of 425 Michigan Street as a food truck lot subject to the five staff recommendations. Support for the motion was given by Board Member Hinrichs.

Board Member Knibbs requested an amendment to the motion to require the trucks to be licensed. Staff responded that currently there is no City licensing of food trucks, but that they are regulated by the Health Department and also the Building Department in some situations. The requested amendment was then withdrawn.

Board Member Karr requested an amendment that a sidewalk west of the fence be a minimum of 5 feet, raised above the drive aisle, and extend from Michigan Street to the southwest corner of the new building.

Board Member Clinton requested an amendment clarifying that the approval was pursuant to the timeframe and hours requested.

Both amendments were approved and staff was asked to repeat the motion.

To approve a temporary use permit at 425 Michigan Street for up to six food trucks from May 1 - October 31, 2018 as shown on the plan submitted with the following conditions:

1. A three (3) foot landscape area be added along Michigan Street;
2. A five-foot raised sidewalk be installed along the west side of the fence extending from Michigan Street to the southwest corner of the new building;
3. Expansion of the utility area at the northeast corner to a minimum of 6' x 6';
4. The storm drain lines from the building tie into the drain field and not the manhole; and
5. Extension of the saw cut lines for utilities in Michigan Street to the south curb.

Upon roll-call vote, the motion passed 6-0.

Mr. Turner asked whether the request had to go back to the Planning Commission, to which staff responded that it did not.

ZBA Training – Fair Housing Accommodation Policy

The City Attorney gave an overview of the Federal Fair Housing Amendments Act (FHAA) and proposed ordinance, explaining the Board's responsibility and that they will have to weigh the totality of the factors in making a decision on an accommodation.

He reviewed the three elements used to evaluate a request

1. The accommodation must be reasonable;
2. The City must give those protected equal opportunity;
3. The accommodation must be necessary.

Board members asked about the distance requirement in the ordinance, the requirement for the property owner to sign the application and what would happen if they wouldn't sign, and under what circumstances a request could be denied.

The City Attorney cited case law regarding the reasonableness of distance requirements; explained that the three criteria have to be met in each case for the request to be approved; and that property owners are also subject to the FHAA. The ordinance allows for an appeal of the ZBA decision to circuit court, however, likely the case would be brought in federal court.

The meeting was then adjourned at 9:10 p.m.