

Oakwood, Dayton, Ohio

February 6, 2013

The planning commission of the City of Oakwood, State of Ohio, met this date in the council chambers of the City of Oakwood, city building, 30 Park Ave., Dayton, Ohio, 45419, at 4:30 p.m.

The Vice Chair, Mr. Andrew Aidt, presided and the Clerk, Lori Stacel, recorded.

Upon call of the roll, the following members responded to their names:

MR. JEFFREY B. SHULMAN.....	ABSENT
MR. ANDREW AIDT	PRESENT
MRS. HARRISON GOWDY	PRESENT
MRS. E. HEALY JACKSON	PRESENT
MR. STEVE BYINGTON.....	PRESENT

Officers of the city present were the following:

Mr. Robert F. Jacques, City Attorney
 Mr. Jay A. Weiskircher, Assistant City Manager
 Mr. Dave Bunting, City Inspector
 Ms. Lori Stacel, Clerk of Council

The following visitors were present:

David E. Grusenmeyer, Firehouse Subs
 Seth D. Grusenmeyer, Firehouse Subs
 David Montgomery, Pickrel, Schaeffer and Ebeling
 Christine Fahlbush, 100 Springgrove Ave
 Shelia Conard, 416 Irving Ave
 Robert Conard, 416 Irving Ave
 Jane Balquiedra, 414 Irving Ave

It was moved by Mr. Byington and seconded by Mrs. Gowdy that the absence of Mr. Shulman be excused. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Mr. Aidt explained the commission needs to conduct a brief organizational meeting to select a Chair and Vice Chair for 2013.

Therefore, it was moved by Mr. Byington and seconded by Mrs. Gowdy that Mr. Shulman be nominated as Chair and Mr. Aidt as Vice Chair.

Upon call of the roll on the question of the motion, the following vote was recorded:

MR. ANDREW AIDT	YEA
MRS. HARRISON GOWDY	YEA
MRS. E. HEALY JACKSON	YEA
MR. STEVE BYINGTON.....	YEA

Application #13-1, In addition to Saxby's Coffee, Mr. Weiskircher explained that Mr. Routsong has a Letter of Intent from Firehouse Subs to occupy the second of the four available tenant spaces. This application involves two (2) special use requests. Due to the limited nature of the menu, Firehouse Subs is classified as a delicatessen and delicatessens are considered special uses in the NBD. The second special use involves extended operating hours until 10 pm on Friday and Saturday evenings only. The standard

operating hours in the NBD are 7 am – 9 pm. Mr. Weiskircher referenced a PowerPoint presentation. In regard to the delicatessen use, a deli is distinguished from a restaurant by its mix of specialty foods and products, mostly perishable and its small physical size. Also, a delicatessen shall have no more than 65% of gross sales revenue from carry-out and delivery business. Delicatessens may be approved as a Special Use in a Neighborhood Business District so long as the seating area doesn't occupy more than 1200 square feet and seating is limited to a maximum of 24 persons. In regard to the hours of operation, the applicants are proposing to extend the hours until 10 p.m. on Friday and Saturday evenings only.

Following the staff presentation, Dave Montgomery stated that Mr. Routsong was out of town so he was attending to reiterate that interest remains strong for the remaining available tenant spaces at the retail center. He added that his client has a commitment with Saxby's Coffee and a Letter of Intent from Firehouse Subs. He said that Routsong Realty has no objections to the delicatessen use and the request for extended hours.

Seth Grusenmeyer, owner of Firehouse Subs shared that Firehouse Subs is not just a typical sub shop, but was founded by firefighters and they want to be part of the community and not just absentee owners. Mr. Grusenmeyer added that Firehouse Subs wants to be a positive addition to the community. He noted that Firehouse Subs has donated to local fire departments, donated police cars and auto CPR machines. He added that he feels Firehouse Subs would be a good fit with Oakwood. Mr. Aidt asked about the number of employees. Mr. Grusenmeyer answered that they would have approximately 15-20 part-time employees. He also shared that the amount of staff depends on the need as with any business. He added that typically the lunch crowd is larger, but they hope to pull in larger crowds on the evenings of the UD basketball games. Mrs. Gowdy asked how many table tops would be available. Mr. Grusenmeyer answered that they are currently working with the architect so they are unsure at the moment. Mr. Aidt asked if there would be outside seating available. Mr. Grusenmeyer responded that there would be a few outside tables on the patio that have already been approved on the site plan. Mrs. Jackson inquired about where the employees would park. Mr. Grusenmeyer said the employee parking would be on the back side of the strip center behind the deli. He added that if needed, they would implement a policy on employee parking based on community need. Mrs. Gowdy asked if there were set delivery hours. Mr. Grusenmeyer answered that they have the option of delivery timeframes and would work with the suppliers to confirm times that will not disrupt the surrounding neighborhood. Mr. Aidt asked if there would be a catering vehicle. Mr. Grusenmeyer confirmed that there is a vehicle for catering that is used for multiple locations so it would not just reside at the Oakwood location. Mrs. Gowdy inquired about the employee hours if the hours were extended. Mr. Grusenmeyer shared that the employees would come in at 7 a.m. and if they were open until 10 pm, they would leave around 10:30 or 11 pm. Mr. Aidt asked what time they would open. Mr. Grusenmeyer shared that they would open at 10:30 am and employees would be needed as early as 7 am because they slice meats fresh daily. Mrs. Jackson asked if there was an agreement with Routsong Realty on designated parking. Mr. Grusenmeyer stated that if the center was busy, there would not be assigned spots, but they have not finished the lease so they haven't worked this out completely. Mr. Aidt asked how many total parking spots were available. Mr. Weiskircher confirmed that there are 42 or 43 spots for four different businesses. Mr. Aidt asked for the ratios of carry-out versus dine in. Mr. Grusenmeyer shared that it depends on the time of the day as well as the weather, but approximately 2/3 would eat inside. Mrs. Gowdy asked if Firehouse Subs was a franchise. Mr. Grusenmeyer confirmed that the first Dayton store is in Huber Heights and will open in April. There are already six locations in the Cincinnati area.

The matter was then opened for public hearing. Dr. Robert Conard, 416 Irving Ave, asked what the operating hours were for the Cincinnati locations and if the hours were not until 10 pm, what the difference is between Dayton and Cincinnati. Mr. Grusenmeyer answered that it varies based on the franchise owner and what they see is appropriate for the location. He added that the Firehouse Subs may not stay open until 10 pm in Oakwood, but they would like to have this option if the demand is there. He

said that some stores stay open until 9 pm, 10 pm and 11 pm depending on location. Dr. Conard inquired as to why the special use would be granted before the need is there. He felt it would be wise to wait and see if the demand dictates longer operating hours. Mr. Aidt commented that the community determines what is appropriate and, Firehouse Subs is asking for operating flexibility in advance. Ms. Christine Fahlbusch, 100 Springgrove Ave, shared that she just moved in and isn't against Firehouse Subs being here, but she was interested in the access road from Volusia – the alley. Mr. Aidt confirmed that the alley would be closed and the only access to Firehouse Subs would be from Irving Ave and Oakwood Ave. Ms. Fahlbusch added that if they are open until 10 pm, employees would be there until possibly 11 pm, there would be noise from car doors and taking out garbage. She also asked that since Routsong owns two adjacent buildings, would it be possible to knock those down and increase the area of the retail center. Mr. Aidt responded that if that was proposed, they would need to come back to the Planning Commission. Dr. Conard asked since they are a 501 (c) (3) are they non-profit. Mr. Aidt confirmed that Firehouse Subs isn't non-profit. Dr. Conard then asked if they file reports with the city on carry-out and delivery business to ensure 65% of gross sales revenue isn't being increased. Mr. Aidt stated that the city didn't require filings, but would follow up on resident complaints and investigate as needed. Mr. Weiskircher added that the same requirements apply to Tropical Smoothie in the Far Hills Business District. He added that the city would investigate based on a complaint or if the city felt the tenant was in violation. Dr. Conard asked if it's a good idea to have laws that aren't enforced and it being up to the public to complain before the shop is regulated. Mr. Aidt confirmed that the city would be aware of concerns or issues from resident complaint. Mr. Weiskircher added that history shows a very lower percentage of takeout/delivery and the city does not currently require any businesses to provide copies of receipts. Ms. Lois Thomas, 223 Volusia Ave, asked if the Saxby's drive thru going to be open in the evening. Mr. Weiskircher confirmed that the Saxby's drive thru will be open from 7 pm to 9 pm and they haven't asked for extended hours. Ms. Thomas added that she doesn't feel the retail/food sales are compatible for the neighborhood she lives in. She felt that in her opinion it sounds like it's already a done deal. She shared that she is in a house on the alley and she leaves work each morning by turning around in the alley where the drive thru would be. She said it seems that the property owner is already impinging on public property. She added that Firehouse Subs seems to have a good business and she doesn't think any comments would deter anyone from allowing them to do this. Ms. Jane Balquiedra, 414 Irving Ave, opined that she didn't see any reason for Firehouse Subs to stay open until 10 pm in a residential community where everything else is closed by 9 pm. Ms. Thomas, 223 Volusia Ave, asked how many other stores would be in the retail center. Mr. Aidt responded that there are four total spaces with this use there would be two remaining vacancies. Mr. Grusenmeyer with Firehouse Subs shared that they have policies/rules on taking out trash cans late at night. He shared that this would be done mainly for the safety of the employees so they don't have to go into the dark late at night to take out garbage. He also remarked that people work different hours and some work late. He added that Firehouse Subs wants to offer their product to customers when they need it. He said they take pride in their guests and he added that they want to be a part of the Oakwood community and not to be a nuisance. Ms. Thomas stated that she understands that the customer base will heavily be UD students eating later, but if approved, would they then come back in one or two years and request to be open later. Mr. Jacques confirmed that a request like this would require additional planning commission to approve. Mrs. Gowdy added that the Planning Commission provides a recommendation to City Council and they then decide. Mr. Weiskircher shared hours of the following restaurants located nearby: Pine Club - Monday through Thursday 4:30 pm to 11 pm, Friday and Saturday 4:30 pm to midnight; Ben & Jerry's – Monday through Thursday 12 pm to 10 pm, Friday and Saturday 12 pm to 11 pm and Sunday 12 pm to 9 pm; Milano's – Monday through Saturday 11 am to 2:30 am and Sunday 11 am to 12 am.

There being no further comments, Mr. Aidt closed the public hearing. Mrs. Gowdy asked if the city has control over the delivery and trash hours. Mr. Weiskircher shared that the city controls commercial trash pickup through Rumpke and currently they cannot pick up trash before 7 am and most routes are completed by no later than 3 pm. Mrs. Balquiedra, 414 Irving Ave, added that Routsong Funeral Home

had a trailer truck with a trash dumpster and no one complained then. Mr. Aidt responded that he would hope residents would call and complain if there are concerns or complaints so the issue can be addressed. Mrs. Jackson asked if Firehouse Subs is approved to have extended hours, would there be any grounds for not allowing others to have the same hours such as Saxby's. Mr. Weiskircher responded that each request would be handled independently and on its own merits. Mrs. Gowdy shared that there needs to remain a difference between the business district and the resident district and shared that it just seems to make sense for the delicatessen versus the extended hours. Mrs. Jackson agreed and said that there needs to be a difference in regulation. Mr. Weiskircher noted that Mr. Routsong has already informally requested a number of other uses and the city has indicated that only those uses currently permitted in the NBD will be considered. He also added that if Firehouse Subs had requested to be open until midnight, the city would have taken a different approach with this application.

Mr. Aidt confirmed with Mr. Jacques that there would need to be separate motions for each special use. Mr. Weiskircher added that the Planning Commission's recommendation would go before council on March 4, 2013.

SPECIAL USE STANDARDS

- A. The proposed use at the specified location is consistent with the Comprehensive Plan.

PRELIMINARY STAFF FINDINGS:

- Deli Use – Consistent with the Comprehensive Plan the proposed deli use is geared towards users in the immediate area and should not adversely impact the adjoining neighborhood.
- Extended Hours – The request for limited extended hours until 10 pm on Friday and Saturday evenings only is compatible with existing uses already operating in the immediate area.

PLANNING COMMISSION FINDINGS: Sustained.

- B. The proposed building or use will not adversely affect or change the character of the area in which it is located.

PRELIMINARY STAFF FINDINGS:

- Deli Use – The proposed deli use is compatible with existing food service uses in the immediate area. It should also be noted that Firehouse Subs does not serve alcohol.
- Extended Hours – A number of other businesses in the area are already open daily beyond 10 pm so the request for extended hours on weekend nights only should not change the character of the area.

PLANNING COMMISSION FINDINGS: Sustained.

- C. That the establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, convenience or general welfare.

PRELIMINARY STAFF FINDINGS:

- Deli Use – As stated above, the proposed use is compatible with other food service uses already operating in the immediate area.
- Extended Hours – The extended hours should not impact the health, safety or general welfare of the public.

PLANNING COMMISSION FINDINGS: Sustained.

- D. That the proposed use will not be injurious to the reasonable use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the neighborhood.

PRELIMINARY STAFF FINDINGS:

- Deli Use - This proposed use is compatible with other food service uses already operating in the area. Unlike some of the other food/restaurant uses in the immediate area, the deli will not be serving alcohol.
- Extended Hours – As previously mentioned, there are several businesses in the area already open beyond 10 pm on a nightly basis so the proposal to extend operating hours on Friday and Saturday evenings only should not be injurious to the neighborhood nor impair property values.

PLANNING COMMISSION FINDINGS: Sustained.

- E. The proposed use at the specified location will not significantly adversely affect the use and development of adjacent and nearby properties in accordance with the regulations of the district in which they are located. The location, size and height of proposed buildings and other structures, and the operation of the use will not significantly adversely affect the use and development or hinder the appropriate development of adjacent and nearby properties.

PRELIMINARY STAFF FINDINGS:

- Deli Use – The proposed use is compatible with similar uses already operating in the immediate area and should not adversely affect the use of adjacent and nearby residential properties. Customers will access the site from the front door along Oakwood Avenue and will exit either on foot or by vehicle from either of the two egress points on the site.
- Extended Hours - The immediate area surrounding the use is already fully developed so the proposal for extended hours should have no impact on development of adjacent or nearby properties.

PLANNING COMMISSION FINDINGS: Sustained.

- F. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood, or the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood.

PRELIMINARY STAFF FINDINGS:

- Deli Use – The architecture for the building has already been approved and the applicant will sign this particular space consistent with regulations already in place.
- Extended Hours - The standard is not applicable to this application.

PLANNING COMMISSION FINDINGS: Sustained.

G. That adequate utilities, access roads, off-street parking and loading facilities, drainage and/or other necessary facilities, have been or are being provided at the applicant's cost.

PRELIMINARY STAFF FINDINGS:

- Deli Use - All utilities and infrastructure needed to support this special use are being provided at the owner and applicant's cost.
- Extended Hours – This standard is not applicable in this application.

PLANNING COMMISSION FINDINGS: Sustained.

H. That adequate measures have been or will be taken at applicant's cost to provide ingress and egress so designed as to minimize traffic congestion in the public streets and avoid hazards to pedestrian traffic.

PRELIMINARY STAFF FINDINGS:

- Deli Use – Ingress and egress to the site have already been approved as part of the original site plan review and this proposed use is compatible with the traffic plan.
- Extended Hours – The request for extended hours will have no negative impact whatsoever on previously approved plans for ingress and egress to the site.

PLANNING COMMISSION FINDINGS: Sustained.

Therefore, it was moved by Mrs. Jackson and seconded by Mrs. Gowdy that application #13-1, the special use request, for operations as a delicatessen in the NBD, be approved

Upon call of the roll on the question of the motion, the following vote was recorded:

MR. ANDREW AIDT YEA
 MRS. HARRISON GOWDY YEA
 MRS. E. HEALY JACKSON YEA
 MR. STEVE BYINGTON YEA

There being four (4) yea votes and no (0) nay votes thereon, said motion was declared duly carried and it was so ordered.

Therefore, it was moved by Mr. Byington and seconded by Mr. Aidt that application #13-1, the special use request involving extended operating hours until 10 pm on Friday and Saturday evenings only, be approved.

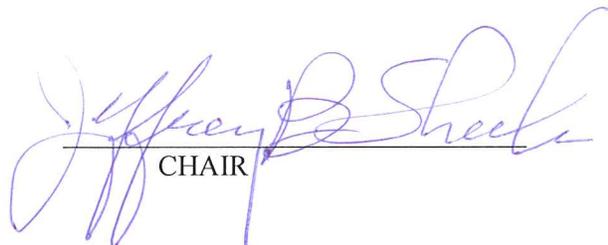
Upon call of the roll on the question of the motion, the following vote was recorded:

MR. ANDREW AIDT YEA
 MRS. HARRISON GOWDY YEA
 MRS. E. HEALY JACKSON YEA
 MR. STEVE BYINGTON YEA

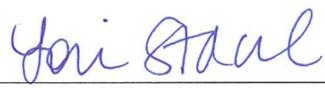
There being four (4) yea votes and no (0) nay votes thereon, said motion was declared duly carried and it was so ordered.

Mr. Weiskircher provided the Planning Commission with a progress update on the Point Oakwood development. He noted that design work on both the assisted living center and condo projects at Pointe Oakwood continues and that in all likelihood final building plans and site conditions will be before Planning Commission within the next couple of months. Construction on both projects is scheduled to get underway in early summer.

There being no further business, the Planning Commission adjourned. The public meeting concluded at 5:25 pm.


CHAIR

ATTEST:


CLERK

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