

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

February 6, 2007

7:30 p.m.

Present at the 7:30 p.m. meeting were:

Commissioners: James Bowman
Angela Dressel
Chris Hamilton
Mary Lou McDowell
Joe Russell

Absent: Ralph Begleiter
James Soles

Staff Present: Roy H. Lopata, Planning Director

Vice Chairman Bowman called the Planning Commission meeting to order at 7:30 p.m.

1. THE MINUTES OF THE JANUARY 2, 2007 PLANNING COMMISSION MEETING.

The minutes of the January 2, 2007 Planning Commission meeting were approved and received.

2. REVIEW AND CONSIDERATION OF AN AMENDMENT TO THE ZONING CODE INCREASING SPECIAL USE PERMIT FEES.

Mr. Lopata summarized his report to the Planning Commission which reads as follows:

As a follow-up to the recent Planning Commission recommendations and City Council approvals of increases in the City's fees for Subdivision and Development Regulations applications and stormwater management facilities maintenance, the Planning Department has provided below information concerning possible increases in the City's special use permit application fees. The suggested special use permit application fee revisions, in addition, will help defray some of the costs associated with the changes to the City's procedures adopted by City Council at its January 8, 2007 meeting that require special use permit hearing notification mailings to all property owners within 300 feet of the site involved.

Current Fees

Zoning Code Section 32-78(a)(4) specifies a \$50 fee for all special use permit applications regardless of use category. Please note that special use permits are required for a wide variety of uses ranging, for example, from day care homes in residential districts, to fast food and alcoholic beverage serving uses in business districts, and to telecommunication towers in industrial districts.

Other Jurisdictions

As part of the Planning Department's review of this issue, we thought it would be helpful to survey fees that some other Delaware or nearby jurisdictions charge applicants for special use permits. Please note that each jurisdiction handles special (or

“conditional”) use permits in its own way; for example, in New Castle County, the Board of Adjustment reviews special use permit requests.

In any case, some representative special use permit fees are provided below:

<u>Jurisdiction</u>	<u>Fee</u>
Dover	\$325, plus \$15 per acre
New Castle County	\$1,500
<u>Jurisdiction (cont.)</u>	<u>Fees (cont.)</u>
Sussex County	\$500
West Chester, PA	\$400 for single family \$450, multi-family and institutional \$600 commercial/industrial
Wilmington	\$100 residential \$250 Commercial

As you can see from these examples, the fees charged by nearby jurisdictions for special use permits are all higher than those in Newark and also vary widely. Moreover, some jurisdictions take into account the type of special use permit proposed.

Recommendation

Based on our review of nearby jurisdiction special use permit fees and the recent increases in the costs to the City for special use permit notifications, the Planning Department suggests that **the Planning Commission recommend that City Council amend Zoning Code Section 32-78(a)(4) as follows:**

- 1. Fees for special use permits in all residential districts to be increased to \$150.**
- 2. Fees for special use permits in all university, business and industrial districts to be increased to \$650.**

Mr. Lopata: If there are any questions, I will be happy to answer them.

Ms. Angela Dressel: I am concerned about the residential fee increase. I think it is a good idea to increase both of them, I question whether we are pricing ourselves out of this particular market.

Mr. Lopata: Let me explain to you what these uses are. Special use permits are “commercial” uses in a residential district in a sense. They include day care centers, bed and breakfasts, nursing homes, or offices in a home for a doctor or a lawyer who would live in a home. That is the kind of use we are talking about. These are not, per se, residential uses. They are uses that are allowed in a residential district. The \$50 does not come close to covering the cost to administer the special use permit review process. I do not think that \$150 in that category is that much considering that Wilmington is charging \$100, West Chester, Pennsylvania - \$400, Sussex County - \$500, and New Castle County - \$1,500.

Ms. Dressel: I did not understand what the special use was.

Mr. Lopata: In commercial districts they are things like a fast food restaurant, restaurants with alcohol, gasoline service stations and used car lots. They are for uses that are not permitted as a matter of right but require a special level of scrutiny. In every case, those applicants can certainly afford \$650.

Mr. Bowman: Roy, just out of curiosity, what would you give as an estimate for the number of staff hours to process one of these?

Mr. Lopata: Every special use permit that is received is reviewed by all the departments that are relevant. Typically, it is Police, Building, Public Works, Water, Electric and Parks and Recreation. The plans go out, they come back, then a report is prepared and is sent to you and/or the Council. We have a hearing. The notifications are sent out. So, you are talking about a considerable amount of time. Easily, it takes 25 man hours. Advertising in the newspaper is much more expensive than you might think. If you have ever placed a little ad in the newspaper, you know how expensive it is.

Mr. Bowman: Just trying to put that into perspective, fundamentally, then, even with the increase to \$650, you are still about covering the administrative costs – maybe even not.

Mr. Lopata: We may not be for a commercial use. If you are talking about a fast food restaurant, for example, just the City engineering time to look at the stormwater management, the drainage, the Building Code preliminary review, all of that before the permit is applied for, in theory, for something that could be turned down.

Mr. Bowman: Are there any questions from the Commission? If there are no further questions from the Commission, does anyone from the public want to address this issue? We will bring it back to the table. If there are no further questions, the Chair will entertain a motion on the issue.

MOTION BY McDOWELL, SECONDED BY RUSSELL, THAT THE PLANNING COMMISSION RECOMMEND THAT CITY COUNCIL AMEND ZONING CODE SECTION 32-78(a)(4) AS FOLLOWS:

1. FEES FOR SPECIAL USE PERMITS IN ALL RESIDENTIAL DISTRICTS TO BE INCREASED TO \$150.
2. FEES FOR SPECIAL USE PERMITS IN ALL UNIVERSITY, BUSINESS AND INDUSTRIAL DISTRICTS TO BE INCREASED TO \$650.

VOTE: 5-0

AYE: BOWMAN, DRESSEL, HAMILTON, McDOWELL, RUSSELL,

NAY: NONE

ABSENT: BEGLEITER, SOLES

MOTION PASSED UNANIMOUSLY

3. REVIEW AND CONSIDERATION OF AN EXPANSION OF THE EXISTING PARKING WAIVER FOR THE CAFFÉ GELATO RESTAURANT AT 90 E. MAIN STREET.

Mr. Lopata summarized his report to the Planning Commission which reads as follows:

On January 5, 2007, the Planning Department received an application from the Caffé Gelato restaurant for the expansion of the existing BB District off-street parking option at this restaurant located at 90 E. Main Street. The applicant proposes to expand his facility into the adjoining to-be-vacated Bert's Compact Discs store, on the east side of the existing restaurant. Through a redesign of the existing facility and the expansion into Bert's a total of 16 additional seats will be added to Caffé Gelato. Based on the 16-seat addition and three additional employees during the largest shift, the applicant is requesting a nine-space parking waiver [one space per three seats, plus one for each employee].

Please see the attached floor plan and supporting letter submitted by the applicant.

The Planning Department's report concerning this BB District off-street parking option follows:

Location

The BB zoned Caffé Gelato restaurant is located on the north side of E. Main Street at 90 E. Main Street. Municipal Parking Lot #3 is located directly to the north of the 90 E. Main Street property.

BB District Off-Street Parking Option Procedures

The BB District Off-Street Parking Option Program, adopted by the City to encourage quality pedestrian oriented development downtown, stipulates that the Planning Commission can reduce or waive the off-street parking standards in Zoning Code Section 32-45(a) after considering the following:

- A. Whether the applicant has demonstrated the proposed use does not conflict with the purposes of the Comprehensive Development Plan of the City;
- B. Whether the applicant has demonstrated the proposed use conforms to and is in harmony with the character of the development pattern of the Central Business District;
- C. Whether the applicant has demonstrated the proposed use is not highway oriented in character or significantly dependent on automobile or truck traffic as a primary means of conducting business;
- D. That the proposed use will not adversely affect the health or safety of persons residing or working in the vicinity, or will be detrimental to the public welfare, or injurious to property improvements in the vicinity.
- E. The Planning Commission may also consider the availability of off-street parking facilities, the availability of nearby adjacent public parking facilities (within 500 feet) that may be shared by the applicant in an existing or proposed use. In considering this subsection, the Planning Commission may require that the applicant submit an appropriate deed restriction, satisfactory to the City, that either ensures the continued validation of and/or the continued use of shared parking spaces in connection with the uses and structures they serve.
- F. The Planning Commission shall consider the advice and recommendation of the Planning Director.

Please note that the Newark Comprehensive Plan calls for “commercial (pedestrian oriented)” uses at the location.

In addition, regarding the requested parking waiver, our procedure also specifies that applicants receiving parking waiver approval must make a “payment in lieu of spaces” to the City to be used to improve parking downtown. The required payment, based on the estimated cost of the construction of service level spaces provided by the Public Works Department (\$2,678), is as follows:

<u>Number of Spaces</u>	<u>Fee</u>
Five (5)	\$ 669.50 (5% of Cost)
Six to Twenty-five (4)	<u>\$5,356.00</u> (50% of Cost)
Total: [9]	\$6,025.50

Departmental Comments

The City’s Management, Planning and Operating Departments have reviewed the proposed request to expand the Caffé Gelato parking waiver and have the following comments:

1. The Planning Department indicates that in light of the obvious popularity of the Caffé Gelato restaurant and the small size of the requested additional parking waiver, we suggest that the Planning Commission grant this BB District off-street parking option request. We note, in addition, that adjacent Parking Lot #3 continues to have space available that could be utilized by patrons of Caffé Gelato seeking off-street parking. The previously stipulated City of Newark parking validation for the restaurant will be required to be continued.
2. The Building Department indicates that prior to the issuance of a certificate of occupancy for the additional seating, a required registered architect's seat layout and isle dimension plan must receive Departmental approval. Compliance with all current Life Safety and Accessibility Codes will be required.
3. There were no other Departmental comments.

Recommendation

The Planning Department suggests that the **Planning Commission approve the requested BB District off-street parking option expansion at 90 E. Main Street for Caffé Gelato with the conditions noted above.**

Mr. Lopata: The applicant is here to answer any questions that you might have.

Mr. Bowman: Are there any questions from the members of the Commission? Is there anyone in the audience that wishes to address this subject?

Mrs. Jean White: 103 Radcliffe Drive. I just have a couple of quick questions and a comment. I was just curious about what was happening to Bert's Compact Disc store – where they are going or are they going out of business?

Mr. Lopata: We are not really sure. He does have another store on Concord Pike.

Mrs. White: The new plan shows a bar and I wondered if that was just a display area?

Mr. Lopata: That is a service bar.

Mrs. White: A service bar for the employees?

Mr. Lopata: Correct.

Mrs. White: I was also curious about whether Caffé Gelato as it exists now has a sprinkler system and whether moving into the neighboring space at Bert's CD's if the restaurant has to put in sprinklers?

Mr. Ryan German: We are going to put a sprinkler system in. The building does not currently have a sprinkler system.

Mr. Bowman: I am pretty sure you could not get a certificate of occupancy for a restaurant without it.

Mrs. White: Right now, for your current restaurant, you don't have a sprinkler system. Is that correct?

Mr. German: We do not have a sprinkler system now, and we are going to put one in.

Mrs. White: I think that is a positive thing and I am sure Mr. Bowman, in particular, and others would appreciate that. I support this. I don't know how anyone could not support it. I don't know what has happened to the music store, but I have thought for a long time, and probably Mr. German himself has, that it would be nice to have the extra space and, actually, even aesthetically, it would look nice for the whole width of the building to be the restaurant. So, I think that would be a good thing.

I did notice in the letter by Mr. German, that he was asking, if possible, for the fee to be waived or reduced. That is the one thing that I have to disagree with.

Mr. Lopata: We are not going to waive or reduce it.

Mrs. White: It is a small amount, but as far as the waiver itself, I am totally in support of that.

Mr. Joseph Russell: Ryan, are you going to have to close for a period of time?

Mr. German: We are going to try not to. If all goes well, we will try to have it all done by the time the students come back in August.

Mr. German: I think we might do that. Thank you for your time.

Mr. Bowman: Are there any other questions? We will bring it back to the table.

MOTION BY RUSSELL, SECONDED BY DRESSEL, THAT THE PLANNING COMMISSION APPROVE THE REQUESTED BB DISTRICT OFF-STREET PARKING OPTION EXPANSION AT 90 E. MAIN STREET FOR CAFFÉ GELATO WITH THE CONDITIONS LISTED IN THE PLANNING DEPARTMENT REPORT.

VOTE: 5-0

AYE: BOWMAN, DRESSEL, HAMILTON, McDOWELL, RUSSELL,

NAY: NONE

ABSENT: BEGLEITER, SOLES

MOTION PASSED UNANIMOUSLY

The Planning Commission meeting was adjourned at 7:45 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission