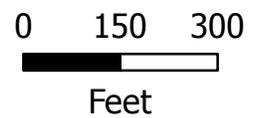




City of Dublin

14-077PDP-FDP
 Preliminary Development Plan/Final Development Plan
 Athenry Shoppes Limited
 7148 Muirfield Drive



Held _____

20 _____

5. Tartan Ridge - Section 2, Part 2 - Final Plat
6. Tartan Ridge - Section 2, Part 3 – Final Plat
7. Tartan Ridge - Section 4 - Final Plat

SECOND READING/PUBLIC HEARING – ORDINANCES

Ordinance 35-12

Rezoning Approximately 4.91 Acres, on the East Side of Avery-Muirfield Drive Approximately 500 Feet North of the Intersection with Tara Hill Drive, from PUD, Planned Unit Development District (Indian Run Meadows Commercial) to PUD, Planned Unit Development District (Indian Run Meadows Commercial Revised) to Revise the Development Text to Permit up to 1,680 Square Feet of Outdoor Patio Area in Front of an Existing Restaurant (Mary Kelley's) within the Shoppes at Athenry Shopping Center.

(Case 12-017Z/PDP/FDP)

Ms. Husak stated that, in addition to the discussion that has occurred this evening, the applicant also has plans to address the concerns raised at the last Council meeting regarding the existing patio at the shopping center. The applicant has committed to including a section of fence at the northern end of the existing patio to discourage any serving for patio patrons to occur through that space. The Code requires a gate at one of the two exits, and that gate is to be located on the south side. Staff recommends approval of the amendment to the development text to allow this patio with those changes.

Jill Tangeman, Vorys, Sater, Seymour and Pease, 52 E. Gay Street, attorney for the applicant stated that, following the last Council meeting, she and Mr. McCash met and further discussed closing off the existing patio, the installation of the gate at the south end and the fence at the northern end. No further revisions occurred. It is her understanding that Mr. McCash is in agreement with those revisions.

Tom McCash, 55 S. High Street, representative for the residents, stated that the residents are in support of this provision. Obviously, there has been a long history related to the Conditional Uses. The residents have consistently argued that this was not a Permitted Use and that a rezoning was required. The applicant has now done so and addressed some of the residents' concerns through that rezoning process, including switching the gate to a fence at that location to avoid a potential, additional negative impact on the residents. In the spirit of balancing the interests, the residents have agreed to support this rezoning. It is hoped that in the future, the other issues discussed tonight are also addressed, and that this commercial development and the neighbors can co-exist in harmony.

Vote on the Ordinance: Mr. Keenan, yes; Mr. Reiner, yes; Mrs. Boring, yes; Ms. Chinnici-Zuercher, yes; Vice Mayor Salay, yes; Mr. Gerber, yes; Mayor Lecklider, yes.

INTRODUCTION/PUBLIC HEARING/VOTE - RESOLUTIONS

Resolution 28-12

Appointing a Member to an Unexpired Term on the Personnel Board of Review.

Vice Mayor Salay requested that this legislation be postponed to the June 4 Council meeting.

There was no objection to this postponement.

OTHER

- Branding Update

Ms. Grigsby stated that the information on branding, which was provided in Council packets, describes in general what is being done citywide. This is a coordinated effort with Economic Development, influencing the information and material that is provided, and the language and words used to describe the City's districts and projects. Staff has also been working with a firm to help identify some of the issues that need to be considered from a local, state and international perspective. An update on these efforts

Held _____

20 _____

Ms. Chinnici-Zuercher moved to dispense with the public hearing and treat this as emergency legislation.

Vice Mayor Salay seconded the motion.

Vote on the motion: Mr. Gerber, yes; Mr. Reiner, yes; Vice Mayor Salay, yes; Mayor Lecklider, yes; Mrs. Boring, yes; Mr. Keenan, yes; Ms. Chinnici-Zuercher, yes.

Vote on the Ordinance: Mr. Reiner, yes; Mr. Keenan, yes; Ms. Chinnici-Zuercher, yes; Mayor Lecklider, yes; Vice Mayor Salay, yes; Mrs. Boring, yes; Mr. Gerber, yes.

Ordinance 35-12

Rezoning Approximately 4.91 Acres, on the East Side of Avery-Muirfield Drive Approximately 500 Feet North of the Intersection with Tara Hill Drive, from PUD, Planned Unit Development District (Indian Run Meadows Commercial) to PUD, Planned Unit Development District (Indian Run Meadows Commercial Revised) to Revise the Development Text to Permit up to 1,680 Square Feet of Outdoor Patio Area in Front of an Existing Restaurant (Mary Kelley’s) within the Shoppes at Athenry Shopping Center.(Case 12-017Z/PDP/FDP)

Vice Mayor Salay introduced the ordinance.

Ms. Husak stated that this ordinance amends the development text for the Indian Run Meadows PUD, specifically for the commercial standards of that PUD to allow a patio for the Mary Kelley’s Restaurant. The site is on Muirfield Drive, just north of Tara Hill Drive in the Shoppes at Athenry Center.

- The red box indicates where the patio area is proposed in front of Mary Kelley’s tenant space, divided into two portions. The patio is proposed for construction in two phases, and would be 1,680 square feet at build out of Phase 2. There is a patio space that was constructed when the Center was built, but it has never been approved for use as a patio. There were many concerns expressed by adjacent residents regarding noise, odor pollution, and general operational issues for the Center. In an attempt to alleviate those concerns, the property owner has been working on a proposal for a patio area in front of the restaurant. That is the subject of tonight’s application for consideration.
- The original patio area was approximately 1,800 square feet and the Center is parked to accommodate this. As proposed in the new development text, the maximum allowable area of the patio would be 1,680 square feet, which means there would be parking available in the Center for this patio. If the owners would attempt to use the existing patio area in any manner – as either a patio or enclosed area – the applicant would need approval through a development text amendment. It cannot be used in conjunction with this application.
- The Planning and Zoning Commission reviewed the application at their April meeting and some residents, represented by Mr. McCash expressed concerns about limiting the patio area in the Center to only this particular space and application. They requested that the text clarify that any other patio areas that would be proposed by any other tenant in the Center would also require a rezoning. This change was incorporated in the text forwarded to Council.
- In addition, there is a gate proposed to close off the existing patio area so that there would not be anyone loitering or smoking in that area. This is part of the application as well.
- The patio amenities of planters, flower boxes, chairs, tables, umbrellas have all been approved by PZC as part of the final development plan. These are also described in the development text.
- There is also a prohibition against any music in response to the neighbors’ concerns about noise.

Staff recommends approval at the second reading/public hearing on May 21. The applicant has worked with staff to revise their plans in response to the Commission’s concerns that were shared in conjunction with the final development plan review.

RECORD OF PROCEEDINGS

Held _____

20 _____

Mayor Lecklider invited public testimony.

Farid Masri, 7061 Cavalry Court stated that Mr. McCash contacted the Mayor to indicate he could not be present tonight. There are a couple of items that they are still working on with the applicant and they hope to have resolution prior to the next reading. Mr. McCash indicated that he will address those issues either before the next meeting. On a personal note, this is the first time he can recall a zoning case where input from the neighborhood was not sought through a meeting prior to the Council and Commission meetings. This sets a bad precedent.

Ms. Chinnici-Zuercher asked about the outstanding issues he has referenced, as the report provided tonight indicates that the issues have been resolved. Mr. Masri responded that Mr. McCash will address the issues. He is not privy to share them, as he is represented by Mr. McCash. Ms. Chinnici-Zuercher asked Ms. Husak if what staff has presented tonight in terms of the resolution of the issues is accurate. Ms. Husak responded that what Council has been provided fulfills all of the conditions of the Planning and Zoning Commission. Mr. McCash agreed to these conditions at the PZC meeting. There are a couple of issues that cannot be addressed, such as storing the patio furniture inside during the off-season. The applicant has agreed to store the furniture during the off-season, and staff has agreed to check on this each year.

Mrs. Boring commented that waiting to submit written comments until the second reading makes it difficult to address them. Given this is a patio request, the timing is important as well. Mr. Masri responded that Mr. McCash submitted documents for the Commission hearings, including parking issues with the back of the Center, access and service to the patio, and other concerns. Ms. Chinnici-Zuercher stated that the access and service issue has been resolved, according to the materials. Ms. Husak added that staff was in contact with Mr. McCash last week. He asked to review the materials submitted to Council and she has not heard anything in response. Ms. Chinnici-Zuercher commented that, according to the PZC minutes, the requests made by Mr. McCash were accommodated. She does not understand why there would be any new issues that Mr. Masri cannot articulate tonight in Mr. McCash's absence.

Mr. Masri noted that one of the issues that they submitted documents about are the ongoing parking violations in the Center that have never been addressed. He provided a document that dates back to a Public Services Committee of Council meeting of 2000 that indicates parking behind the Center is not allowed and is to be addressed. The Law Director's office agreed to look into this and make this an enforcement issue. Ms. Chinnici-Zuercher responded that parking in the back is a Code violation and the Code Enforcement staff have addressed this on a regular basis. Mr. Masri responded that it has never been addressed. Ms. Reader noted that Code Enforcement is an ongoing matter. Tonight's focus relates to the rezoning application under consideration.

Ms. Husak stated that the document submitted by Mr. Masri is already included in the Council packet. Mayor Lecklider stated that this matter was then addressed at the Commission hearing. Ms. Husak reiterated that this issue is not part of this rezoning application, but in order to provide a complete record, staff included the information in the packet. Mr. Masri stated for the record that in previous years, the prior Commission had recommended this issue be addressed before moving forward.

RECORD OF PROCEEDINGS

Held _____

20 _____

Mrs. Boring stated that the tenants at the Center do change over, and there have been issues addressed year to year regarding these complaints. Can Council legally deny a rezoning request based on the existence of these parking issues? These are two separate issues, correct?

Ms. Readler responded that is correct. There are a set of standards for the rezoning that involves the development application before Council. To the extent there are parking or Code Enforcement issues, it is a separate matter that can be addressed separately.

Mr. Masri clarified that the residents are not requesting the rezoning request be denied on this basis; they are requesting the Code violation issues be addressed at the same time as the rezoning. There is correspondence that was sent to some Council Members, but there has been no response despite the requests made since 2000.

Ms. Chinnici-Zuercher asked staff to review the Code Enforcement reports regard to the tenants at the Center and provide an update to Council. This has been an ongoing issue for Code Enforcement, as everyone is aware.

Ms. Grigsby added that there have been complaints in various areas of the Center, and Code Enforcement has followed up on those. Staff will provide an update for the May 21 meeting.

Mr. Masri asked for a copy of those reports as well.

Mayor Lecklider noted that over the past 12-18 months, he has forwarded a number of communications from Mr. Masri to staff for follow-up. It is his understanding that staff has responded to the complaints.

Ms. Grigsby responded that when such correspondence is forwarded to her, she discusses the Code Enforcement matters with Greg Jones. On occasion, he has spoken to the residents directly regarding the concerns – in particular, to Mr. Masri or his wife.

Mr. Masri clarified that the power washing issue was addressed, but the parking issues were never addressed.

Mayor Lecklider indicated that staff's report will provide the information regarding these matters.

Mayor Lecklider asked about the City's practice of contacting the neighbors about a pending rezoning, and whether this did not in fact occur with this rezoning.

Ms. Husak responded that the Code required notification was sent to all residents within 300 feet of the property for the Commission hearing. The applicant did not have a neighborhood meeting with the residents because the application is exactly the same as what was reviewed informally by the Commission in 2010. At that time, there was a three-hour hearing before the Commission. Staff did not suggest that the applicant meet with the neighbors because the application was identical. If no significant changes are made to an application, staff does not request that the applicant meet again with the neighbors.

Vice Mayor Salay recalled that the application in 2010 was viewed favorably by the neighbors. The main issue at that time was related to the outparcel. Using this space as the patio was not an issue at that time.

Ms. Husak responded that Mr. McCash was also involved at that time and has remained in contact with staff regarding this application. He represents many of the neighbors who have had issues with the Center. There was much positive feedback from the neighbors at the 2010 hearing.

Mayor Lecklider added that he does recall there was a difference of opinion among those who lived close to the site and those who lived some distance away.

Ms. Husak agreed, adding that many of the complaints from the close neighbors have centered on the issues raised by Mr. Masri – parking, noise from trash removal at night, etc. It is somewhat difficult to separate them from a potential patio operation.

RECORD OF PROCEEDINGS

Held _____

20 _____

Mayor Lecklider stated that in the presentation, she noted that there was concern that this patio use be for only Mary Kelley's and that the rezoning would not give blanket permission to other tenants in the Center for patio use. He understands that this concern has been addressed in the text.

Ms. Husak responded that the text specifically identifies the tenant space – not the Mary Kelley's Restaurant per se for this patio use. However, by virtue of this rezoning, no other tenant space is entitled to a patio use.

Ms. Readler added that, in fact, this rezoning makes it more difficult to do so. The main patio to the south of Mary Kelley's restaurant was addressed in a settlement entry that indicated the applicant would need a rezoning approval or a conditional use approval to use it. Mr. McCash had requested that the text specify it require a rezoning approval, and this was changed in the text. Therefore, if anyone requests any other patio use in the Center, it would require a full rezoning – with hearings at the Commission and with Council.

Mayor Lecklider noted that meeting the parking requirements may also prevent future patio use, as well.

Mayor Lecklider summarized that the issues reported by Mr. Masri tonight are related, but are not legally and technically related to the rezoning matter. Nevertheless, there is opportunity for further public testimony at the second reading.

Ms. Chinnici-Zuercher stated that in order to avoid a lengthy discussion at the next reading about items unrelated to this case, staff should communicate with Mr. McCash about the issues that are pertinent. Her understanding is that the issues have been resolved by the City agreeing to change the text to accommodate the requests. Other items not related to the case could be put in writing to the City Manager for Code Enforcement staff to address.

Ms. Readler responded that staff will follow up with Mr. McCash. She has had discussions with Mr. McCash, and Jill Tangeman, attorney for the applicant, has had discussions with him as well.

Mayor Lecklider asked why the project will be phased.

Ms. Husak responded that it relates to the desire to determine if it is financially viable before building it out at a later date.

Mayor Lecklider stated, assuming this is approved, is it likely that Phase One would be open for the upcoming season?

Ms. Husak responded that the applicant's representative can address this question.

Jill Tangeman, Vorys, Sater, Seymour and Pease, 52 E. Gay Street, attorney for the applicant noted that she is new to the Mary Kelley's situation, given that there has been communication and issues raised in the past. She was retained for the patio issue and that is all that has been addressed. She has spoken to Mr. McCash on several occasions and, as of last Wednesday, he had indicated that his clients would support passage as an emergency, if the applicant so requested. They have not requested passage by emergency, but this does seem to indicate Mr. McCash's clients' comfort with the application. If there are outstanding issues relative to this patio application, it seems Mr. McCash would have indicated that prior to tonight's hearing. In terms of phasing, it is a monetary issue. Mary Kelley's wants to ensure this is financially feasible before purchasing tables and impacting the landscaping. For this season, they plan to do only the first phase. By the time this rezoning would be in place, the Memorial Tournament would have taken place, which is a busy time for a patio use. They want to have the experience of having the patio over the summer to determine whether they should pursue the second phase.

Mr. Gerber asked about Condition #6 that indicates all service to the patio shall occur from the front of the restaurant tenant space. In reading the PZC minutes, it seems

Held _____

20 _____

the applicant was working to strike a balance with the neighbors to keep the noise level down, and therefore indicated they would serve the patio from the front. He is concerned with servers bringing food through the main doors as patrons are existing and entering.

Ms. Husak responded that, operationally, this is the understanding of how this will work. One option, perhaps not completely explored by the applicant, is whether they could modify the front windows and add a door to the patio. This application would not preclude that from occurring at the front of the building.

Mr. Gerber stated that there is a side door in place that would allow such patio service.

Ms. Tangeman added that the applicant has indicated the front has double doors and it will not be problematic during the first phase. With the second phase, they may consider installing a separate doorway through the glass front. The neighborhood did not want servers using the side door.

Discussion continued about other restaurants with patio service and how their operations work as well as the neighborhood desire for the side door not to be used.

Ms. Tangeman indicated that according to Mr. Kelley, the location of the kitchen makes it preferable for the patio servers to use the front door. Again, the second phase may prompt the need for other options to be explored.

Mr. Reiner asked how quickly this patio could be implemented, i.e. obtaining a building permit, patio permit, etc. should this rezoning be approved.

Ms. Husak responded that they do not need a patio permit, and they may not need a building permit. They would need a Certificate of Zoning Plan Approval, which could be accommodated within a week or two.

Mr. Reiner stated that this will be an enhancement to the restaurant and the overall quality of Dublin, so he wants to ensure this can be implemented quickly.

There will be a second reading/public hearing at the May 21 Council meeting.

INTRODUCTION/PUBLIC HEARING - RESOLUTIONS

Resolution 27-12

Waiving Competitive Bidding Requirements Pursuant to Section 7.04, Paragraph C of the Revised Charter for the Purchase of Alcoholic Beverages for the 2012 Dublin Irish Festival.

Mr. Gerber introduced the resolution.

Ms. LeRoy stated this is an annual request. Coors has again agreed to sponsor the Irish Festival with their Killian's brand. In accordance with this, the beverages are purchased from Superior Beverage, the sole supplier of Killian's in Central Ohio. She offered to respond to questions.

Vote on the Resolution: Mr. Reiner, yes; Mayor Lecklider, yes; Mrs. Boring, yes; Vice Mayor Salay, yes; Mr. Gerber, yes; Ms. Chinnici-Zuercher, yes; Mr. Keenan, yes.

OTHER

- Request for waiver to allow alcohol to be served at 2012 Dublin Irish Festival

Ms. LeRoy stated that this is a request for a waiver to allow alcohol to be served in Coffman Park for the 25th annual Dublin Irish Festival. Events staff works closely with the Police division to ensure proper controls are in place for safety. She offered to respond to questions.

Mayor Lecklider moved approval of the waiver.

Mr. Reiner seconded the motion.

Vote on the motion: Mr. Keenan, yes; Ms. Chinnici-Zuercher, yes; Mr. Reiner, yes; Mayor Lecklider, yes; Mrs. Boring, yes; Vice Mayor Salay, yes; Mr. Gerber, yes.



City of Dublin
Land Use and Long
Range Planning
 5800 Shier Rings Road
 Dublin, Ohio 43016-1236
 phone 614.410.4600
 fax 614.410.4747
 www.dublinohiousa.gov

PLANNING AND ZONING COMMISSION

RECORD OF ACTION

APRIL 12, 2012

The Planning and Zoning Commission took the following action at this meeting:

1. Indian Run Meadows PUD – Shoppes At Athenry – Mary Kelley’s Patio
12-017Z/PDP/FDP **7148 Muirfield Drive**
Rezoning/Preliminary Development Plan/
Final Development Plan

Proposal: A revision within the development text to permit up to 1,680 square feet of outdoor patio area in front of an existing restaurant within the Shoppes of Athenry shopping center. The application also includes all final design details of the proposed patio. The site is located within the Indian Run Meadows Planned Unit Development on the east side of Avery-Muirfield Drive approximately 500 feet north of the intersection with Tara Hill Drive.

Request: Review and approval of a rezoning/preliminary development plan and final development plan application under the provisions of Zoning Code Section 153.050.

Applicant: Pat Kelley, represented by Jill Tangeman, Esq.

Planning Contact: Claudia D. Husak, AICP, Planner II.

Contact Information: (614) 410-4675, chusak@dublin.oh.us

Motion 1– Rezoning with Preliminary Development Plan:

To recommend approval to City Council of this rezoning with preliminary development plan because it meets the applicable review criteria and the development standards in the area with one condition:

- 1) That the development text be amended to delete the language regarding additional patio areas on page 4 and require a rezoning process to permit any additional patio areas.

* Jill Tangeman, Esq, on behalf of the applicant, agreed to the above conditions.

VOTE: 5 – 0.

RESULT: This Rezoning/ Preliminary Development Plan application was approved.

RECORDED VOTES:

Chris Amorose Groomes	Yes
Richard Taylor	Yes
Warren Fishman	Yes
Amy Krumb	Yes
John Hardt	Recused
Joseph Budde	Yes
Victoria Newell	Recused

1. Indian Run Meadows PUD – Shoppes At Athenry – Mary Kelley’s Patio
12-017Z/PDP/FDP **7148 Muirfield Drive**
Rezoning/Preliminary Development Plan/
Final Development Plan

Motion 2– Final Development Plan:

Mr. Taylor made the motion to approve this Final Development Plan application because the proposed modifications are consistent with surrounding development and the applicable review criteria and requirements of the Zoning Code with six conditions:

- 1) That gates be installed for both patio areas; and
- 2) That all outdoor furniture be stored out of sight from November 1st to April 1st unless the furniture is set-up for use, not covered in any way and weather conditions are appropriate for use;
- 3) That the patio fence be removed if the restaurant discontinues use of the space;
- 4) That the applicant work with Planning to decrease the patio area along the sidewalk to provide additional sidewalk area;
- 5) That the plan be revised to place the flower boxes inside the fence; and
- 6) That all service to the patio occur from the front of the restaurant tenant space.

* Jill Tangeman, Esq, on behalf of the applicant, agreed to the above conditions.

VOTE: 5 – 0.

RESULT: This Final Development Plan application was approved.

RECORDED VOTES:

Chris Amorose Groomes	Yes
Richard Taylor	Yes
Warren Fishman	Yes
Amy Kramb	Yes
John Hardt	Recused
Joseph Budde	Yes
Victoria Newell	Recused

STAFF CERTIFICATION


Claudia D. Husak, AICP
Planner II

PLANNING AND ZONING COMMISSION

MEETING MINUTES

APRIL 12, 2012

**1. Indian Run Meadows PUD – Shoppes At Athenry – Mary Kelley’s Patio
12-017Z/PDP/FDP
7148 Muirfield Drive
Rezoning/Preliminary Development Plan
Final Development Plan**

John Hardt and Victoria Newell recused themselves from this case.

Chair Chris Amorose Groomes introduced this request for review and approval of a revision of the development text to permit up to a 1,680-square-foot patio area in front of an existing restaurant. She said that the application also includes all final design details of the proposed patio. She said the site is located within the Indian Run Meadows Planned Unit Development on the east side of Muirfield Drive, north of the intersection with Tara Hill Drive. Ms. Amorose Groomes said the application contains two components, and the Commission will have to make two motions. She said the preliminary development plan requires the Commission to make a recommendation to City Council and the Commission is the final authority on the final development plan. She swore in those intending to address the Commission on this case including the representative for the application, Jill Tangeman, Vorys, Sater, Seymour, and Pease, and City representatives.

Jennifer Readler provided a summary of two pieces of litigation in the past involving this shopping center. She said the first case, filed by the City involved an injunction, enjoining the use of the patio space existing today to the south of the Mary Kelley’s tenant space. She said in that lawsuit, the parties entered into a settlement and as part of that settlement entry it if outdoor seating cannot be set up on that specific patio area unless conditional use or rezoning approval is obtained. Ms. Readler said the entry only spoke to that limited piece of the parcel.

Ms. Readler said the second case was more recent and it involved an outparcel that was disapproved by the Commission in 2006-2007. She said there was a 2506 case filed by the center owner. She said the Municipal Court reversed the Commission’s decision and the City of Dublin appealed that to the Court of Appeals who reversed the Municipal Court remand. She said the Municipal Court, in turn remanded it to the Commission. She said around July 2010, there was a very extensive hearing where a proposed settlement was discussed at length to dismiss the case and that involved all kinds different of components. Ms. Readler said that City Council decided at that point that it was not feasible to complete those settlement negotiations, and so they were called off and nothing further happened in the case until recently when the landowner came through again with a proposed space in front of the Mary Kelley’s tenant space, which had been previously discussed as one component of a settlement agreement in July 2010. She said they filed a voluntary dismissal of the 2506 case on March 29th and then filed this application which is primarily just related to that patio use in front of the Mary Kelley’s tenant space.

Ms. Readler said that the outparcel litigation really had nothing to do with the patio use, but they used patio seating in front of Mary Kelley’s as a way to possibly settle the case. She said this was a completely new application and there has not been a court case involving this outdoor seating in front of this tenant space.

Warren Fishman asked what was the negotiation about the space where the original patio was to be located. He asked if it could be developed now.

Ms. Readler explained that the text presently says that they have to get a conditional use approval for outdoor seating, so they would have to come back before the Commission. She said that they have had

discussions with the residents' attorney and the applicant's attorneys, so she thought they were going to suggest striking that section in the text so that if they want to come through with additional patio space anywhere else on the site, including that existing patio space to the south, they would have to come in for a full rezoning.

Mr. Fishman asked if they could build on the space that originally was to be the patio.

Claudia Husak said they could only build on it if they came back to the Commission for an amended final development plan as well as an amendment to their parking requirements. She said they do not have enough parking on their site to allow additional use without any kind of relief from the Commission.

Mr. Fishman said that space then, would never be a building or patio unless they came in for an approval.

Ms. Husak presented a site map. She said there is an amendment proposed to the development text that would permit 1,680-square feet of patio area by right for this particular tenant space. She said another portion of the application; the final development plan shows all of the patio details. She said the development text addresses the size, location, amenities, and the operational details of the patio. She presented picture of Mary Kelley's with the patio proposed on either side of the main entrance in the landscaped area.

Ms. Husak explained that the final development plan consists of two phases for the patio, but the Commission is asked to eventually approve Phase II, knowing that the patio will be built in two phases. She said there is a patio portion proposed north of the main entrance and a portion south of the main entrance. She said the two trees that exist within that area will be maintained and intended to be incorporated into the patio. She said a mixture of four, two, and three patron seating areas are proposed. Ms. Husak said the patio is proposed to be enclosed with a fence. Ms. Husak said the final development plan also includes two small gates for the area, which is not fully enclosed that is the existing patio area. She said due to many concerns of residents about people using that space to smoke, talk, or loiter the applicant has agreed to fully enclose that area with two small portions of a fence.

Ms. Husak presented the patio amenities that are described in the proposed development text amendment and included in the final development plan. Ms. Husak said that the fence proposed is the same as is used at the Matt the Miller's Restaurant. She said the applicant is also proposing planters to be hung off the patio railing and planters with flowers landscaping within the patio area. She said black wrought iron chairs are proposed.

Ms. Husak said that Planning proposes two conditions on the final development plan, one about the offsite storage of patio furniture during off seasons and the eight-foot gaps on either side be fenced in or that gates be installed in those two areas. She said Planning has no conditions proposed for the development text.

Jill Tangeman, Vorys, Sater, Seymour, and Pease, representing the applicant said that they were trying to strictly limit this to the patio area. She said that they had discussed with Tom McCash two amendments to which they agreed that any future patio areas would have to come to the Commission as a rezoning and that all access to this patio is through the front door.

Ms. Amorose Groomes invited comments from the public regarding this application.

Tom McCash, 55 South High Street, Suite 210, representing 27 adjoining property owners, said that they had tried to reach a compromise on this issue, addressing their concerns raised in 2010. He said the residents were concerned with the use of this site currently and with any future rezoning effecting their property values and quality of life. He said in the spirit of compromise and in trying to move this forward they have looked at the proposed development text, and the sentence that provides any other patio areas may be permitted through the approval of a conditional use by Planning and Zoning Commission according to the Zoning Code, they have asked the applicant if they would agree to strike the sentence

and they have agreed to that particular provision. Mr. McCash said his clients are happy with having the provision that would in essence require that any other outdoor seating on this site would have to come through as a rezoning and they could address those particular issues at that time.

Mr. McCash said another matter they had concern with on the final development plan proposed is access, and how that particular outdoor patio area is served. He said the on the plan in both Phase I and II, two gates are proposed in the formal patio area designation. He said there has been a consistent problem in the past where that area has been used for access from the bar for smoking and loud conversations which creates problems for the neighbors because it is a very cavernous, noisy area. He said it has been a consistent problem with the conditional use applications before the Commission. Mr. McCash said that they did not want to see that area being used now for service to the patio area for wait staff and bartenders with plates, dishes, and things like that. He said as long as there is a condition with the final development plan that the patio areas are only serviced from the front entry, which Mr. Hammond and Ms. Tangeman have agreed is the way they are going to serve the patio, and not used for service of the patio, they would be fine with it.

Warren Fishman said that he thought this would be a wonderful addition to the shopping center. He asked if music and so on would be allowed on the patio.

Ms. Husak explained that the development text specifically prohibits it.

Mr. Fishman said he felt that it should be allowed, only because they face into the shopping center and it could do nothing but enhance the value of the center. He pointed out that at the Shoppes at River Ridge, there was music all the time, and it was very pleasant. He said this patio will add vibrancy to the center and he could not see how it would affect the neighbors at all to have music in the center.

Ms. Husak said that it is in the details of the patio as proposed in the development text, that music is specifically prohibited with the idea that the patio area is supposed to be as low-impact as possible toward the adjoining residences.

Mr. Fishman said that Tucci's always had music on their patio, and on the front patio here, it was far away from the neighbors. He said he hesitated to prohibit that here.

Joe Budde said he was empathetic to the neighbors' situation, but he applauded Mr. McCash for working to try to come up with some compromise that appears to be acceptable. He said he thought it would be a nice addition, but he did like the conditions that will help the neighbors feel more secure that there will be the least amount of impact to them as possible. Mr. Budde said he supported it and liked the quality of what is being done.

Amy Kramb suggested that the standard condition language used for previously approved patios regarding the use of outdoor furniture be added for consistency. She asked about the size of the two gates used to close the eight-foot gaps in the fence. She was concerned that an eight-foot gate would swing into the walkway.

Ms. Husak explained that the details had not been reviewed by Planning. She said that the intention was that it might be a four-foot gate and two additional pieces of fence. She said a sidewalk, eight-feet or more went into the restaurant.

Ms. Kramb said because there was not a large waiting area, people would be waiting outside. She said she preferred that the gates opened inward.

Ms. Husak said she was concerned that there might be a Code requirement that the gates open outward to allow people to leave faster.

Ms. Amorose Groomes said that the condition could be made that the gate would be subject to approval by staff.

Ms. Kramb asked about the timelines for Phase I and II. She asked if Phase II was an option that might not be built.

Ms. Tangeman said it was a financial matter at this time. They did not want to remove the landscape beds and tables if the patio was not successful for some reason. She said it was an option.

Ms. Kramb asked if tables would be added to Phase I rather than spending money on Phase II.

Ms. Tangeman said they could only do what was shown for Phase I, unless they went to Phase II.

Richard Taylor said he agreed that the condition about the tables and chairs should be consistent with the condition on previously approved patios. He did not think music should be permitted and that the text should remain as it is proposed. He said he was fine with two patios. He pointed out there was six feet from the back of the curb to the fence, a light pole, and flower boxes, so there was plenty of space for people to walk. Mr. Taylor suggested more might be better. He noted that including Phase II, at build out there will be 1,680 square feet of seating area, about 25 square feet per seat for 67 seats. He said if this were inside the building, the Building Code would allow as low as 15 square feet, which would be 112 seats. He said there was plenty of room to move the fence away from the curb to make the walkway a little wider and still have more than enough room for 67 seats. He said he wanted it pushed back to provide plenty of room.

Ms. Kramb recalled that for other patio applications, that the Commission has asked that the flower boxes hang to the inside, to make sure there is that extra space.

Mr. Taylor said he did not think it would be as pretty that way.

Ms. Amorose Groomes recalled that Sunny Street Café was required to hang the planters on the inside of the fence. She said she liked it that way.

Mr. Taylor pointed out that the patio space at Sunny Street Café was really limited and underneath the canopy of the building. He said he would like to see the fence moved back a foot or two away from the curb.

Gary Schmidt, Landscape Architect, Floyd Browne Group, 3763 Columbus Pike, Delaware, said that they looked at making it wider, and it did not work as well to get the tables in there, however, they can take another look at it. He said that five feet is the minimum, and they are over that.

Mr. Taylor said the difference here is that it was originally designed as something of a gathering area in front of the whole center, and now they are privatizing that area. He said by making the sidewalk wider, he thought a little of that would be given back to the public.

Ms. Tangeman said they would be happy if it was left to staff. She said that Mr. McCash had mentioned there may be an ADA issue if the fence is moved. She agreed to a condition that they work with Planning with the location of the fence.

Mr. Taylor noted that on the top left corner of the drawing where the fence angled back towards the business to the north, in Phase II, the fence was moved and straightened, but it was not shown on the other drawing. He said that area on the other drawing was shown as becoming paving. He said the fence in Phase I and II were identical, except for that. He suggested the fence could be built in Phase I instead of moving it so that they would be done with it.

Mr. Taylor noted that at the very end of the development text, there were two typos. He said on Page 4 of 4, the proposed development text #2, the last sentence, 'No addition' should be 'No additional lighting and the end of the sentence, 'Patio operations shall ~~seize~~ cease at 11 p.m.

Ms. Amorose Groomes said she would like the flower boxes moved to the interior of the patio to provide more clearance for the exterior sidewalk.

Mr. Fishman said he was very happy to see that Mr. McCash and Mary Kelley's work out a compromise. He said regarding the music, if it affects the neighbors, he withdrew his suggestion.

Motion #1 and Vote – Rezoning with Preliminary Development Plan

Mr. Taylor made the motion to recommend approval to City Council of this rezoning with preliminary development plan because it meets the applicable review criteria and the development standards in the area with one condition:

- 1) That the development text be amended to delete the language regarding additional patio areas on page 4 and require a rezoning process to permit any additional patio areas.

Mr. Fishman seconded the motion.

Ms. Tangeman, on behalf of the applicant, agreed to the above condition.

The vote was as follows: Ms. Kramb, yes; Mr. Budde, yes; Ms. Amorose Groomes, yes; Mr. Fishman, yes; and Mr. Taylor, yes. (Approved 5 – 0.)

Motion #2 and Vote – Final Development Plan

Mr. Taylor made the motion to approve this Final Development Plan application because the proposed modifications are consistent with surrounding development and the applicable review criteria and requirements of the Zoning Code with six conditions:

- 1) That gates be installed for both patio areas;
- 2) That all outdoor furniture be stored out of sight from November 1st to April 1st unless the furniture is set-up for use, not covered in any way and weather conditions are appropriate for use;
- 3) That the patio fence be removed if the restaurant discontinues use of the space;
- 4) That the applicant work with Planning to decrease the patio area along the sidewalk to provide additional sidewalk area;
- 5) That the plan be revised to place the flower boxes inside the fence; and
- 6) That all service to the patio occur from the front of the restaurant tenant space.

Mr. Fishman seconded the motion.

Ms. Tangeman, on behalf of the applicant, agreed to the above conditions.

The vote was as follows: Ms. Amorose Groomes, yes; Ms. Kramb, yes; Mr. Budde, yes; Mr. Fishman, yes; and Mr. Taylor, yes. (Approved 5 – 0.)