

Oakwood, Dayton, Ohio

May 1, 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 Chair, Mr. Jeffrey Shulman, presided and the Clerk, Lori Stacel, recorded.

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

MR. JEFFREY B. SHULMAN.....	PRESENT
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 Montgomery, Pickrel, Schaeffer and Ebeling  
 Tommy Routsong  
 Kurt Ritter, Saxbys Coffee  
 Michael Woods  
 Christi Woods  
 Charles J. Hartmann, 710 Irving Ave  
 Lisa Kell, 247 Volusia Ave  
 Faye Wenner, 1900 Coolidge Dr  
 Mary Malone, 303 E. Schantz Ave  
 Martha Haley, 400 Irving Ave  
 Greg Monett, 234 Irving Ave  
 Charlene Monett, 234 Irving Ave  
 Shelia Conard, 416 Irving Ave  
 Robert Conard, 416 Irving Ave  
 Jane Balquiedra, 414 Irving Ave  
 C. Roberts, 125 Mahrt Ave  
 Ken Rosenzweig, 317 Volusia Ave  
 Gary Pacernick, 419 Volusia Ave  
 Joe Hale, 444 Irving Ave

David Montgomery, representing Routsong Realty, noted that Saxbys Coffee has been a long standing tenant for the Routsong Realty Center project. He stated that Michael Wood, operator of Oakwood location of Saxbys Coffee, is seeking extended morning hours Monday through Friday for a 6 a.m. start time. He added that the request has been modified as it originally requested extended morning hours starting at 6 a.m. Monday through Sunday. He added that Saxbys Coffee is a coffee shop and morning hours are paramount for the business to succeed. Mr. Montgomery referenced a few pictures of the construction of Saxbys Coffee showing a grade change between the property from when you enter and then directly from the south. He showed that there is a 5 ft. privacy fence which offers an artificial and earthen noise barrier. He noted that with evolving technology, the drive thru will use a high end sound system that is digital and similar to human conversation which will minimize sound. He added that the

concept of having separate hours for the drive thru and store would create customer confusion and possible traffic issues which would generate possible interruptions for the resident community. Mr. Montgomery commented that the big point he wanted to communicate is that the landlord and tenant have an opportunity to be successful with this new location by offering a drive thru with early hours which would benefit both the city and the applicant.

Mr. Kurt Ritter, Saxbys Coffee developer for the state of Ohio, noted that Saxbys Coffee currently has two locations in the area in Centerville and Springboro. The location in Centerville has been operating for six years and the location in Springboro has been operating for a year. Mr. Ritter added that the location in Springboro is similar because it backs up to a residential area. He shared that there have not been any concerns or complaints from either communities for opening at 6 a.m. Mr. Ritter added that the Starbucks on Far Hills currently opens at 5:30 a.m. so they are already losing 30 minutes if the extended hours are approved. Mr. Shulman recalled that Mr. Ritter shared in a previous meeting that the majority of the drive-thru use in Centerville is from 7 a.m. to 10 a.m. Mr. Ritter confirmed this and answered that it is different for every store because each store is unique and when this was discussed he was referring to the Saxbys Coffee on Feedwire. Mrs. Gowdy asked why they wouldn't open and see what hours they would need based on the business in Oakwood. Mr. Ritter responded that it is very hard to re-train people on different opening hours. Mr. Shulman stated that this has been a long time project and asked why this request didn't come up sooner. Mr. Ritter answered that he's never found restrictions on hours and he didn't realize this was the case in Oakwood until recently after reading and looking at the ordinance. Mrs. Jackson asked if she understood correctly in thinking that they had considered being a tenant for two years and never looked at the zoning. Mr. Ritter reconfirmed that they looked at the zoning, but didn't realize the hour restrictions. Mr. Byington asked if they received deliveries or had trash removal in the mornings. Mr. Ritter answered that the mornings are always busier so they schedule deliveries and trash removal in the afternoons. Mr. Aidt inquired about the percentage of people that use the drive-thru. Mr. Ritter shared 35% - 60% depending of traffic and time of day. He also added that by offering a drive-thru they give the option of people not having to get out of their car during inclement weather and would help Saxbys Coffee establish their brand name by being the only coffee shop with a drive-thru currently in the area. He shared that Saxbys Coffee's slogan is "Making Life Better". Mr. Ritter said that Saxbys Coffee can offer an area to bring people together and he feels it would be a nice addition to the community.

Mr. Montgomery added that Saxbys Coffee cannot be compared to the former funeral home use which was legal non-conforming use and had activity all hours of the day and night. That was prior to the rezoning process that had been done for this project. Saxbys Coffee's impact will be minimal to the community. He added that if anything the city has a noise ordinance and can address issues if they were to arise.

Application #13-2, Mr. Weiskircher explained that this application involves a special use request on behalf of Saxbys Coffee for extended hours. The standard operating hours in the NBD are 7 am – 9 pm. Mr. Weiskircher referenced a PowerPoint presentation. In regard to the hours of operation, the applicants are proposing to extend the hours beginning at 6 a.m. Monday through Friday for both the drive thru and the store. Mr. Weiskircher shared the operating hours for surrounding coffee shop/breakfast locations in the Far Hills Avenue Community Business District. In response to a question about the frequency of noise complaints in the Far Hills Business District, Mr. Weiskircher shared that every once in a while DLM will receive an early delivery, but it doesn't happen very often. Mr. Aidt confirmed that all activity is primarily on the Far Hills side and doesn't currently affect the adjoining neighbors. Mrs. Gowdy shared that Tropical Smoothie backs up to a parking lot and doesn't back up directly to houses. She added that DLM has people entering from Far Hills and not on the residential side of the property.

The matter was then opened for public hearing.

Mrs. Sheila Conard, 416 Irving Ave, shared that she has lived in the Oakwood community for 46 years and their house like many others is 100 years old and they care greatly about the house. Mrs. Conard referenced a few items from her newsletter, The Herald. One item is called "The Sausage" which can be summarized by stating that whenever certain people want the whole sausage, they get it by asking for one slice at a time. Dr. Robert Conard, 416 Irving Ave, referenced a legal notice that was sent on April 19, 2013 regarding the request from Firehouse Subs for extended hours. He referenced a few comments and questions that he has received from other residents: 1) Why didn't all residents receive this notice? 2) Why wasn't the notice signed? 3) Who is responsible for the notice? 4) How was this arrived at? 5) Why wasn't the wording cited? 6) The city deceived us and led us to believe it would be taken to council. 7) The city hopes we will vote to increase taxes, but I'm not voting for it because city doesn't protect. 8) City makes decisions out of fear. 9) We need competent people to write the code. He then added that Firehouse Subs argument had no degree of validity. He added that the building wasn't even built yet and they didn't know the customer needs so it was decided off of opinion and not fact. He shared that he felt it was best to deny this request because it can be made later if needed. He shared that Saxbys Coffee should accumulate experience and then the Planning Commission can make a fair decision with the information. Dr. Conard then quoted the city of Oakwood's vision statement from the 2012 Annual Report, "Where viable business and professional enterprises are clearly compatible with residential living and not in conflict with the residential integrity of the community". Mr. Greg Monett, 234 Irving Ave, shared that he looked at the city's codified ordinances and it states that the hours are regulated by the city stating that a drive-in shall not serve food from 11 p.m. to 9 a.m. He added that he's concerned about the fence being a sounding board and this will throw noise into the neighborhood. He said that he doesn't like to be woken up and the law was created to mitigate sound. Mrs. Faye Wenner, 1900 Coolidge Dr, shared that there shouldn't be a strip center in a residential area to begin with. She added that there is no need to add insult to injury and it would be nice if our city would have more concern for the residents that pay the bills. She added that the tax levy is asking for more money from home owners, not businesses. Mr. Byington responded and said that of those on the dais, himself, the city attorney, the city inspector and secretary are paid and everyone else volunteers. Mr. Byington asked that Mr. Jacques, Law Director, clarify the recent legal notice that was sent out in relation to Firehouse Subs. Mr. Jacques shared that under Sec. 1004.5(B) of the zoning code, authority to approve or deny special uses rests with the Planning Commission except in the case of "Planned Developments." In those cases, the Planning Commission makes a recommendation to Council and Council, after public hearing, issues the final approval or denial. For years, what this has meant in actual practice is that the Planning Commission issues final decisions in cases involving residences and existing business structures, while new commercial developments have been referred on to Council with the Planning Commission's recommendation. This was Council's intent when the zoning code was re-written in 2001, and it is how the city has handled these cases ever since. Planned Developments are just one category of commercial development. We also have Site Developments and Major Site Developments. Since "Planned Developments" are expressly singled out in the zoning code for further action by Council, it is clear that Site Developments and Major Site Developments fall within the category of situations in which the Planning Commission issues a decision rather than a recommendation. There are two or three specific references in the zoning code to this effect (i.e., specifically referencing "Planned Developments" to the exclusion of other forms of commercial development). Dr. Conard, 416 Irving Ave, asked for specific information on where it was listed in the code and then asked what the correct procedure is for residents wanting to question this. Mr. Jacques confirmed that it is in 1004.5B and 1004.1 and shared that the correct procedure is to await final action, whether from the Planning Commission or from council, and then appeal to the common pleas court. Mr. Jacques was clear that this was not his legal advice, he was just sharing the correct procedure. He suggested that if Dr. Conard needed specific advice, he should consult with his son or another attorney of his choice. Mr. Shulman stated that when the zoning code was re-written in 2001, every citizen was given a copy of the changes and had the option to come to a public hearing. Mrs. Conard, 416 Irving Ave, stated that the new building seems to her as a weak imitator of the elegant city building or like that of Oakwood High School.

There being no further comments, Mr. Shulman closed the public hearing. Mr. Byington mentioned that when the city building was being built, he recalls similar statements about its architecture being inelegant and ugly. He added that the Planning Commission takes in all facts and opinions. He added that the belief that decisions are made without facts is not accurate. He said that the comment about the Planning Commission not listening is not accurate and shared that the Planning Commission does care about resident opinions. Mr. Shulman explained that the Routsong Development took more than two years to decide and had approximately 5 or 6 hearing so it wasn't a quick decision. He knows that they went back and forth to the drawing board at least two times. Mrs. Gowdy explained that she was voting no because of the location of the drive-thru being closer to residents on the south side even though suggestions were made to locate it further away. She also added that there is plenty of human conversations that wake her so the thought of a sound system, so early in the morning is troublesome in the neighborhood. Mrs. Jackson shared that Saxbys Coffee's justification to be open shouldn't fall on the neighbors taking a risk. She added that the residents already have to contend with UD traffic. Mr. Aidt added that the special use staff report has items A-I and four or five of these items don't meet the requirements. Mr. Aidt said that they need to see how things work and then come back if extended hours are still needed. Currently the plan does not meet the decision standards. Mr. Byington added that he wants to see everyone successful, but tenant viability doesn't trump the residential character.

#### **SPECIAL USE STANDARDS**

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

PRELIMINARY STAFF FINDINGS:

- One of the basic principles of the Comprehensive Plan is that business areas should not adversely impact adjacent neighborhoods. The burden of proof rests with the applicant that introducing expanded morning operating hours, especially for a drive thru use, will not adversely impact the adjacent neighborhood.

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:

- In this general area there are a number of businesses, all located within the city of Dayton corporation limits, open past 9 p.m. The only business in the immediate area that opens before 8 a.m. is the Sunoco at Brown Street and Irving Avenue which is open 24/7 when UD is in session. Having a business open at 6 a.m., especially one with the noise associated with a drive thru, is inconsistent with the residential character of the surrounding Oakwood properties.

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:

- Although there will be a privacy fence located along the south side of the lot, as Mr. Byington pointed out at the August 3, 2011 Planning Commission meeting, the fence/vegetation will not eliminate all of the sound associated with patrons ordering items at the drive thru. Notwithstanding the fact that Mr. Routsong owns both properties abutting the site, the introduction of a business with very early operating hours will impact the surrounding area.

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:  
 • As just mentioned, the introduction of a 6 a.m. start time, especially for the drive thru, is inconsistent with the surrounding residential uses.  
 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:  
 • While not directly impacting the fully developed surrounding residential area, the introduction of early operating hours at this site represents a significant departure from the operating hours of the previous business use on this site.  
 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:  
 • The proposal for early business hours for a drive thru is inconsistent with the character of the surrounding residential neighborhood.  
 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:  
 • The applicant has met the requirements of this standard.  
 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:  
 • The applicant has met the requirements of this standard.  
 PLANNING COMMISSION FINDINGS: SUSTAINED.
- I. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulation may, in each instance, be modified by Council pursuant to the recommendations of the Planning Commission.  
 PRELIMINARY STAFF FINDINGS:  
 • Although a coffee house is a permitted use in the NBD, the proposed plan to open one hour before the 7 a.m. permitted start time changes the character of the area.  
 PLANNING COMMISSION FINDINGS: SUSTAINED.

Therefore, it was moved by Mr. Aidt and seconded by Mrs. Gowdy that application #13-2, the special use request, for operations in the NBD, be denied.

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

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

There being five (5) yea votes and no (0) nay votes thereon, said motion was declared duly carried and it was so ordered.

There being no further business, the Planning Commission adjourned. The public meeting concluded at 5:45 pm.



CHAIR

ATTEST:



CLERK