

**MINUTES OF  
PLANNING COMMISSION MEETING  
APRIL 6, 2021**

The meeting was called to order at 6:00 pm by Chair Fiorendino.

**CALL TO ORDER/ROLL CALL**

Commissioners present: Rob Fiorendino, Stan Hoium, Mike Novitsky, Mark Vargas, Clara Wolfe  
Commissioners present via Zoom: Tom Kaiser, Eric Sahnaw  
Commissioners absent: none

Also present: Alicia Apanah (Community Development Administrative Assistant II), Aaron Chirpich (Community Development Director), Joan Dobbs, Nick Dobbs, Minerva Hark (City Planner), KT Jacobs (Council Liaison), Louie Kader, Jim Mackey, Anthony Mayer, Deborah Shamel (via Zoom)

**1. SWEARING-IN OF NEWLY-APPOINTED PLANNING COMMISSIONER**

Apanah administered the oath of office of Clara Wolfe, newly-appointed Planning Commissioner.

**2. ELECTION OF OFFICERS**

Apanah opened the floor for nominations of the Planning Commission Chairperson. Vargas nominated Fiorendino, which was seconded by Novitsky. There being no further nominations, Apanah closed the floor. Fiorendino consented to the nomination.

*Motion by Novitsky, seconded by Vargas, to elect Fiorendino as Chairperson of the Planning Commission. A Roll Call vote was taken of the members. All Ayes. MOTION PASSED.*

Fiorendino opened the floor for nominations of the Planning Commission Vice Chairperson. Novitsky nominated Hoium, but he declined. Hoium nominated Vargas, which was seconded by Novitsky. There being no further nominations, Fiorendino closed the floor. Vargas consented to the nomination.

*Motion by Hoium, seconded by Novitsky, to elect Mark Vargas as Vice Chairperson of the Planning Commission. A Roll Call vote was taken of the members. All Ayes. MOTION PASSED.*

Fiorendino opened the floor for nominations of the Planning Commission Secretary/Treasurer. Sahnaw nominated Kaiser, which was seconded by Novitsky. There being no further nominations, Fiorendino closed the floor. Kaiser consented to the nomination.

*Motion by Sahnaw, seconded by Novitsky, to elect Kaiser as Secretary/Treasurer of the Planning Commission. A Roll Call vote was taken of the members. All Ayes. MOTION PASSED.*

**APPROVAL OF MINUTES**

**3. APPROVAL OF FEBRUARY 2, 2021 PLANNING COMMISSION MEETING MINUTES**

*Motion by Hoium, seconded by Vargas, to approve the minutes from the meeting of February 2, 2021. A Roll Call vote was taken of the members. All Ayes. MOTION PASSED.*

## **PUBLIC HEARINGS**

### **4. SITE PLAN REVIEW – AFANDINA CAFÉ – CASE 2021-0401**

**Introduction:** Hark reported that applicant Louie Kader submitted proposed plans for the addition of a paver patio with a roof and an upper deck at Afandina Café, 4001 University Avenue NE. The proposed patio is 833 square feet, and the proposed upper deck is 288 square feet. This project will also include the demolition of an existing non-conforming deck in the north eastern portion of the property. The proposed patio addition meets the City's Zoning Code requirements for setbacks and height. The Section 9.104 (N) of the Zoning Ordinance requires that all new plans for development other than one and two family residences, be reviewed and approved by the Planning Commission prior to the issuance of a building permit.

**Zoning Ordinance:** The property located at 4001 University Avenue NE is located in the General Business (GB) Zoning District. The properties to the north and east are located in the Multiple Family (R-3) Residential Zoning District, and the properties to the south are located in the General Business (GB) Zoning District. The properties across University Avenue to the west are located in the Multiple Family (R-3) Residential Zoning District.

**Comprehensive Plan:** The Comprehensive Plan guides this area for commercial uses. The proposal for an outdoor patio addition to the existing commercial business is consistent with the goals and intent of the Comprehensive Plan.

**Design Guidelines:** The subject property is located on the intersection of University Avenue and 40th Avenue, which is within the Design Guideline Overlay District, and is governed by the "40th Avenue District" standards within the Design Guidelines. The intent of the Design Guidelines is to make the City more aesthetically appealing by requiring a set of minimum standards for new construction along Central Avenue and 40th Avenue.

Much of the guidelines do not apply to this proposal as the guidelines are intended for the principal structure and use on the property. In this case, the applicant is simply proposing to construct an enclosed patio addition. The proposal will allow for an increase in patrons to the existing restaurant, particularly between late spring and early fall for those who desire an outdoor dining experience.

The building addition is proposed to be a covered roof over an open patio area. The roofing material will include weathered wood-colored fiberglass asphalt shingles, and edge rafters will be faced with stained rough-sawn plywood. Due to the property being located in the Design Guidelines and the visibility off 40th Avenue, staff has added a condition that the wooden materials of the patio be painted to match the existing color of the building.

**Findings of Fact:** Section 9.104 (N) of the Zoning Ordinance outlines four Findings of Fact that must be met in order for the City to approve a Site Plan. They are as follows:

- a. The Site Plan conforms to all applicable requirements of this article.

*This is correct. The Site Plan in question achieves the applicable Zoning Code requirements.*

- b. The Site Plan is consistent with the applicable provisions of the City's Comprehensive Plan.

*The Comprehensive Plan guides this area for Commercial Uses. Staff believes the proposed Site Plan for the property is consistent with the intent of the Comprehensive Plan.*

- c. The Site Plan is consistent with any applicable area plan.

*This is correct.*

- d. The Site Plan minimizes any adverse impacts on property in the immediate vicinity and the public right-of-way.

*The proposed Site Plan meets all the development standards outlined in the Zoning Code and will be required to meet Design Guidelines outlined previously. The applicant is not proposing to use the parcel in a different manner than used previously; therefore, the properties in the immediate vicinity of the proposed patio addition should not be adversely impacted.*

*The site has adequate on-site parking to sustain the proposed addition. The existing 2,433 square foot building (seats 40 people) along with the proposed 833 square foot patio (to seat 32 people) and 288 square foot deck (to seat 12 people totals 3,554 square feet (84 people). Per code, the minimum parking required is calculated at 30% of the building capacity, which constitutes 26 parking stalls. Thus, the existing 26 parking stalls are sufficient for the proposed addition.*

*All existing boundary fences will be remodeled to comply with the six-foot height limitation, as to not trigger any additional permits. An unpermitted wooden deck exists onsite currently and shall be demolished as part of this project. Additionally, the project shall be conditioned to prohibit excessive loud noise emanating from the site in an effort to minimize any negative impact onto adjacent residential and commercial properties.*

**Recommendation:** Staff recommends approval of the Site Plan for the proposed patio addition at Afandina Café to be located at 4001 University Avenue NE, subject to certain conditions of approval.

Questions/Comments from Members:

Hoium expressed disapproval of the plan, noting that he did not understand how the upper deck overlooking the other backyards and daycare would be a wise idea.

Novitsky agreed with Hoium and said he did not think the height and deck would fit with the landscape and rest of the area.

Hoium asked how an unpermitted deck, with all the problems of the property, was built in the first place. Hark responded that the property was originally approved for a patio and, as part of the proposed plan, the unpermitted deck that was built would be removed. The proposed patio and deck addition would be attached to the existing building for the façade to match, and the setbacks would be compliant.

Novitsky asked how the noncompliant fence was kept so high for so long, knowing that it has been noted to be out of compliance, and if anyone had communicated with them about it. Hark said she believed it had been communicated to them. Chirpich added that the violations were brought to City staff's attention and the building official conducted a site inspection and issued a stop work order a few months before winter. The owner was notified that some of the work was not approved as part of the original Site Plan and there were no building permits in place that were necessary for the improvements, such as for the deck and some of the patio footings. So, it was staff's decision to review the project since the 2013 improvements for the original Site Plan, reviewing what changed, what deviated, what is not compliant and create a plan towards compliance. The plans before the Commission now are a combination of some the approved improvements in 2013, which was a patio off the north end (and has been enlarged in this proposal) and the deck (which was not part of any of the original proposals). He summarized that the work would be to rein in what had gone awry in the work that cannot be approved because there is no path to compliance, being the surface deck on the northernmost edge of the property, and determine what can be approved according to code and moving forward from there.

Fiorendino inquired about the current state of the area that the new deck would be in. Chirpich said the existing nonconforming deck is wooden and is built in and around some trees, for which there is no way for compliance because of setbacks and would also exceed seating capacity standards as it relates to parking.

Hoiium asked for clarification that it is a main level deck only. Chirpich responded that it is approximately six inches off the ground, adding that a paver patio was approved in 2013 but has since grown in this proposal and the deck would be totally new.

Fiorendino asked about the elevation of the deck, and Chirpich responded that it is nine feet. Hark added that the first footing is nine feet and the deck would be above that grade. Fiorendino asked for clarification that it was not in the original plan, and Chirpich confirmed, adding that the new plan would be a pitched roof that will shed water. Fiorendino asked if all the dining would be on the ground level, and Hark responded that the plan would allow 32 seats on the ground level and 12 seats on the deck.

Vargas inquired about where the building drains, whether there is a gutter system, and where and how the increased flow from the new roof would be handled. He said there is limited information in the plans on the subject, noting that he did not see in the survey any wells in nearby abandoned lots. Without additional information, it would be difficult to approve or deny the owner's application, because it would set him up for a lot of compliance issues that would be impossible to achieve, the way that the drainage and building are structured. Hark said she was unsure if the owner has a representative present to speak on the drainage issue. Chirpich said he believed those questions would be more geared to the applicant at this point, and Fiorendino agreed.

Kaiser asked if there is anything in City code specifically tailored to rooftop patios and if there is anything related to fencing or sound screening for rooftop patios, which is a concern because is it directly above single-family homes. Hark said the current City code does not address anything about rooftop or second-level decks in regard to commercial or residential developments. City staff has asked the applicant to provide screening from residential, perhaps not in a structural way because it is not required in the code.

Kaiser then asked if his understanding was correct that it would only be to a maximum height of six feet according to City guidelines. Hark stated that the six-foot maximum is for property line fencing. The upper deck does have a proposed railing around it, which is not subject to a six-foot height limitation because it is a railing and not a property line fence and is considered a part of the structure. Kaiser then stated that the issue may be a “blind spot” in the City code.

Wolfe said there was an original proposal for the property and guidelines were not followed for that so asked, if approved, whether there is something in place to ensure that guidelines are followed for the new proposal. Hark said there are six conditions listed in the proposed resolution for approval of this project and any applicable conditions that were listed previously on this project would still hold standing as long as they are relevant, which are: compliance with building and fire codes, minimizing noise impacts to adjacent properties, color and design follow City guidelines, fencing, removal of unpermitted structures and final building plans to be signed by a design professional and approved by the Building Department.

As requested by Wolfe, Hark cited the previous conditions included in Resolution No. 2013-PZ03: all application materials, maps, plans, drawings and descriptive information submitted with the application shall become part of the permit and any new signage incorporated into the building or site shall meet the requirement of the 40<sup>th</sup> Avenue design guidelines district and shall be approved through the sign permit process; the memorandum from the Public Works Director and City Engineer dated November 13, 2013 shall be a component of this approval; the sidewalk and median on the south side of the building shall be changed from a width of six feet to a width of seven feet to better accommodate front vehicle overhang and pedestrian access; the existing payphone and clothing drop box on the south side of the site shall be removed prior to the issuance of a certificate of occupancy; the location of the future gas meter shall be shown on all future plans; the two proposed parking spaces adjacent to the patio area on the north side of the parking shall not be constructed and shall be removed from future Site Plans; future Site Plans must clarify the driveway location off of the Highway 47 frontage road as well as surface runoff from the east side of the site; the building shall be sprinkled; parking areas adjacent to the residential property shall be screened with fencing and/or landscaping that is 80% opaque year round; the visual appearance of the trash enclosure shall be consistent with the visual appearance of the building; the fence along the east side yard property line shall be repaired and made compliant with the City’s property maintenance standards; and hours of operation of the outdoor patio are restricted, to be open to 9:00 pm on Sundays through Thursdays and 10:00 pm on Fridays and Saturdays.

Novitsky asked if the two vehicles parked in the accessway on the service road would put them out of compliance, as there would be no way to get into the building off the service road. Hark said she would have to pull up the original Site Plans.

Sahnaw asked whether City staff has had a conversation with the applicant about the fencing condition cited in Resolution 2021-PZ02 and how the noise restrictions would be enforced. Hark responded that there has been minimal conversation regarding the condition and that the Police Department would enforce complaints. Because it is a Site Plan review, it is not a Conditional Use Permit and operational plans were not discussed in detail because only the structure and how it complies to zoning in height, design, etc.

Fiorendino asked for the clarification that there is no current Conditional Use Permit on the property. Chirpich confirmed this, adding that a condition of City Code is that amplified sounds will not be audible from residential property lines. He said compliance with this is difficult for any city and it is complaint driven, but there is fencing and vegetative screening in the site's vicinity, and he suggested that the applicant to speak to operations and inform the Planning Commission how they intend to mitigate noise and how they will operate.

Hoium said the location of the second-floor deck is a balcony overlooking the residential backyards.

Fiorendino agreed and said it was a very good point that should be addressed separately, that it would be the only grounds for denial of the application as there is no Conditional Use Permit in place; however, if it does not meet all four Findings of Fact, then the Planning Commission is obligated to deny the application. He said he did not believe that the Site Plan does minimize any adverse effects on the property in the immediate vicinity.

Hoium disapproves of a balcony next door to children, as the privacy fence around the daycare goes two ways.

Kaiser said, because this is a Site Plan review and not a Conditional Use Permit discussion and (as Chirpich stated) that there are remotely similar examples throughout the City, what he thinks is so important about this case in particular is that it is a bad Site Plan. It is unfortunate that this lot is set up the way that it is, that in a "perfect world" for this business, it would not be laid out this way. The building itself would be directly at the corner of University and 40<sup>th</sup> and the parking, the quiet part of the use of this lot, would be up against the nearby houses; unfortunately, that cannot be changed. He said it would be frankly impossible to mitigate sound with an outdoor patio and raised rooftop deck and, if approved, would be setting up a really bad situation not only for City staff and the applicant but also the Police Department in terms of enforcement.

Novitsky also referenced, relating to fencing mitigation, previous complaints of neighbors taking pictures of children.

Wolfe, regarding approval, asked if Commissioners would be able to limit approval to part of the proposed plan. Hark said absolutely so, that they would be able to approve the plan as is, deny the project as proposed or make alterations, adding or removing conditions, or table action to the next meeting if there are substantial changes made by the Planning Commission. Fiorendino added that the Commissioners would only be able to add conditions that would address item D of the Findings of Fact, "The Site Plan minimizes any adverse impacts on property in the immediate vicinity and the public right-of-way." Hark agreed and said conditions would have to be relevant to the Site Plan review directly.

Sahnaw reminded City staff that part of the review will be Minnesota State Accessibility Code, which talks about the need to disperse accessibility seating throughout the property and "unique seating areas." He said he would like to see some accessibility component leading up to the elevated deck area.

Fiorendino asked the applicant to address the Commission.

Applicant Kaider said he plans to make something nice and is flexible regarding the deck's position to rectify the Commission's concern.

Hoiium inquired as to whether the balcony could be placed at the front of the building.

Fiorendino said he would find it hard to believe that an upper deck would not disturb neighbors.

Public Hearing Opened.

Jim Mackey, the applicant's architect, said that there is a four-foot fence on the east edge of the floor plan's upper level, not an open rail. He said the primary reason for the upper level is that the applicant wished to provide space for hookah users, so they would not be on the main level. And he said the main reason for the roof is that outdoor seating in the summer months is a big "plus" because Minnesota summers are short and customers like to dine outside. He believes that he and the applicant would be willing to eliminate the upper deck but that the roof over the patio is a "plus" for the business. Fiorendino said he did not believe any of the Commissioners would disagree with him.

Anthony Mayer, owner of the daycare business next door to the applicant, said he likes the applicant but disapproves of his structure's upper level, that it would seem to him to be in violation of the children and exceed the limit of the six-foot privacy fence. He said children cannot make noise after hours, so why would it be all right for music to be an exception. Fiorendino said he believes City staff is aware of the noise mitigation situation in relation to commercial and residential properties.

Nick Dobbs, City resident, said is extremely concerned about the upper deck as it looks directly over his backyard. He said he is aware the applicant is willing to adjust the plan but they said that the last time as well, as he was part of that meeting and they never followed through. Looking at the current building the upkeep of the property and the lot behind it, he said both have been "abysmal" with trash and tarps being evident. He said the trust issue is not there in that he is going to build an upper structure and keep the noise down, citing an issue last year of fires being seen until 11:00 pm, and permits had not been pulled previously for building the lower deck. He said he understands businesses are needed in the City, but they need to be right and business owners that are going to actually make the neighborhood better instead of just coming in to get their "bit," adding that the current owner has not been good neighbor.

Kader responded that he never "put in a nail" outside without City building official Ryan Smith's permission, who told him that since it was not attached to the building and that he "could do whatever he wanted," adding that he would not put \$20,000 worth of wood and then be told to take it out. He said if the application is denied, he could sell the property to an interested party but he would like to resolve the noise issue and be a good neighbor.

Vargas commented that an application denial would put additional pressure on him and an alternate to a restaurant or business that serves food would be an apartment building, such as in Fridley or Northeast Minneapolis.

Fiorendino asked the applicant if he would still move forward with the project if further action was tabled a month so he could amend his plan that would eliminate an upper deck.

Novitsky added that he would like to ensure that the trash would be removed from the applicant's property as well, because it affects neighboring properties.

Deborah Shamel, City resident, said her concern is the hookah, as a hookah bar across the street had a lot of traffic, a lot of garbage on the streets, and there would not be adequate parking if hookah is allowed at this restaurant. She said the parking would overflow onto 4<sup>th</sup> Street, as it did with the other lounge, and that was very disruptive. The previous bar was open until 1:00 am; but even if this restaurant wants to close at 9:00 pm on weeknights and 10:00 pm on weekends, she still disapproves.

Joan Dobbs, City resident, said she had been present at the last hearing for the "beautiful restaurant" in 2013. Her main concerns are the noise, lights coming into the neighborhood and the privacy factor. She said there is a current noise factor regarding the patio and it was her understanding that the restaurant wished to open the patio to the public as well as customers; and she hoped that the City would be open to rectifying any problems related to this. It was also her understanding that a previous Planning Commission had agreed not to have any additional hookah bars in the City, and she asked why that position has changed. Hark responded that the difference between the establishment in question and the one on 40<sup>th</sup> is that it would be only outside, that the use of the patio would be used for outdoor dining but be allowed to accommodate outdoor smoking as well. The City ordinance does not speak to outdoor smoking establishments.

Ms. Dobbs also asked how a smoking situation would be addressed being so close to a daycare. Fiorendino said he believes that there seems to be a gap in the City ordinance that perhaps there are areas that need to be addressed and the Planning Commission can certainly start those discussions. Hark reminded the Commission that the current action before the group Site Plan review, so the deep details of the operation. Chirpich added that smoking is regulated by Minnesota through the Clean Indoor Act and is focused primarily on smoking indoors across the State, and they do allow for smoking patios.

Novitsky said he believes daycare is considered a learning institution and there is a footage that cannot be crossed, whether it be a minimum of 50 or 100 feet from the structure. Chirpich said enforcement would be the next issue. Fiorendino suggested City staff address the issue in the next round if further action is tabled, and Chirpich agreed it would be fair. He added that the City does not license the activity of smoking, it licenses the sale of tobacco products.

Ms. Dobbs asked whether the matter of the restaurant's patio being open to the general public late at night be ceased. Fiorendino said he believed it would be a matter for her to take up with that owner, that it would be nothing the City could enforce.

No one else was present to speak on this matter.

#### Public Hearing Closed.

Fiorendino asked Hark if she preferred denial or tabling the matter. Hark responded that another viable option would be condition the project as proposed to move forward without an upper deck, and Fiorendino said he would not be comfortable with that.



Wolfe said she would be comfortable moving forward without the upper deck and just the patio expansion with the stipulation that the requirements need to be followed. She said she can appreciate people wanting to be outside in Minnesota, appreciates the applicant owning a business in the City and hopes that it thrives, but understands that there are other factors in play.

Novitsky said he would like the matter tabled so the applicant has ample time to find out about the smoking backset before he puts anymore time and effort into the project, whether it is even feasible for his business plan.

Fiorendino asked Hark what changes would be needed to move forward without the upper deck. Hark responded that a deck would be proposed but a condition would be to deny it for any building permits of a deck.

Hoiium inquired about the shielding and noise in the back of the building. Fiorendino said those were included in the 2013 plan but it had not been followed. Further, he said clarity in what the Planning Commission would approve is important, basically due to the history of this property.

Novitsky said his other big concern is the daycare is restricted in outdoor noise, then the restaurant would also need to be restricted. Fiorendino said there would need to be legal justification for doing that, which the Planning Commission does not have, that the business has to abide by City ordinance but the City does not have the authority to add that condition. Novitsky said he preferred to table action until the cited pertinent questions could be answered.

Sahnow said he believes an elevated deck is a concern for all Commissioners. He is concerned about a patio expansion and overhanging roof, as it may be making a bad situation worse, and is opposed to an elevated deck as it relates to adjacent neighbors.

Kaiser agreed and said, citing item D of the Findings of Fact, he believes it would not only magnify an adverse effect but also create additional impacts, not just the rooftop, deck but also the patio as well. He said he would be voting to deny the project with or without the rooftop deck.

Hoiium said he would not have a problem denying the whole project.

Fiorendino said he would be willing to listen to arguments about why the enlarged patio would make things worse.

Sahnow said there are already adverse conditions related to the patio; and it were enlarged, it would only be closer to neighbors and consolidating the noise beneath the roof, which would impact where the noise travels. He said he cannot approve a project that would only make things worse.

Fiorendino asked Hark whether the existing Site Plan still in force if the project were denied. Hark confirmed so, stating that the current Site Plan approval.

*Motion by Wolfe, seconded by Vargas, to table CASE 2021-0401, a Site Plan for the proposed patio addition with upper deck to be located at 4001 University Avenue NE. A Roll Call vote was taken. 3 Ayes, 4 Nays. MOTION FAILED. Ayes: Hoiium, Vargas, Wolfe. Nays: Fiorendino, Kaiser, Novitsky, Sahnow.*

*Motion by Novitsky, seconded by Sahnaw, to deny CASE 2021-0401, a Site Plan for the proposed patio addition with upper deck to be located at 4001 University Avenue NE. A Roll Call vote was taken of all the members. 5 Ayes, 2 Nays. MOTION PASSED. Ayes: Fiorendino, Hoium, Kaiser, Novitsky, Sahnaw. Nays: Vargas, Wolfe.*

## 5. INTERIM USE PERMIT – RENAISSANCE FIREWORKS TEMPORARY SALES TENT

**Introduction:** Hark reported that Renaissance Fireworks, Inc. applied for an Interim Use Permit to allow the operation of a seasonal fireworks sales tent at 4001 Central Avenue. The specific development standards for outdoor fireworks sales/display are found in Section 9.107 (C) (22) of City Code and will be added as conditions of approval for this permit. The attached property and tent location map illustrates the configuration and orientation of the fireworks tent to Central Avenue. The Fire Chief and Building Official will conduct a site inspection of the tent.

She reported that one neighboring resident contacted the City in opposition of the proposed interim sales tent. Hark clarified for her that the fireworks were only to be sold and not set off at the location in question. She also informed her that this Interim Use Permit has been applied for and issued on an annual basis for over ten years and no complaints or issues had been reported in the past about their annual operation on Central Avenue.

**Zoning Ordinance:** The property located at 4001 Central Avenue in the CBD, Central Business District. Properties to the north, south and west are also zoned Central Business, and the properties to the east are zoned in the R-4, Multiple Family Residential District. Seasonal Fireworks Sales is allowed as Interim Use in the Central Business Zoning District.

**Comprehensive Plan:** The Comprehensive Plan designates the property for commercial use. The proposal for seasonal fireworks sales is consistent with the intent of the City's Comprehensive Plan.

**Findings of Fact:** Section 9.104 (I) of the Zoning Ordinance outlines seven Findings of Fact that must be met in order for the City to grant an interim use permit. They are as follows:

1. The use is one of the interim uses listed for the zoning district in which the property is located, or is a substantially similar use, as determined by the Zoning Administrator.

*Fireworks tents are specifically listed as an Interim Use in the Central Business District, and are considered retail sales, which are permitted.*

2. The use is in harmony with the general purpose and intent of the Comprehensive Plan.

*The Comprehensive Plan designates the property for commercial use, including retail sales. The proposal is consistent with the intent of the City's Comprehensive Plan.*

3. The use will not impose hazards or disturbing influences on neighboring properties.

*The proposed temporary use should not have hazardous or disturbing influence on neighboring properties because of its proximity to Central Avenue. It is screened from adjacent residential uses by the surrounding commercial buildings.*

4. The use will not substantially diminish the use of property in the immediate vicinity.

*The fireworks tent should not diminish the use of the adjacent properties.*

5. The use will be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area.

*The Fire Chief will conduct an on-site inspection prior to any temporary sales. All State and City requirements regarding fireworks sales will be achieved.*

6. Adequate measures have been or will be taken to minimize traffic congestion on the public streets and to provide for appropriate on-site circulation of traffic.

*The traffic generated by the fireworks tent will not significantly increase the flow of traffic on the public streets. Additionally, the site is large enough to handle additional on-site traffic.*

7. The use will not cause a negative cumulative effect on other uses in the immediate vicinity.

*The fireworks tent should not have a negative impact on other uses in the immediate vicinity, which are all zoned commercial.*

**Recommendation:** Staff recommends that the Planning Commission approve the Interim Use Permit to allow the operation of a seasonal fireworks sales tent at 4001 Central Avenue, subject to conditions of approval outlined below.

Questions/Comments from Members:

Novitsky said that the tenants have been good every year and he did not see a problem with approval of an Interim Use Permit.

Hoiium commented that in their justification, the applicant has a materials safety data sheet dated 1986, which is probably not valid any longer. He has no objection to approval.

Public Hearing Opened.

No one was present to speak on this matter.

Public Hearing Closed.

*Motion by Kaiser, seconded by Sahnaw, to waive the reading of Resolution No. 2021-PZ03, there being ample copies available to the public. A Roll Call vote was taken of all the members. All Ayes. MOTION PASSED.*

*Motion by Hoiium, seconded by Novitsky, to approve Resolution No. 2021- PZ03, being a resolution approving an Interim Use Permit for a fireworks tent at 4001 Central Avenue NE from June 25, 2021 to July 5, 2021 subject to certain conditions of approval that have been found to be necessary to protect the public interest and ensure compliance with the provisions of the Zoning and Development Ordinance, including:*

- 1. The fireworks tent, display area, access aisles, and surrounding area shall be reviewed by the Fire Department prior to operation. The applicant must contact the Fire Department to set up an inspection prior to any sales occurring on the property.*
- 2. The sale of fireworks shall meet all requirements of Chapter 24 of the Fire Code and NFPA Chapter 1124.*
- 3. The fireworks tent shall be accessory to a commercial use.*
- 4. Fireworks tents located within the public right-of-way are prohibited.*
- 5. All goods shall be displayed on a designated impervious surface area.*
- 6. All goods shall be displayed in an orderly fashion, with access aisles provided as needed.*
- 7. Music or amplified sounds shall not be audible from adjacent residential properties.*
- 8. The fireworks tent shall not reduce the amount of off-street parking provided on-site below the level required for the principal use.*
- 9. An appropriate transition area between the use and adjacent property shall be provided by landscaping, screening or other site improvements consistent with the character of the neighborhood.*
- 10. Signage shall be limited to two (2) professionally made signs, with a combined square footage not exceeding thirty-two (32) square feet.*
- 11. Fireworks tents may be allowed for a maximum of 90 days per calendar year.*
- 12. Any electrical use associated with the temporary sales, will require an Electrical Permit and is required to be inspected by the State Electrical Inspector.*

*A Roll Call vote was taken of all the members. All Ayes. MOTION PASSED.*

## **OTHER BUSINESS**

Fiorendino asked whether there was anyone present who would like the Planning Commission to ask City staff for recommendation on ways that the Code may be improved as far as what discussed during the meeting, as there seems to be lack between commercial and residential properties. Chirpich thanked the Planning Commission for a good meeting, citing a robust conversation around some tough issues, and that the Commissioners handled them very well with good testimony. He said it was a challenging Site Plan and it will continue to be difficult on these integration sites where there are adjoining commercial and residential properties. Such properties are numerous within the City and a restaurant is an intense use, especially with an expansion of an outdoor component. Chirpich said staff should look at outdoor dining CUPs, but the noise issue will have to be continued to be administered by ordinance and enforced with compliance checks.

Kaiser added that he writes about restaurant delivery for a living and, because the City has so many, he believes fast food restaurants will soon be dramatically rebuilding themselves because of the COVID-19 pandemic. And because a lot of these facilities are going to be adding a lot more drive-through lanes when possible, it will be hot topic throughout the nation, allowing customers to grab their meals without having to go inside the restaurant.

Kaiser added that dedicated spaces for delivery drivers is something that a lot of municipalities will have to react to catch up with. So it will be wise for the City to move on those issues proactively because it will be likely that it will be approached on them within the next 18 months. Hark said she agreed, citing her own professional experiences where cities had to enforce ordinances related to permanent outdoor dining, and said the City's ordinances could be stronger addressing such issues.

Chirpich, referring to the meeting's denial, clarified that any motion to deny an application by the Planning Commission must have rationale and it was clear that the condition for this evening's application was not met and the Site Plan did not minimize any adverse impacts on properties in the immediate vicinity. He asked Commissioners to confirm that rationale, and they confirmed so.

Vargas said he had been a devil's advocate for the Site Plan but it had so many holes in it, the survey was bad, the engineering comments were about stucco and it was lap siding; and he said he had preferred to table action on the project to give the owner an opportunity to make improvements, but the plan was really not appropriate for that area. He is concerned that the 2020 tax bill eliminated funding for low cost housing and that is why there has been a slowdown in apartments; and there will soon be massive infrastructure bill and need for housing such as a 50-unit apartment, and he said he wonders how the neighbors will feel about that building as opposed to a restaurant.

#### **6. REMINDER: NEXT PLANNING COMMISSION MEETING**

The next scheduled meeting is Tuesday, May 4, 2021 at 6:00 pm.

#### **ADJOURNMENT**

*Motion by Vargas, seconded by Novitsky, to adjourn the meeting. The meeting was adjourned with no objection by Fiorendino at 7:20 pm.*

Respectfully submitted,

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Alicia Apanah, Secretary