

MINUTES
February 20, 2019
Plan Commission
City of Batavia

PLEASE NOTE: These minutes are not a word-for-word transcription of the statements made at the meeting, nor intended to be a comprehensive review of all discussions. They are intended to make an official record of the actions taken by the Committee/City Council, and to include some description of discussion points as understood by the minute-taker. They may not reference some of the individual attendee's comments, nor the complete comments if referenced.

1. Meeting Called to Order for the Plan Commission Meeting

Chair LaLonde called the meeting to order at 7:00pm.

2. Roll Call:

Members Present: Chair LaLonde; Vice-Chair Schneider; Commissioners Harms, Joseph, and Peterson

Members Absent: Commissioner Gosselin

Also Present: Mayor Schielke; Laura Newman, City Administrator; Scott Buening, Director of Community Development; Joel Strassman, Planning and Zoning Officer; Drew Rackow, Planner; Jeff Albertson, Building Commissioner; and Jennifer Austin-Smith, Recording Secretary

3. Items to be Removed, Added or Changed

There were no items to be removed, added or changed.

4. Approval of Minutes: December 12, 2018

Motion: To approve the minutes from December 12, 2018

Maker: Peterson

Second: Schneider

Voice Vote: 4 Ayes, 0 Nays, 1 Absent, 1 Abstain
Motion carried.

Chair LaLonde abstained from the motion because he was not in attendance at the 12-12-18 meeting.

5. Fuzzy Dice Motorz, 321 East Wilson Street

Darren Enger, applicant

Public Hearings:

- **Amendment to the Text of the Zoning Code: Chapter 2.4 Downtown Mixed Use Zoning District**
- **Conditional Use for a Motor Vehicle Sales and Leasing, New and used – Internet Based**

Motion: To open the public hearing

Maker: Schneider
Second: Harms
Voice Vote: 5 Ayes, 0 Nays, 1 Absent
Motion carried.

Strassman reported that applicant Darren Enger is looking to become an Illinois licensed vehicle dealer located at 321 East Wilson Street to add internet vehicles sales to his insurance business at this location. Mr. Enger's application material for both the proposed Zoning Code text amendment and Conditional Use notes that operation of his vehicle sale business would be innocuous, vehicles will not be displayed on the property, and vehicles purchased by customers would be delivered directly to the purchaser's home or facility. Mr. Enger has offered to ask for his approved conditional use to be rescinded if his business raises any concerns.

The Commission must to consider an amendment to the text of the Zoning Code to add the land use classification of "Motor Vehicle Sales and Leasing, New and Used – Internet Based" to the uses allowed in the DMU Downtown Mixed Use Zoning District. Staff feels any consideration to add this use should include the use requiring Conditional Use approval. If the Commission feels this change can be acceptable, the Commission must then consider Mr. Enger's conditional use permit application.

The stated purposes in the Zoning Code for the DMU District include strengthening the pedestrian environment and economic vitality and diversity of the area. Sales tax from vehicle sales can be a significant source of revenue for any municipality. With sales limited to internet activity as opposed to customer site visits, there would be little generation of pedestrian activity.

The Comprehensive Plan includes Goals and Policies related to the downtown to enhance retail activity and provide public parking. Allowing the proposed vehicle sales as a conditional use can introduce new retail activity to the downtown. Requiring conditional use approval can address limit such businesses' keeping of vehicles on or near the property so that public parking would not be negatively affected.

Staff is concerned about vehicles for internet sales being on or the property, especially downtown where many storefronts lack enough on-site parking to accommodate existing uses, like the situation at 321 East Wilson Street. Having a vehicle associated with the internet sales business on the property would increase a site's parking requirement, therefore, one cannot be located on the property at 321 East Wilson. Staff feels that if the Commission considers adding internet vehicle sales to the DMU District, there should be a prohibition on having inventory vehicles on the premises. Staff notes that unlicensed vehicles are prohibited from parking on-street and generally from parking lots. Enforcement of parking regulations consumes significant staff time.

If the Commission feels adding internet vehicle sales to the DMU with Conditional Use approval is appropriate, the Plan Commission can make a recommendation for conditional use approval to the City Council for any location where this is proposed, including for Mr. Enger. To consider a recommendation for Conditional Use approval a condition to expressly prohibit any vehicle associated with this business being located on the property can be considered. The exclusion can

note one dealer-plated vehicle being on the property that is used solely by the owner of the dealership his or her commute to or from this location.

To help Mr. Enger achieve the innocuity identified in his application material, staff feels signage for this business be non-illuminated, not exceed six square feet in area, the maximum for a typical Informational Sign, and be located solely on the front entrance door containing only the name of the business and hours of operation as required by the State of Illinois for vehicle dealers.

With any conditional use, the Commission must arrive at positive conclusions for all the Findings for Approval. Staff has provided a draft in the memo for Commission consideration.

Staff recommends the Plan Commission conduct the public hearing for the both the text amendment and Conditional Use, with adopting Findings for Approval for the Conditional Use Permit.

With all positive Conditional Use findings, staff recommends the Plan Commission recommend City Council approval of the proposed Zoning Code Text Amendment to add to add the land use classification of “Motor Vehicle Sales and Leasing, New and Used – Internet Based” to the uses allowed with conditional use approval in the DMU Downtown Mixed Use Zoning District in Table 2.403 Land Use Regulations – Downtown Mixed Use District, and to add a Limitation to Table 2.403 to prohibit inventory or potential inventory vehicles being parked, displayed, stored, or kept on the property.

With all positive findings, staff recommends the Staff recommends the Plan Commission recommend City Council approval of the proposed conditional use permit subject to:

1. The Conditional Use Permit shall be granted solely to Darren Enger doing business as Fuzzy Dice Motorz at 321 East Wilson Street and the Conditional Use approval is not transferrable.
2. Vehicles associated with this business cannot be located on the property located at 321 East Wilson, including any vehicle acquired, being considered for acquisition, awaiting sale, or for pick-up by a purchaser, but excluding one (1) dealer-plated vehicle used solely by Mr. Enger for his commute to/from this location. Vehicles for sale shall also not be parked, kept, or stored on any public street or public parking lot nor on properties within the DMU District.
3. Signage for Fuzzy Dice Motorz be non-illuminated, not exceed six (6) square feet in area, and be located solely on the front entrance door of the building stating only “Fuzzy Dice Motorz” and its hours of operation or other information as required by the State of Illinois for vehicle dealers.

Chair LaLonde swore in those who wanted to give testimony at the meeting.

Darren Enger, applicant, addressed the Commission. He stated that there would not be any inventory on site. Joseph asked how the City would receive sales tax. Buening answered that if the City is entitled to sales tax there would be a sales tax number and that sales tax would go to the City of Batavia, which is collected by the State and refunded to the City. Enger stated that these

would all be used vehicles. Enger clarified that the signage is required by law through the Secretary of State.

Motion: To close the public hearing

Maker: Harms

Second: Schneider

Voice Vote: 5 Ayes, 0 Nays, 1 Absent
Motion carried.

Motion: To approve the Findings of Approval for a Conditional Use permit as provided in the staff report

Maker: Schneider

Second: Peterson

Roll Call Vote: **Aye:** Schneider, Peterson, Harms, Joseph, LaLonde
Nay: None
5-0 Vote, 1 Absent, Motion carried.

Motion: To recommend City Council approval of the proposed Zoning Code Text Amendment to add to add the land use classification of “Motor Vehicle Sales and Leasing, New and Used – Internet Based” to the uses allowed with conditional use approval in the DMU Downtown Mixed Use Zoning District in Table 2.403 Land Use Regulations – Downtown Mixed Use District, and to add a Limitation (L11) to Table 2.403 to prohibit inventory or potential inventory vehicles being parked, displayed, stored, or kept on the property.

Maker: Schneider

Second: Joseph

Roll Call Vote: **Aye:** Schneider, Peterson, Harms, Joseph, LaLonde
Nay: None
5-0 Vote, 1 Absent, Motion carried.

Motion: To recommend to City Council approval of the proposed conditional use permit subject to three stated conditions provided by staff

Maker: Peterson

Second: Schneider

Roll Call Vote: **Aye:** Peterson, Harms, Joseph, LaLonde, Schneider
Nay: None
5-0 Vote, 1 Absent, Motion carried.

6. Raising Cane’s Restaurant – 1998 McKee Street

Batavia McKee, LLC, applicant

- **Public Hearings**
 - **Amendment to the Zoning Map – Planned Development**
 - **Conditional Use for a Drive-Through Restaurant**
- **Preliminary and Final Plat of Subdivision of Raising Cane’s Subdivision**
- **Design Review**

Motion: To open the public hearing
Maker: Joseph
Second: Harms
Voice Vote: 5 Ayes, 0 Nays, 1 Absent
Motion carried.

Strassman reported that Kensington Development Partners is contract purchaser of the property located at 1998 McKee Street and is proposing redevelopment of this site. The first phase would be a Raising Cane's drive-through restaurant to replace the former Avenue Chevrolet/Motor Sales building. The Commission will review:

- Preliminary and Final Plat of Subdivision
- Amendment to the Zoning Map to propose a Planned Development Overlay District (PD) on the property
- Conditional Use (CU) for a drive-through to be part of the restaurant
- Design Review (DR) for the Raising Cane's site and building improvements

The overall property covers 8 acres and is zoned General Commercial (GC) District. Avenue Motor Sales had operated on this property from the late 1980's through 2011. The applicant is here this evening and will describe the proposed improvements.

The subdivision proposes 4 lots, with Lot 2 would being the access to McKee Street. The subdivision also proposes dedicating 5 feet for additional McKee Street right-of-way. The applicant has requested a variation from the Subdivision Regulations Section for Lot 4 not abutting a public street.

While restaurants are permitted uses in the GC District, drive-through operation requires CU approval. Two drive lanes for ordering, funneling into a single lane for separate order payment and order pick-up are proposed.

The Planned Development Overlay is requested for the purpose of securing modifications to requirements of the Zoning Code for the Raising Cane's restaurant on Lot 1. Strassman summarized the modifications from the staff report.

Overall, staff is supportive of this proposal that would return retail activity to part of the former Avenue Motor Sales property. Future development of Lots 3 and 4 would require additional entitlement review with at least Design Review.

Staff is supportive of the subdivision, but notes that with no development proposed for Lot 4, staff feels it is possible for the applicant and the property owner to work together to allow Lot 1 to have a greater north-south dimension to add landscaping and to eliminate the rear (south) landscape Zoning Code modification. If moving this common lot line cannot be accomplished to provide landscape separation, a 15 foot landscape easement can be added to plat for the north 15 feet of Lot 4 adjacent to Lot 1.

The proposed McKee right-of-way dedication would provide space for improvements needed for the site access. The proposed 10 foot public utility easement/sidewalk easement along the right-of-way dedication should also be a roadway easement to facilitate potential future roadway improvements. Staff had requested that an access easement be added to the plat to connect with an access easement to the property to the south into the Great Escape parking lot. This was not added, therefore staff feels the Commission should consider requiring this.

Lot 1 proposes a sidewalk easement along its west property line for Raising Cane's. Staff feels a sidewalk should be built in this location with development of Raising Cane's. Staff is supportive of the requested variation to the Subdivision Regulations to allow Lot 4 not abutting a right-of-way, provided the easement extending north from the Great Escape parking lot is added to the plat.

Staff is supportive of the Conditional Use request since the Randall Road corridor is the appropriate location for automobile-based activity like a restaurant drive-through. With the requested parking modification tied to Raising Cane's PD, staff feels the Conditional Use should be granted solely to Raising Cane's for operation of the proposed drive-through restaurant. This would allow review of parking conditions in the event Raising Cane's leaves the site and another business seeks to occupy the site.

As with any CU, the Commission must arrive at positive conclusions for all the *Findings for Approval*. A draft of these is provided in the staff report.

Staff is generally supportive of the Planned Development and Design Review requests. Site, building, and landscape design balance providing corporate identity, drive-through logistics, and aesthetics. The overall design of the building and site are generally consistent with the *Standard Design Review Criteria for Commercial and Institutional Projects*.

Landscaping would provide screening for parking and the refuse enclosure. Staff notes that plant quantities and sizes shown on the landscape plan would be checked for Zoning Code compliance with building permit review as would screening of utility equipment. These should be conditions of approval.

The applicant has requested three (3) modifications to the requirements of the Zoning Code with the PD; staff notes an additional 4th modification.

Staff is supportive of the PD modification requests for the side perimeter landscape area, parking supply, and cove lighting height. Due to the need to align the subdivision's access driveway with the existing driveway on the north side of McKee, Lot 1 cannot be widened, necessitating the side perimeter landscape setback modification. Staff notes that only the refuse enclosure will extend into this required setback. Reduction of the required parking from 33 spaces to 28 is reasonable as shown by the parking study Raising Cane's provided. Only the cove lights would exceed 15 feet in height. These lights are not area lighting and would be fully shielded providing only down-lighting. Staff supports this modification.

Staff is not supportive of the requested rear-south perimeter landscape setback for Raising Cane's. The applicant and property owner should work together to relocate the south property line

to eliminate the need for this modification. If the Commission considers recommending for this modification, staff feels development of Lot 4 should include a north landscape area to provide adequate separation. This can be accomplished through adding a landscape easement to the subdivision plat along the north 15 feet of Lot 4 adjacent to Lot 1.

Strassman read the staff recommendations from the staff report, including having the Commission conduct the public hearing, approve findings, and consider the cited Subdivision Regulations variation and Zoning Code modifications along with conditions for approval.

Strassman noted that he distributed an email from resident Faith Dimaria who could not be in attendance at tonight's meeting to the Plan Commission (PC). Chair LaLonde swore in all who wanted to address the Commission.

LuAron McCormack, Raising Cane's Property Development Manager, addressed the Commission and gave the business history and described Raising Cane's business model.

John Schoditsch, Kensington Development Partners, stated that they are in 100% agreement with staff's recommendation for everything except the lighting and south property line.

Lisa Cassaidy, Project Engineer, discussed the site plan, plat of subdivision, utility plan, access drive, property setbacks, and sidewalk connections.

Jason Cooper, Kimley-Horn, discussed the landscape plan with the Commission.

Jeff Pountney, architect, discussed the building's architect plan, elevations, materials and colors with the Commission. Buening asked if face brick would be used. Pountney answered it would be. Buening asked if cast stone would be used. Pountney answered part of the building's base would be cast stone.

Schoditsch addressed the email distributed to the Commission regarding the resident's concern about having one more restaurant on Randall Road. He stated that Raising Cane's is different than a typical fast food restaurant. Raising Cane's has a cult following and retail wants to surround our restaurant. He stated that the homes are setback far enough that he does not believe property values would be negatively effected.

Schoditsch stated that the lighting and rear yard setback are the items that still need to be addressed. He suggested having the rear yard setback discussed during Phase Two. The Commission discussed the maintenance of the site, landscaping, and building material. A material board was reviewed. Chair LaLonde opened the floor for public comment.

Linda Belyea, 319 Mill Street, stated that she liked the presentation but would not like this establishment in her backyard. She questioned the need for this restaurant. Other concerns are environmental and noise pollution, lighting, and in the summer if she will hear noise all night. She questioned if the smell would permeate the neighborhood. She had concerns about property values and traffic on McKee. She sees this as accidents waiting to happen on McKee exiting the site.

McCormack addressed the resident's concerns. She stated that the hours are 10 AM to 11 PM and there should not be much noise since the site plan is not facing the residential neighborhood. She added that the clientele does not tend to stay long after consuming the food because they do not provide free Wi-Fi because they do not cater to that type of crowd. McCormick stated that the music that is outside is always below code standards.

There were no other members from the public who wanted to address the Commission.

Motion: To close the public hearing
Maker: Schneider
Second: Peterson
Voice Vote: 5 Ayes, 0 Nays, 1 Absent
Motion carried.

Peterson stated that she understands the residents' concerns but this is zoned as retail property. She thanked the applicant for discussing with the Committee how this development would not be intrusive to the surrounding neighborhood.

The Committee discussed the compromised fifteen-foot easement. The consensus of the Commission was in favor of it.

Motion: To recommend to City Council approval of the Preliminary/Final Plat of Raising Cane's Subdivision, with a variation to the Subdivision Regulations Section 11-4-5-C to allow Lot 4 to not abut a right-of-way subject to the four conditions with the first condition modified to read 'to add a 15ft landscaped easement to the plat for the north fifteen feet of Lot 4 adjacent to Lot 1' and the other three conditions stand as written
Maker: Schneider
Second: Harms
Roll Call Vote: **Aye:** Schneider, Peterson, Harms, Joseph, LaLonde
Nay: None
5-0 Vote, 1 Absent, Motion carried.

Motion: To approve the Conditional Use findings as written
Maker: Peterson
Second: Harms
Roll Call Vote: **Aye:** Peterson, Harms, Joseph, LaLonde, Schneider
Nay: None
5-0 Vote, 1 Absent, Motion carried.

Motion: To recommend to City Council to approve the Conditional Use Permit for a drive-through restaurant subject to the two conditions provided by staff
Maker: Harms
Second: Schneider
Roll Call Vote: **Aye:** Harms, Joseph, LaLonde, Schneider, Peterson

Nay: None
5-0 Vote, 1 Absent, Motion carried.

Motion: To approve the ten Findings for the Planned Development Overlay as written
Maker: Joseph
Second: Harms
Roll Call Vote: **Aye:** Joseph, LaLonde, Schneider, Peterson, Harms
Nay: None
5-0 Vote, 1 Absent, Motion carried.

Motion: To recommend to City Council approval of a Planned Development Overlay for the Raising Cane's Subdivision property, that may be amended for future development of Lots 3 and 4, subject to the modifications to the requirements of the Zoning Code and conditions as written in the staff report, with modification to condition number seven to state 'other exterior wall lighting not to exceed 15 feet and three inches' and condition number two striking the first portion and maintain the recommendation for the 15ft easement on the north side of lot four
Maker: Peterson
Second: Joseph
Roll Call Vote: **Aye:** Peterson, Harms, Joseph, LaLonde, Schneider
Nay: None
5-0 Vote, 1 Absent, Motion carried.

Motion: To approve the five findings for Design Review as written
Maker: Schneider
Second: Joseph
Roll Call Vote: **Aye:** Schneider, Peterson, Harms, Joseph, LaLonde
Nay: None
5-0 Vote, 1 Absent, Motion carried.

Motion: To approve the Design Review with the three conditions in the staff report
Maker: Schneider
Second: Peterson
Roll Call Vote: **Aye:** Schneider, Peterson, Harms, Joseph, LaLonde
Nay: None
5-0 Vote, 1 Absent, Motion carried.

7. Administrative Design Review for Funway – Exterior/Sign Revisions
1335 South River Street
Windmill City Entertainment, Applicant

Chair LaLonde recused himself from this discussion due to Windmill City Entertainment being a client at his firm.

Rackow reported on the proposed changes to the exterior of the building. The materials would be combinations of EFIS panel and metal siding. Rackow stated that it is the same siding material and color used on parts of the Go Kart Building. Rackow continued that they are adding awnings along

the windows on the south elevation. There were no awnings along the south elevation on the previous design. The second part of the changes is for the sign. The revised sign has a reduced size of the LED screen going from 24 square feet to 16 square feet. The sign would illuminate the welcome to Funway text and the LED message sign. Rackow distributed a handout that was updated with the new sign information to the Commission.

The Commission discussed the proposed changes with staff. Schneider asked if there were anyone in the audience who wanted to address the Commission on these changes and there were none.

Motion: To approve the Administrative Design Review for Funway Exterior/Sign
Maker: Peterson
Second: Joseph
Voice Vote: 4 Ayes, 0 Nays, 1 Absent, 1 Recusal
Motion carried.

The recusal was Chair LaLonde.

8. Matters From the Public (For Items Not on the Agenda)

There were no matters from the public for items not on the agenda.

9. Other Business

Rackow stated that on March 6th there are two public hearing items for the Plan Commission. One is a set of map amendments for the City and the other is a text amendment for accessory structures in the single family district and the merger of chapter six and seven to put all the terms and definitions into one chapter along with other miscellaneous items.

Chair LaLonde asked what is the latest on the Shodeen One Washington Place. Buening answered that staff is still working on the environmental issues with Shodeen. The Committee of the Whole will review the Environmental Agreement and Redevelopment Agreements at the February 26th meeting.

10. Adjournment

There being no other business to discuss, Chair LaLonde asked for a motion to adjourn the Plan Commission. Harms moved to adjourn the meeting, Joseph seconded. The motion carried. The meeting was adjourned at 9:32pm.

Minutes respectfully submitted by Jennifer Austin-Smith