

**CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENT
MINUTES OF THE AUGUST 21, 2018 MEETING**

MEMBERS PRESENT:

Ms. Susan Meyers
Mr. Justin Verst
Mr. Roger Mason, Vice Chair
Mr. Scott Bachmann, Chair

STAFF PRESENT:

Ms. Cynthia Minter, Director
Mr. Kirk Hunter, Principal Planner
Mr. Michael Duncan, Legal Counsel
Ms. Stephanie Turner, Recording Secretary

MEMBERS ABSENT:

Mr. John Fessler
Mr. Joseph Williams
Mr. Michael Williams

STAFF ABSENT:

Mr. Bachmann called the meeting to order at 7:00 PM with the Pledge of Allegiance. Following roll call, a quorum was found to be present. Mr. Bachmann asked if everyone had read the July 17, 2018 meeting minutes and if there were any questions or corrections. There being no comments or corrections, Mr. Bachmann called for a motion. Mr. Mason made a motion to approve the minutes as submitted. Mr. Bachmann seconded the motion. Mr. Bachmann called for a roll call vote. A roll call vote found Mr. Mason and Mr. Bachmann in favor. Ms. Meyers and Mr. Verst abstained. Motion passed.

Ms. Minter introduced our newest Board member Ms. Susan Meyers and advised the Board that Ms. Meyers has been sworn in and has participated in training with Mr. Hunter. The Board welcomed Ms. Meyers to the Board.

There being no old business to discuss, Mr. Bachmann introduced the first case on the agenda for a public hearing as Case #BA-18-004 by applicant Jazzman Inc. with a request for a conditional use permit for outdoor seating. Mr. Bachmann called for the staff report to be given. Mr. Hunter presented the staff report as follows:

FILE NUMBER: BA-18-004 / 198-18-CUP-02
APPLICANT: Jazzman Inc.
LOCATION: 2401 Alexandria Pike, Southgate, KY.
REQUEST: A conditional use permit for outdoor seating

Overview:

The area under review consists approximately four tenths (0.4) of an acre in the City of Southgate on Alexandria Pike (US27) at the corner of Willow Street. The site is currently zoned Residential-One H (R-1H). The building at the site has been used as a tavern since its construction in the nineteen-thirties. It is currently a pre-existing, non-conforming (grandfathered) land use.

The Campbell County and Municipal Planning & Zoning Commission approved the zone change for this site to General Commercial (GC) at their July 10, 2018 meeting.

The applicant is requesting approval of a conditional use permit to allow outdoor seating at the establishment.

Notice of this hearing was published in the Campbell County Recorder in accordance with Article 17 of the City of Southgate Zoning Ordinance.



Considerations

The applicant intends to offer outdoor seating at their establishment. The current land use is a pre-existing non-conforming use and may continue indefinitely without expansion. However, the addition of outdoor seating could not be approved as the property is currently zoned. The final approval of the Zone Map Amendment by Southgate City Council is required for the approval of this Conditional Use Permit. Outdoor seating is only listed as a conditional use in the General Commercial (GC) zone. Southgate City Council approved the addition of outdoor seating as a conditional use in the GC zone on June 20, 2018 (Ordinance No. 18-07)

1. A review of public records indicates there are no previous conditional uses or variances granted by the Board of Adjustment for this site.
2. Kentucky Revised Statute (KRS) 100.111 provides for the following definitions:

"Conditional use" means: a use which is essential to or would promote the public health, safety, or welfare in one (1) or more zones, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on

location, size, extent, and character of performance are imposed in addition to those imposed in the zoning regulation.

"Conditional use permit" means legal authorization to undertake a conditional use, issued by the administrative official pursuant to authorization by the Board of Adjustment, consisting of two parts:

- a. A statement of the factual determination by the Board of Adjustment which justifies the issuance of the permit; and
- b. A statement of the specific conditions which must be met in order for the use to be permitted;

3. In accordance with KRS 100.237 and the City of Southgate Zoning Ordinance Section 9.14, the Board of Adjustment shall meet the following criteria for conditional use.

- A. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community;

The applicant states:

"That the Outdoor seating at 2401 Alexandria Pike Southgate, KY is desirable to provide an additional service and facility (patio) for a better overall customer experience. In addition, the outdoor patio will provide for a more aesthetically pleasing facility for the surrounding neighborhood."

Staff Comment:

The use is desirable and will provide a service and facility that will contribute to the general well-being of the neighborhood or the community.

The Conditional Use Permit is issued for this specific site and cannot be transferred to another location. The Board of Adjustment cannot regulate the ownership of the business.

- B. That the use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.

The applicant states:

"The use of outdoor seating will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity. The general overall health and safety of our customers and neighbors is the top priority."

Staff Comment:

The use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.

- C. That such use will comply with any regulations and conditions in in the Zoning Ordinance for such use.

The applicant states:

“The outdoor patio will comply with any regulations and conditions set forth in the Zoning Ordinance for such use. The Ordinance will be strictly enforced by ownership and management.”

Staff Comment:

The use will comply with any regulations and conditions in in the Zoning Ordinance for such use.

4. City of Southgate Zoning Ordinance Section 9.14, B, 1 Conditional Use Permits.

In accordance with KRS 100.237, the Board of Adjustment shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named herein which may be suitable only in specific locations in the zone only if certain conditions are met:

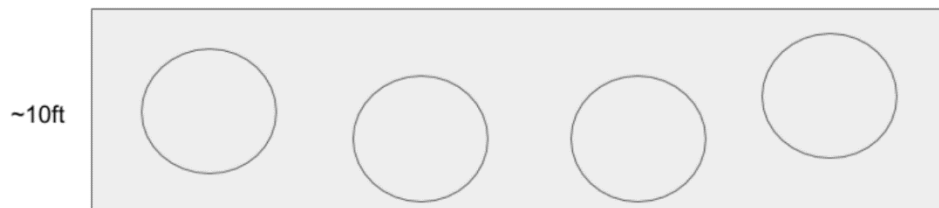
- a. The board of adjustment may approve, modify, or deny any application for a conditional use permit. If it approves such permit, it may attach necessary conditions such as time limitations, requirements that one or more things be done before the request can be initiated, or conditions of a continuing nature. Any such conditions shall be recorded in the board's minutes and on the conditional use permit, along with a reference to the specific section in the zoning regulation listing the conditional use under consideration. In addition, a Certificate of Land Use Restriction shall be filed. The board shall have power to revoke conditional use permits for noncompliance with the condition thereof. Furthermore, the board shall have the right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in person for such cost.
- b. Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of this ordinance, the building code, housing code, and other regulations of the city.
- c. In any case where a conditional use permit has not been exercised within the time limit set by the board or within twelve (12) consecutive calendar months from date of issuance, such conditional use permit shall not revert to its original designation unless there has been a public hearing. Exercised as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvement has been let; or in the absence of contracts that the main building or other improvement is under construction to a substantial degree, or that prerequisite conditions involving substantial investment shall be under contract, in development, or completed. When construction is not a part of the use, exercised shall mean that the use in operation is in compliance with the conditions as set forth in the permit.
- d. The Zoning Administrator shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually

and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the landowner is complying with all of the conditions which are listed on the conditional use permits.

If the landowner is not complying with all of the conditions listed on the conditional use permit, the Zoning Administrator shall report the fact in writing to the Chairman of the Board of Adjustments. The report shall state specifically the manner in which the landowner is not complying with the conditions on the conditional use permit, and a copy of the report shall be furnished to the landowner at the same time it is furnished to the chairman of the Board of Adjustments.

The Board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearing shall be furnished to the landowner at least one week prior to the hearing. If the Board of Adjustments finds that the facts alleged in the report of the Zoning Administrator are true and that the landowner has taken no steps to comply within the time between the date of the report and the date of the hearing, the Board of Adjustments may authorize the Zoning Administrator, to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

- e. Once the Board of Adjustments has completed a conditional use permit and all the conditions required are of such type that they can be completely and permanently satisfied, the Zoning Administrator, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied, and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit which is on file with the County clerk, as required in KRS 100.329. Thereafter said use, if it continues to meet the other requirements of this ordinance, will be treated as a permitted use



5. The plans submitted by the applicant reflect the following:
 - a. The proposed site context with proposed seating area expansions. showing:
 1. Outdoor seating for sixteen (16) to twenty-two (22) at four (4) tables in the rear of the building.
 2. The plan indicates that a safety barrier will be surround the proposed patio.
 - b. Site plan does not include signage
 - c. The total indoor seating capacity is seventy (70).
6. Per Section 18.2, Procedures for All Appeals to Board, a legal notice of this public hearing was given in accordance with the City of Southgate Zoning Ordinance.

A legal notice appeared in the June 28, 2018 edition of the Campbell County Recorder advertising applicant's request and the hearing to be held on July 10, 2018.
7. The planning commission may hear and finally decide applications for conditional use permits with a proposed development assuming all powers and duties otherwise exercised by the board of adjustments pursuant to KRS 100.231, 100.233, 100.237, 100.241, 100.243, 100.247, and 100.251.

Summary of Applicants Request:

The applicant is requesting a conditional use permit in the General Commercial (GC) Zone for outdoor seating.

Staff Recommendation – Southgate Zoning Ordinance:

To approve the conditional use permit for the expansion of outdoor dining subject to the following conditions:

- a. Such area shall be designed to clearly identify the limits of the outdoor dining area;
- b. Such area shall not exceed forty (40) percent of the maximum seating capacity of the indoor dining area;
- c. Entertainment shall not be permitted within the outdoor seating area;
- d. Such area shall not be any closer than five (5) feet to the property line.
- e. A landscaping buffer be placed between the seating area and the sidewalk.

Additional information:

1. The applicant must submit to the building department all appropriate building permits.

2. No activities related to the conditional use shall be conducted until the applicant complies with all building permit requirements and receives a certificate of occupancy for that permit.

Bases for Staff Recommendation:

1. Per Kentucky Revised Statutes, the City of Southgate has the authority to enact zoning regulations within its jurisdiction.
2. In accordance with Section 18.2 of the Zoning Ordinance, proper notice of public hearing was given.
3. Under KRS 100.237 and Southgate City Zoning Ordinance Section 18.5, the Board of Adjustment has the power to hear and decide applications for Conditional Use Permits. The board may impose any reasonable conditions or restrictions on any variance it decides to grant. Evidence was presented to and heard by the Board regarding the Conditional Use permit.

Mr. Hunter advised the Board that the zone map amendment requested by the applicant was forwarded to the City of Southgate for review and approval. This requires two readings. Mr. Hunter stated he knew the first reading had already occurred, but was uncertain if the final reading has taken place. Ms. Minter was able to provide Mr. Hunter with the update that Southgate has had their second reading and did vote to approve the zone map amendment.

Mr. Hunter asked if there were any questions he could answer for the Board. Mr. Bachmann asked about the status of the site. It was previously considered to be pre-existing non-conforming. Does this continue for this site? Ms. Minter advised that with the adoption of the zone map amendment it is now a legally conforming use of the property. The previous status expired as soon as the City adopted the zone map amendment.

Mr. Hunter asked if there were any other questions staff could answer. Mr. Bachmann asked if there were any questions of staff. There being none, Mr. Bachmann asked the applicant if he wanted to address the Board. Mr. Rick Neltner, 2325 McArthur, Newport, KY stepped forward as the applicant. Mr. Neltner stated that he did not really have anything to add to Mr. Hunter's presentation. He has been to several meetings and appreciated staff's assistance throughout this process. Mr. Neltner asked if there were any questions he could answer. Mr. Bachmann asked if the Board had any questions of the applicant. There being none, Mr. Bachmann stated for the record that there were no audience members tonight and asked staff if there had been any public comments received. Mr. Hunter and Ms. Turner advised they had not received any comments. Ms. Minter advised that she only received one comment and it was from Mayor Jim Hamburg. Mayor Hamburg just wanted to make sure the applicant focused any lighting on his property only and did not allow it to glare on any adjoining properties.

Mr. Bachmann asked the Board if they had any questions or comments. Mr. Verst stated that this request appears to be very straightforward and appropriate for the use of this property. If the City of Southgate is open to the outdoor seating, there does not appear to be any reason for this Board to not approve the applicant's request.

Mr. Bachmann asked if any other questions or comments. There being none, Mr. Bachmann called for a motion. Mr. Verst made motion on Case #BA-18-004 by the applicant Jazzman Inc. requesting a conditional use permit for outdoor seating to approve the conditional use permit for outdoor seating subject to the following conditions, as listed in the staff report: that such area shall be designed to clearly identify the limits of the outdoor dining area; that such area shall not exceed

forty (40) percent of the maximum seating capacity of the indoor dining area; that entertainment shall not be permitted within the outdoor seating area; that such area shall not be any closer than five (5) feet to the property line; and that a landscaping buffer be placed between the seating area and the sidewalk.

Mr. Verst recognized the additional information for the applicant staff recommended as that the applicant must submit to the building department all appropriate building permits; and that no activities related to the conditional use shall be conducted until the applicant complies with all building permit requirements and receives a certificate of occupancy for that permit.

The basis for Mr. Verst's motion is as stated in the staff report: that per Kentucky Revised Statutes, the City of Southgate has the authority to enact zoning regulations within its jurisdiction; that in accordance with Section 18.2 of the Zoning Ordinance, proper notice of public hearing was given; and that under KRS 100.237 and Southgate City Zoning Ordinance Section 18.5, the Board of Adjustment has the power to hear and decide applications for Conditional Use Permits. The board may impose any reasonable conditions or restrictions on any variance it decides to grant. Evidence was presented to and heard by the Board regarding the Conditional Use permit.

Mr. Bachmann asked if there were any questions about this motion. There being none, Mr. Bachmann called for a second. Mr. Mason seconded the motion. Mr. Bachmann asked if there were any questions or comments about the motion before the Board. There being none, Mr. Bachmann called for a roll call vote. A roll call vote found Ms. Meyers, Mr. Verst, Mr. Mason and Mr. Bachmann in favor. No one opposed the motion. No one abstained. Motion passed.

Director's Report:

Mr. Bachmann asked if there was a Director's Report for this evening. Ms. Minter advised the Board that there is a training opportunity coming on October 5th offered by the Ohio APA. If you are interested in attending, please let Ms. Turner know. She will register you and we will pay the fee for the registration and parking.

Ms. Minter stated that the only other item is that last month we deferred the election of officers to this meeting. We dispensed with the nominating committee so the Board can make nominations from the floor. Mr. Bachmann commented that the elections were delayed to this month in hopes that the full Board would be present to vote on the officers. There are fewer people here today than last month. Mr. Mason asked if people who were not present tonight could be nominated for office. Mr. Duncan replied they could. Ms. Minter stated that the Board can make those nominations and if at the next meeting that person expressed they did not want to hold office then a new election could occur at that time. Mr. Duncan agreed with her statement.

After a brief discussion, Mr. Mason stated that the consensus last month was to keep the officers the same. Ms. Sharon Haynes was the Temporary Presiding Officer (TPO) and she was no longer on the Board. Mr. Bachmann nominated Mr. Fessler for the position of TPO. Mr. Verst seconded the motion. There was a question of if their vote would be for Mr. Fessler only or all proposed officers. Mr. Duncan advised they withdraw their motion or amend their motion to clearly reflect what action they want to take. Mr. Bachmann withdrew his motion. Mr. Verst made a motion to elect Mr. Bachmann as Chair, Mr. Mason as Vice-Chair, and Mr. Fessler as TPO. Ms. Meyers seconded the motion. Mr. Bachmann asked if there were any discussion on the motion as

seconded. There being none, Mr. Bachmann called for a roll call vote. A roll call vote found Ms. Meyers, Mr. Verst, Mr. Mason and Mr. Bachmann in favor. No one opposed the motion. No one abstained. Motion passed.

There was a question if the Board would be meeting next month. Staff did not think so, but Ms. Minter stated they would advise the Board as soon as they know.

Mr. Bachmann asked if there were any other comments, questions or points for discussion among the Board. There being none, Mr. Bachmann called for a motion to adjourn. Mr. Mason made a motion to adjourn. Mr. Verst seconded the motion. Mr. Bachmann called for an oral vote. An oral vote found Ms. Meyers, Mr. Verst, Mr. Mason and Mr. Bachmann in favor of the motion. No one abstained. Motion passed.

The meeting adjourned at 7:24 PM.

Prepared by:

Approved:

Cynthia Minter
Director

Scott Bachmann
Chair