



# Plan Commission Meeting Minutes October 24, 2023

3930 N. Murray Avenue, Village of Shorewood, WI 53211

**1. Call to order.**

The meeting was called to order at 6:30 p.m.

Present: Trustee Eric Couto – Acting Chair, President Ann McKaig, Commissioners Barbara Kiely Miller, Therese Klein, Kate Flynn Post, Josh Pollack

Excused: Commissioner Dan Wycklendt

Others present: Planning Director Bart Griepentrog, Planning Administrative Clerk Crystal Kopydlowski

**2. Approval of September 26, 2023 special joint meeting of the Plan Commission and Community Development Authority meeting minutes.**

Ms. Flynn Post moved to approve the minutes, seconded by Ms. Kiely Miller. Vote to approve 6-0.

**3. Conditional Use Permit application for outdoor dining at commercial property 4144 N. Oakland Avenue.**

**a). Overview**

Director Griepentrog provided an overview of the item per information provided in the meeting materials and a slide presentation. The conditional use application is being considered for outdoor dining at the new Foxhole Shorewood establishment that was formerly occupied by Hiya Taco. Site conditions were displayed to show the location of the business in relation to other surrounding land uses. 4144 N. Oakland Avenue is zoned MX1 Mixed-Use Storefront District which allows eating and drinking establishments and retail sales as permitted uses. Outdoor dining is allowed as an accessory use subject to conditional use review by the Plan Commission per 535-26F.

The proposed operation would be a fast-casual restaurant with full bar and retail sales. The hours of operation would be 4 p.m. to 12 a.m. Monday through Wednesday, 4 p.m. through 2 a.m. Thursday and Friday, 11 a.m. to 2 a.m. on Saturday and 11 a.m. to 12 a.m. on Sunday. There was no differing hours for outdoor operations so it is assumed they will be the same. There would be six employees on site per shift with an estimated 40 customers per hour. The outdoor dining is proposed for the patio area south of the building and west along Oakland Avenue. There was extensive interior remodeling for a different floor plan and flow. The exterior remains the same as when Hiya Taco occupied the space and it is presumed a similar arrangement will be in place. Approximately 50 guests could accommodate the outdoor patio at full capacity. General overview photos of the site were shown.

The Plan Commission has specific overview of outdoor dining as a conditional use permit (535-31F) and within the new zoning chapter there are use specific conditions for outdoor dining to be considered.

Daniel Gillespie and Terri Blahnik were present representing the item.

**b). Public Comment**

Trustee Couto opened the public hearing at 6:37 p.m. With no comments received the public hearing was closed at 6:37 p.m.

**c). Deliberation**

Ms. Flynn Post stated she was excited about a new business in this location and is not in favor of limiting businesses and feels business owners should have as much flexibility to run their businesses as they see fit. She asked if any other comparable businesses along Oakland Avenue have had hours restricted. Mr. Griepentrog stated that to the best of his knowledge no other existing outdoor dining has been limited but this is a new regulation added within the recent commercial zoning update. Previously, it had existed in the food chapter and was moved into the zoning chapter. This is the first time outdoor dining is being reviewed by the Plan Commission. Outdoor seating and parklets in the public right of way are restricted and the restricted hours are similar to what is detailed in the zoning chapter, but this is outdoor seating/dining on private property.

Ms. Kiely Miller asked what the restricted hours were for outdoor seating and parklets in the right of way. Mr. Griepentrog stated they were Sunday through Thursday 7 a.m. to 10 p.m. and Friday through Saturday 7 a.m. to 11 p.m.

Ms. Klein asked if there had been any complaints about the two previous businesses in this location. Mr. Griepentrog said the only complaints with Hiya Taco related to the sound of their fryer equipment (rooftop) and one complaint from The Mosaic related to the loud music outside. Both complaints did not relate to people outdoors and were rectified. Ms. Klien asked if hours could be restricted later if complaints are received. Mr. Griepentrog said that the Plan Commission could be asked to re-review the approval if complaints are received. Mr. Pollack asked if this was a part of the revocation and termination rights that the Plan Commission has or if it was separate. Mr. Griepentrog was referring to the revocation section.

Ms. Kiely Miller asked if Shorewood limits bars and restaurants to shorter closing times during the weeks versus the weekend. The only limitations are by the state with respect to liquor licenses. There are no local limitations outside of the outdoor seating and parklets in the right of way which is cut off at 11 p.m. She asked if the noise ordinance matches up with the hours of operation for parklets and public seating in the right of way. The noise ordinance does not have hours of disturbances, it is driven by incidents between 10 p.m. and 7 a.m. This is enforced by the police department.

President McKaig said she understands the distinction between private property and seating in the public right of way. She believes businesses are asked to turn off outdoor music at 10 p.m. on weeknights and 11 p.m. on weekends. She thinks limiting music is a reasonable request and doesn't limit operations. This is consistent with other businesses along Oakland as well. Mr. Griepentrog said any restriction should be included in the motion.

President McKaig moved to approve the conditional use permit application for outdoor dining at 4144 N. Oakland Avenue with the limitation to restrict music to 10 p.m. on weekdays and 11 p.m. on weekends. Seconded by Ms. Klien.

Ms. Kiely Miller said she was concerned about the patio butting up to apartments and the warmer months with a maximum of 50 people sitting outside late on a weekday. Mr. Griepentrog said the Plan Commission can require outdoor dining be closed by 10 p.m. Sunday through Thursday and midnight Friday and Saturday. That is an option if the Plan Commission feels it necessary. Trustee Couto said this just restricts dining not sitting outdoors. Mr. Griepentrog said yes and that customers could not be served outdoors or bring food and drink from indoors to outdoors at that time.

Mr. Pollack said that being permissive to start is okay if any issues will be reviewed moving forward. Mr. Griepentrog said complaints would be enforced by the police department. They do not actively look for noise ordinance violations and it is mostly complaint driven.

Trustee Couto wants to give the business a shot and that it is on private property and if complaints come it can be reviewed again. He wants to give them all the opportunities to flourish. Ms. Klein said there have been two previous businesses at this location that have not had major issues.

A roll call vote was taken; Ms. Klein – Yes, Ms. Kiely Miller – No, Ms. Flynn Post – Yes, Trustee Couto – Yes, President McKaig – Yes, Mr. Pollack - No. Vote to approve 4-2.

Mr. Pollack does not like that residents have to go to the police to mitigate noise complaints and that this is how we will deal with revocation issues. Getting the police involved does not sit right with him. Mr. Griepentrog stated the police are the only staff available at late hours on a Friday night to review situations. He asked if emails or notes could be sent. Mr. Griepentrog said there is no way to substantiate emails and notes and therefore they cannot be acted upon.

**4. Future agenda items.**

Mr. Pollack asked if revocation processes could be discussed at a future meeting. Mr. Griepentrog stated revocation processes of conditional uses could be reviewed and he could provide a primer on the topic and consult with the Village Attorney on substantiated evidence.

Ms. Flynn Post asked if there was any update on the DPW Site. Mr. Griepentrog said the Village Manager was working through the Village budget first and when an update on next steps is available those would be brought back before them.

**5. Adjournment.**

Ms. Kiely Miller moved to adjourn the meeting at 6:59 p.m. Seconded by Ms. Klein. Vote to adjourn 6-0.

Recorded by,



Crystal Kopydlowski  
Planning Department Administrative Clerk