

**CAMPBELL COUNTY & MUNICIPAL PLANNING & ZONING COMMISSION
MINUTES OF THE JULY 10, 2018 MEETING**

MEMBERS PRESENT:

Mr. C J Peters
Mr. Edward Stubbs
Mr. Michael Williams, TPO
Mr. Larry Barrow, Vice Chair
Mr. Justin Verst, Chair

STAFF PRESENT:

Ms. Cynthia Minter, Director
Mr. Kirk Hunter, Principal Planner
Mr. Matt Smith, Legal Counsel
Ms. Stephanie Turner, Secretary

MEMBERS ABSENT:

Mr. Dennis Bass
Ms. Sharon Haynes
Mr. Mark Turner

STAFF ABSENT:

Mr. Verst called the meeting to order at 6:21 PM. The meeting was delayed while we awaited the arrival of the applicant for the case to be heard this evening. Following the Pledge of Allegiance, Mr. Verst called for a roll call. The roll call found a quorum was present. Mr. Verst asked if everyone had reviewed the June 12, 2018 meeting minutes and if there were any additions or corrections. There being none, Mr. Verst called for a motion. Mr. Williams made a motion to approve the June 12 meeting minutes as submitted. Mr. Peters seconded the motion. Mr. Verst called for a roll call vote. A roll call vote found Mr. Peters, Mr. Stubbs, Mr. Williams and Mr. Barrow in favor of the motion. Mr. Verst abstained. No opposition. Motion passed.

Mr. Verst introduced the first case on the agenda as case #198-18-ZMA-01, a proposed zone map amendment from the Residential One-Gh (R-1Gh) Zone to the General Commercial (GC) Zone for the property located at 2401 Alexandria Pike located within the City of Southgate. Mr. Verst called Mr. Hunter to present the staff report.

FILE NUMBER:	198-18-ZMA-01
APPLICANT:	Jazzman Inc.
LOCATION:	2401 Alexandria Pike, Southgate, KY.
REQUEST:	A proposed Zone Map Amendment from the Residential-One Gh (R-1Gh) Zone to the General Commercial (GC) Zone.

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 applicant is requesting a zone change to General Commercial (GC). Additionally, the applicant is requesting approval of a conditional use permit to allow outdoor seating at the establishment.

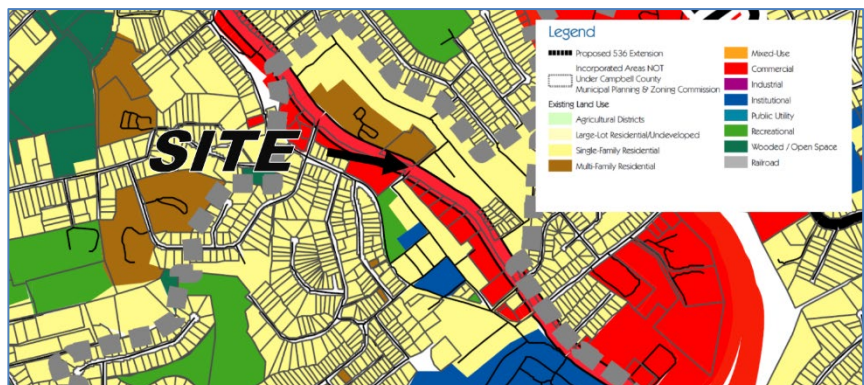
Notice of this hearing was published in the Campbell County Recorder and signs were placed on site in accordance with Article 17 of the City of Southgate Zoning Ordinance.

Request for Zone Map Amendment: R-1Gh to GC



Considerations:

1. The site is adjacent to a General Commercial (GC) zone approximately thirteen (13) acres in size.
2. The site is currently zoned Residential-One Gh (R-1Gh) as defined in the Southgate Zoning Ordinance, Article X, Section 10.4.
3. Adjacent zones are:
 - a. Residential-Three (R-3) to the North
 - b. Residential-One Gh (R-1Gh) to the East
 - c. General Commercial (GC) to the South and West
4. The 2008 Campbell County Comprehensive Plan specifies the current land use as Commercial for this site. The Future Land Use Plan identifies this area of Southgate as Urban Mixed Use.



5. The Southgate Zoning Ordinance defines the following permitted uses for the R-1Gh zone (section 10.4) and GC zone (section 10.9) respectively:

Permitted Uses	R-1Gh
-----------------------	--------------

1. Single-family dwellings (detached).

Permitted Uses	GC
-----------------------	-----------

1. Advertising agency
2. Antique shop
3. Apparel shop
4. Art Supplies
5. Automobile, motorcycle, and truck sales, new or used.
6. Automobile and truck rentals
7. Automobile parts and accessories store, new.
8. Automotive service and repair (providing that all business activities are conducted within a completely enclosed building).
9. Bakery and bakery goods store provided the products are sold exclusively on the premises.
10. Banks and other financial institutions including savings, loan and finance complies [sic], with drive-in windows.
11. Barber Shops
12. Beauty Shops
13. Billiard or pool hall
14. Boat and marine sales and service, new and used
15. Book, stationary or gift shop
16. Bowling Alley
17. Business and professional colleges
18. Bus terminal
19. Camera and photographic supplies
20. Candy store, soda fountain, ice cream store, except drive-ins.
21. Carpet and rug store
22. Clinics – medical and dental
23. Clubs (including businessman's YMCA-YWCA)
24. Delicatessen
25. Department store
26. Drug Store
27. Dry cleaning and laundry pick-up station
28. Dry cleaning establishments
29. Eating and drinking places, including drive-ins
30. Employment agencies
31. Florist Shop
32. Food services and supermarkets
33. Funeral homes
34. Furniture store, including upholstery
35. Garden supplies
36. Glass, china or pottery store
37. Haberdashery
38. Hardware Store

39. Health Spas
40. Hobby shop
41. Household and electrical appliance store including incidental repair
42. Interior decorating studio
43. Jewelry store, including repair
44. Laboratories – medical and dental
45. Laundromats and self-service washing and drying
46. Laundry (all types)
47. Leather goods and luggage store
48. Library
49. Locksmith shop
50. Mobile home and trailer sales, rental and service
51. Music, musical instruments and records including incidental repair
52. Newspaper offices, including printing
53. Office appliances and supply
54. Offices
55. Off-street parking lots and garages
56. Opticians and optical goods
57. Package liquor and wine store
58. Paint and wallpaper store
59. Pawn shop
60. Pet shop, excluding boarding and outside runs
61. Plumbing sales and repair
62. Police and fire stations
63. Post office
64. Radio and television store (including repair)
65. Self-service (providing that all repair work except that of a minor nature is conducted within a completely enclosed building.
66. Shoe store and shoe repair
67. Sporting goods
68. Studios for professional work or teaching of any form of fine arts, photography, music, drama, or dance
69. Tailor shop
70. Taxi terminal
71. Theater (excluding drive-in)
72. Toy store
73. Travel Bureau
74. Variety store, including notions and "Five and Ten" stores

6. The City of Southgate Zoning Ordinance defines the zone requirements for the R-1Gh zone (section 10.3):

<u>Zone Requirements</u>	<u>R-1Gh</u>
Minimum Lot Area	Five thousand (5,000) square feet
Minimum Lot Width at Minimum Setback	Fifty (50) feet
Minimum Front Yard Depth	Twenty-five (25) feet
Minimum Side Yard Depth	Five (5) feet
Minimum Rear Yard Depth	Twenty-five (25) feet
Maximum Building Height	Thirty-five (35) feet

7. The City of Southgate Zoning Ordinance defines the zone requirements for the GC zone (section 10.9):

<u>Zone Requirements</u>	<u>GC</u>
Minimum Lot Area	Ten thousand (10,000) square feet. In the case of this zone, more than one principal building, as defined herein, may be constructed on one lot.
Minimum Lot Width at Building Setback	Seventy (70) feet
Minimum Front Yard Depth	Fifty (50) feet
Minimum Side Yard Depth	No restrictions, except when adjacent to a street, road, highway or other right-of-way, when the required width shall be the same as required for a minimum front yard depth in this zone. When buildings abut each other, firewall construction, as required by the City's building code, shall be required. In the event a side yard is provided, it shall never be less than fifteen (15) feet
Minimum Rear Yard Depth	Fifteen (15) feet
Maximum Building Height	Thirty-five (35) feet

8. Article 17 of the Southgate Zoning Ordinance identifies that before any map amendment is granted, the Planning and Zoning Commission, must:

a. find that the amendment is in agreement with the adopted comprehensive plan

or

b. in the absence of such a finding, that one or more of the following apply

- That the original zoning classification given to the property was inappropriate or improper; and
- That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the comprehensive plan and which have substantially altered the basic character of such area.

Staff finds that the original zoning classification given to this property was improper and this zone change is consistent with the Comprehensive Plan

9. Article 17 of the Southgate Zoning Ordinance also states that the zoning map or maps shall not be amended, changed, or modified in such manner as to create a freestanding zone of less than five (5) acres.

Staff notes that this site is less than five (5) acres. However, it is adjacent to an existing GC zone of approximately thirteen (13) acres. This zone change will not create a freestanding zone of less than five (5) acres.

Staff Recommendation:

The Campbell County & Municipal Planning and Zoning Commission approve the proposed Zone Map Amendment from R-1-Gh to GC and refers their recommendation to the City of Southgate for further action.

Bases for Recommendation:

1. Notice has been given regarding the Zone Map Amendment consistent with Article 17 of the Southgate Zoning Ordinance.
2. As defined in Article 17, the Planning Commission has the authority to review such Zone map Amendments and provide recommendations to the legislative body.
3. The proposed Zone Map Amendment is consistent with the recommendations of the 2008 Campbell County Comprehensive Plan Update, the 2015 Goals and Objectives, the Campbell County Subdivision Regulations and City of Southgate Zoning Ordinance.

Mr. Hunter advised the Commission that the first action needed tonight was a determination on the zone map amendment. The remainder of the information will be discussed after a motion to either approve, approve with conditions or deny the zone map amendment. Mr. Hunter asked if there were any questions on the zone map amendment that he could answer for the Commission.

Mr. Verst reminded that for the zone map amendment the Commission must find that the zone map amendment is in agreement with the adopted comprehensive plan OR that one or more of the following apply:

- That the original zoning classification given to the property was inappropriate or improper; and
- That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the comprehensive plan and which have substantially altered the basic character of such area.

Mr. Verst asked if there were any question by the Commission for staff. The Commissioners agreed that it seemed like a straight forward request and they had no questions. With that, Mr. Verst asked the applicant to step forward and identify himself for the record.

Mr. Rick Webster, 2325 MacArthur Lane, Newport stepped forward. Mr. Webster stated the building was originally constructed as a bar in 1939. There was an addition to the structure sometime after that. Mr. Webster explained that he is interested in obtaining a conditional use permit to allow for outdoor seating. While this is not allowed in a residential zone, if the zone change to GC Zone is approved, he can obtain his conditional use permit.

Mr. Verst interrupted Mr. Webster at this point. Mr. Verst advised that he didn't want the Commission to be distracted with the conditional use permit at this point. Right now they needed

to make a determination on the appropriateness of the zone map amendment. Mr. Verst asked Mr. Webster to hold his further comments until the zone map amendment has been approved.

Ms. Minter clarified for the Commission that the motion would be to approve a recommendation to the City of Southgate to adopt the zone map amendment. The City would hold two readings of the proposed zone map amendment before the change can be adopted. The City can accept the Commission's recommendation and agree or they can determine the zone is inappropriate for this location.

Mr. Verst asked the Commission if they had any comments, questions or concerns with the request presented. The Commission felt the request was clear and concise and that no discussion was needed. Mr. Verst called for a motion. Mr. Barrow made a motion on case #198-18-ZMA-01, a proposed zone map amendment from the Residential One-Gh (R-1Gh) Zone to the General Commercial (GC) Zone for the property located at 2401 Alexandria Pike located within the City of Southgate. His motion was to make a recommendation to the City of Southgate to adopt the zone map amendment from the R-1Gh Zone to the GC Zone. The basis of his motion was that the zone map amendment is clearly in agreement with the adopted comprehensive plan as well as information presented by staff and testimony of the applicant. Mr. Verst asked if there were any questions or comments regarding the motion. There being none, Mr. Verst called for a second. Mr. Stubbs seconded the motion. Mr. Verst announced there was a motion and a second. He again asked if there were any questions or comments regarding the motion. There being none, Mr. Verst called for a roll call vote. A roll call vote found Mr. Peters, Mr. Stubbs, Mr. Williams, Mr. Barrow and Mr. Verst in favor of the motion. No one abstained. No opposition. Motion passed.

Mr. Hunter continued with the introduction of the next request from this applicant as case #198-18-CUP-02, a request for a Conditional Use Permit for outdoor seating at this same location of 2401 Alexandria Pike located within the City of Southgate.

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

Considerations of Conditional Use Permit: Outdoor Seating

1. 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 approval of the accompanying Zone Map Amendment 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)
2. A review of the public records indicates there are no previous conditional uses or variances granted by the Board of Adjustment for this site.
3. 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;
4. 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 Planning and Zoning Commission 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.

5. 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.

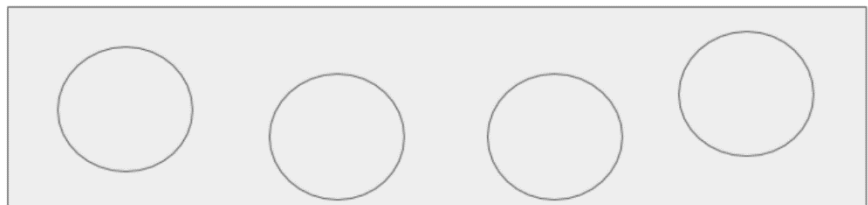
If the landowner is not complying with all of the conditions listed on the conditional use permit, the Zoning Administrator shall report the fact in writing to the Chairman of the Board of Adjustments. The report shall state specifically the manner in which the landowner is not complying with the conditions 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



~10ft



~35ft

6. The plans submitted by the applicant reflect the following:
- 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.
 - Site plan does not include signage
 - The total indoor seating capacity is seventy (70).
7. 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.*
8. 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, 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 stated that the applicants request is for sixteen (16) to twenty-two (22) seats which is approximately four (4) tables. The applicant has also stated that he will place a barrier between the seating area and the sidewalks which is part of the conditional use permit. Per Southgate's Zoning Ordinance, the maximum outdoor seating area size is forty (40%) percent of the total capacity of the structure. The structure has a maximum capacity of seventy (70) seats meaning the restriction to no more than forty (40%) percent would equal twenty-eight (28) outdoor seats. The applicant is below that capacity.

Mr. Hunter concluded his presentation by asking if there were any questions of staff. Mr. Verst asked if there were any restrictions regarding outdoor sound, music or noise levels at night. Mr. Hunter replied there were restrictions in the Southgate Zoning Ordinance. When Southgate adopted the outdoor seating in the GC Zone, they included restrictions:

- a. Such area shall be designed to clearly identify the limits of the outdoor seating area and be used only for sit-down patrons;
- b. Such are be limited in use from 10:00 AM to 10:00 PM Sunday through Thursday and from 10:00 AM to 11:00 PM Friday through Saturday;
- c. Such area shall not exceed forty (40) percent of the maximum seating capacity of the total seating area;
- d. Entertainment, including live or electronic media, shall not be permitted outdoors between 9:00 PM and 10:00 AM Sunday through Thursday and from 10:00 AM to 10:00 PM Friday through Saturday;
- e. Such designated area shall not be located within the minimum required front, side, or rear yard, except where a variance has been approved;
- f. Such designated area shall not encroach upon approved landscaped or parking areas, except where a variance has been approved.

Mr. Verst asked if there were any other questions for staff. Mr. Peters asked if the TV would be a permitted use in that case. Mr. Hunter stated that they state in their ordinance "live" or "electronic" media so that may include the TV. There are other nuisance laws, if the volume was too loud, that exist in addition to the Zoning Ordinance. The Conditional Use Permit actually gives them the ability to have the electronic media playing, but if it was a nuisance and people within

earshot were capable of hearing it, the City Ordinances would allow for them to be found in violation of those separate ordinances.

Mr. Smith asked if the authority for the Commission to hear a Conditional Use permit rather than the Board of Adjustment was something that Southgate delegated to us under their ordinances. Ms. Minter stated that the Commission would be granted this privilege in we are in consideration of a Site Development Plan. However, you are correct that it is not granted in association with a Zone Map Amendment. If we want to look at this as the presentation of a site plan, we would have authority to hear this request. Mr. Smith stated it is his opinion that this request is a Zone Map Amendment and not a Site Development Plan and would need to be heard by the Board of Adjustment. Ms. Minter agreed. Mr. Smith stated the Board was the best forum for its consideration and, in case it were to ever be challenged, it is more relevant if it is decided by the Board. Ms. Minter agreed.

Mr. Verst stated that made sense. Mr. Verst asked if the Commission should make a motion to withdraw this request. Ms. Minter stated they would need to close this case without a decision. Staff will place it on the agenda for the Board and re-advertise the legal notice. Mr. Verst stated, for the applicant's benefit, the Zone Map Amendment has been approved and is going to move on to the City Council for their consideration. They will need multiple meetings to adopt the Zone Map Amendment. The request for the Conditional Use Permit is going to be moved to the Board of Adjustment. It is too late to be added to the July meeting set for next week, but can go on the August agenda. It can be heard in August and still be within the timeline of the City's approval of the Zone Map Amendment so your plans for outdoor seating will not be impacted by the approval of the Conditional Use Permit.

With that, Mr. Verst asked for a motion to withdraw case #198-18-CUP-02, a request for a Conditional Use Permit for outdoor seating at the location of 2401 Alexandria Pike within the City of Southgate or rather to close that file number without a decision. Mr. Williams asked if the Board of Adjustment would then decide on the appropriateness of the Conditional Use Permit. Legal counsel and staff concurred that was correct. Ms. Minter added that if a Stage 1 Plan had been attached to the Zone Map Amendment, the Commission would have had the authority to hear and decide on the Conditional Use Permit. Since none was attached, this is considered an independent request and would be decided by the Board. Staff apologizes for this oversight.

Mr. Verst asked anyone wanted to make this motion. Mr. Peters made a motion to withdraw and/or close without any action the request known as case #198-18-CUP-02, a request for a Conditional Use Permit for outdoor seating at the location of 2401 Alexandria Pike within the City of Southgate. Mr. Verst asked if there were any questions or comments on the motion. There being none, Mr. Verst called for second. Mr. Barrow seconded the motion. Mr. Verst called for a roll call vote. A roll call vote found Mr. Peters, Mr. Stubbs, Mr. Williams, Mr. Barrow and Mr. Verst in favor of the motion. No one abstained. No opposition. Motion passed.

Mr. Hunter conferred with the applicant to advise of the Board of Adjustment meeting in August. Mr. Verst stated that the applicant would need to come back to this location, but in front of a different board, in approximately five (5) weeks to request approval of his Conditional Use Permit.

Mr. Verst noted the next item on the agenda was to approve of training obtained by the Commission, Board of Adjustment and staff. Ms. Minter presented the following training for approval by the Commission:

- P&Z:
 - Larry Barrow (0.5 Hr.) Kentucky League of Cities: “Service Animals” & “Shades of Green – Urban Forestry in Ky. Cities” Articles (0.5 hr.)
 - Sharon Haynes (8.0 Hrs.) Kentucky League of Cities: HB 55 Planning & Zoning Training (8.0 Hrs.)
 - Michael Williams (8.0 Hrs.) Kentucky League of Cities: HB 55 Planning & Zoning Training (8.0 Hrs.)
- Staff:
 - Cindy Minter (5.5 Hrs.) Louisville: Mayor’s 2nd Annual Land Use & Development Forum (5.5 Hrs.)

Mr. Verst called for a motion to approve training. Mr. Peters made a motion to approve the training identified above. Mr. Stubbs seconded the motion. Mr. Verst called for a roll call vote. A roll call vote found Mr. Peters, Mr. Stubbs, Mr. Williams, Mr. Barrow and Mr. Verst in favor of the motion. No one abstained. No opposition. Motion passed.

Director’s Report

Ms. Minter advised the Commission that she would not be available for a Commission meeting in August. If it pleased the Commission, staff would like to delay the topic of campers/recreational vehicles until the September meeting. The Commissioners checked their calendars and advised they would be available for a September meeting. Ms. Minter had no other items for the Commission to discuss.

Mr. Smith asked to be recognized in order to reply to a question that was presented at the June meeting. Mr. Verst recognized legal counsel. Mr. Smith explained that there are attorneys, Mr. David Pike being one and I believe Mr. Garry Edmondson holds this opinion as well. I hold a different opinion. When a speaker approached the Commission or the Board with a statement such as “I am acting as a representative for the applicant.” If you are not an architect, engineer or buyer that is not the actual applicant, or if it has to do with a company and they are not a member of the company, there is an argument that this should be construed as practicing law without a license. There is an ethics committee as part of the Kentucky Bar Association that states this may be the unlicensed practicing of the law. If the applicant is not there, they will stop the application from moving forward and may advise the speaker that they are performing an unlicensed practicing of law. Mr. Smith explained that the Kentucky Bar Association is the agency that oversees the unauthorized practicing of law. It is the County Attorney that you would file a grievance or complaint if you believe someone is practicing law without the proper licensure. This is considered to be a misdemeanor offense.

Mr. Smith continued that he could not find anywhere in KRS 100 where the Planning Commission should be acting as the gate keeper to determine if somebody is or isn’t engaged in the unauthorized practicing of law. I also feel it creates a financial burden on the applicant. I don’t think it is our duty or within our jurisdiction to stop someone from speaking based on a belief that they are or are not engaged in the unauthorized practicing of law. That is not our job; not what we are here to do; and I would not recommend any practice where we did that. Mr. Smith could understand that some may see a potential for “what if we are wrong”. It creates an appeal issue. On the other hand, I can see some due process issues. If we have six (6) items on the agenda, and we don’t slot people accordingly, and their attorney is sitting in the audience with them at \$200 plus dollars an hour waiting for 6 hours, we may have to change the way we do business.

At the end of the day, my opinion is that this is not something for us to determine. We should not stop people from speaking. If someone believes that a person is engaging in the unauthorized practicing of the law, they can report this to the Kentucky Bar Association or the County Attorney. It is their jurisdiction to act on it. Not us.

Mr. Williams stated he felt their view was a little extreme. Mr. Smith stated they may be doing it for some of their Board of Adjustment meetings. They may be seeing it around. I don't view anyone who sits here to do anything other than the area of application of the Zoning Ordinance and to act on zoning issues. I think the way we have been handling things is the appropriate way to deal with our cases and that we should continue to do so. I don't see any reason to change our practices. Mr. Verst commented that he was at Covington Board of Adjustment meeting last month and they wouldn't let some poor guy hear his case because he did not have an attorney present. The guy owned the house, but it was legally registered under a corporation name and they said you don't have an attorney with you so we can't hear your case. There was an attorney in the audience who agreed to act as his attorney so that they could proceed with the case. Mr. Smith reiterated that neither the Commission nor the Board have the authority to determine who is or is not practicing law without a license so let's just keep doing what we have been doing.

Mr. Verst asked the Commission if there were any other comments or points for discussion. There being none, Mr. Verst asked for a motion to adjourn. Mr. Barrow made to adjourn the meeting. Mr. Peters seconded the motion. An oral vote found all in favor, none opposed and none abstained. Motion passed. Meeting adjourned at 6:51 PM.

Respectfully Submitted,

Approved:

Cindy Minter
Director

Justin Verst
Chair