

**Planning Commission  
City of Frankfort  
Minutes  
October 14, 2011 11a.m.  
Resumed Recessed Meeting from October 11, 2011**

**Call to Order: 11AM**

**Roll Call and Recognition of Visitors:** Campbell, Fairchild, Ogilvie, Penne, Storrer, [vacancy (2)]

**Public Present:** Superintendent Mills, Bob Dittrich, Norma Elias, Alma House, JoAnn Holwerda, Jon Armstrong, Tom and Jackie Richmond, BW, BH, Dale Evans, Jill Weide

**Quorum Present**

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**New Business**

**Motion that under Conditions of Approval, Section 8108.09, a failure to comply with any conditions of approval is considered a violation of this ordinance effective on October 15, 2011 as it relates to the Bayview Grille LLC of Frankfort, Michigan moved Ogilvie, seconded Storrer; Roll Call: Campbell Yes; Storrer: Yes, Ogilvie: Yes; Fairchild: No; Penne: Yes. Motion passed.**

Discussion: Josh Mills stated that on May 13, 2010 the Frankfort Planning Commission approved a Site Plan and Special Use Conditions for the Bayview Grille which included improvements to the parking area with striping, addition of a covered porch area, another addition to the kitchen area, two handicapped parking spaces delineated through striping. Conditions of approval were made that provided an opportunity for the facility to open, giving the applicants until May 13, 2011 to pave the rear parking area, re-establish the adjacent curb and sidewalk along Main Street, delineate the access to the site along the west edge. Also a sign permit was to be established and drainage monitored while the asphalt was paid. Those conditions were not met. There was a series of correspondence regarding the associated conditions and procedures. Understanding that the utilization of the covered porch was a strong component of their operation, the Planning Commission approved two temporary Special Use Permits. Continuing correspondence included a July 13<sup>th</sup> letter providing a delineation of the process and options to get into compliance. Both owners signed a document with an associated time line that was not met. The Planning Commission approved an additional 30 day temporary Special Use Permit which expires October 15, 2011. Currently the options to move forward would be to come back to the Planning Commission with a new Site Plan and Special Use that would fall under the new ordinance so the storm water patrol orders would come in as a factor. Another option is to seek another extension from the Planning Commission to complete all the conditions of approval for the Special Use that was granted on May 13, 2010 whereas also an irrevocable letter of credit or some kind of surety posting of financial guarantee would be made to the City to cover the cost of performing those upgrades. A third option if nothing is done, is that the City would initiate civil infractions and establish a Hearing to rescind the Special Use which would eliminate the outdoor eatery.

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**Motion to allow Mr. Evans and Ms. Weide to speak, moved Ogilvie; seconded Storrer; all ayes; motion passed.**

**Evans** explained that due to a lack of understanding about the severity of the winters, they decided to do some things that were bad planning. They did send a letter to the Planning Commission to revisit the issue so they could leave the parking sites in front of the deck so elderly people wouldn't have to walk across an

icy parking lot to get into the restaurant, as customers indicated it would be a deterrent. He feels that constructing the curb will be a detriment to his business and wants to leave that area for parking. He stated he requested from a letter about 90 days ago for a Hearing to consider that those 5 spots be reinstated. He has invested a great deal of money that not been recouped and it would be a financial hardship to comply with these issues right away. They intend on paving the parking lot, it is just a question of having the resources. He stated that the Mayor suggested a meeting with himself and the Planning Commission chair to find an amicable result and that hasn't happened. He asked that the Planning Commission postpone all of this; consider his request to put those parking spaces back in front of the building and leave the curb the way it is. **Jill Weide** added that they have invested a great deal of money. The parking spaces they are requesting would only be in the winter. They have fulfilled the request to put some barriers around to delineate the fact that there is no parking there during the summer that would put anyone at risk on the deck. We are trying to be good public citizens, employing a lot of people around here, investing a whole lot of payroll and trying to do right.

**Ogilvie, addressing Mills:** When Mr. Evans presented this issue to us in June; did he submit any formal modification for his site plan?

**Mills:** no

**Ogilvie:** did he provide any specific details on how that would be achieved?

**Mills:** he provided a letter of correspondence with the request.

**Storrer,** addressing Evans: When you realized the severity of the winters, did you come back within the 12-month period and ask if Josh would look at this issue?

**Evans** responded that the winter was very slow and in order to meet bills they had to lay off most of their staff. He was putting in 15-16 hours a day and the issue didn't even come up in his thoughts until he got the letter from the City Superintendent. He tried to address it through conversations with people in the city and the letter. He didn't bringing drawings to the last meeting because the mayor suggested that he hold off until the meeting with the chair.

**Storrer** noted that they have had two successful summers and by giving an extended period of a year to meet conditions and then extending it again to get through the summer, she felt the Planning Commission was doing what they were permitted to do within the ordinance.

**Fairchild** remarked that his grandfather and father ran a business in this town and is not in the least bit averse to giving every opportunity to extend the time needed to get things done in a reasonable time.

**Mills** has a requirement based on the ordinance and its standards and understands it costs money to bring it into compliance.

**Ogilvie:** was there any time when you think you were unclear or without specificity about what was required under the general site plan for businesses in this district?

**Mills** stated that on September 29, 2010 he (Mills) submitted a certified letter reiterating the Special Use Conditions. On May 2, he submitted another certified letter stating the requirements of the approval.

**Ogilvie-** In the conversations and in our hearing on the 13<sup>th</sup>, was there any time a lack of clarity about what the site plan requirements were?

**Mills-** "Not to my knowledge". All the conditions were placed on the permit and stated as part of the approval, as part of the record.

**Ogilvie-** and he was issued a site plan approval?

**Mills-** the contractor picked it up.

**Storrer** – and it was signed by him?

**Mills-** I don't believe so. It may have been signed by the contractor, which the contractor is allowed to do.

**Ogilvie:** and was the Special Use Permit issued?

**Mills:** Yes. Special Use, Site Plan and Land Use.

**Ogilvie:** and those were all used as part of the package of information that would go to the county building dept.?

**Mills:** the county will not issue a building permit without those in hand.

**Evans** believed there was a dispute as to what was said and expected during that zoning meeting.

**Storrer to Mills:** are these curbing requirements the same for all the businesses? Other businesses have complied with this?

**Mills:** Yes, the Remax office replaced the sidewalk and curb.

**Storrer:** is not the State Savings Bank complying with these conditions? **Mills:** Yes.

**Fairchild:** We used to like to take my mother to Celia's and she would never had been able to get into Celia's without being able to park in front.

**Ogilvie** - the original site plan specifically states that there is a new covered porch and a new patio that is going to be surrounded by decorative planters and landscaping, with a physical representation of what that would look like. It is a health and safety issue, the Planning Commission's primary responsibility. He pointed out that the parking lot paving in the back would provide adequate and close exit and entrance for handicapped, and that one of those spaces was specifically designated for handicapped as well as the closest possible space on the west. Because the parking lot not been paved or striped, because the water conditions anticipated turned out to exist, because the dumpsters have not been enclosed or the signs approved, he asked that the Planning Commission approve the violation order.

**Melina Penne** – his request to postpone the meeting until the private meeting with the Mayor is not possible.

**Ogilvie-** we are saying there is not only a violation of the special use permit but also of the site plan. The mayor has spoken to me and says he has never indicated that he would meet with Evans or anyone else and will uphold the Planning Commission's decision. Ogilvie indicated that there would be no private conversations about land use unless held in open meetings with prior announcement.

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**Motion to establish a Special Public Hearing for withdrawal of the site plan and special use issued to Dale Evans and Jill Wide doing business as the Bayview Grille LLC on Wednesday, November 16<sup>th</sup> at 6 pm in City Hall and authorize the City Superintendent to publicize and notify moved Ogilvie, seconded Fairchild, all ayes, motion passed.**

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**Motion to withdraw site plan and special use permit issued to Dale Evans and Jill Weide dba Bayview Grille pursuant to Zoning Ordinance Section 8108.11 Termination of Special Uses and Variances in Section 8107.08 modification of approved Site Plan development moved Ogilvie, seconded Fairchild; 4 ayes, 1 nay; Motion passed.**

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### **Public Comment**

**Norma Elias**, 107 Park Ave. thought an important lesson was learned. She understood Kim Fairchild's comments but there is a handicap parking in the back and they haven't met their special use requirements. "I believe this PC has done a great job".

**Dale Evans** – addressed the audience and was asked by Ogilvie to address the chair. The reason he is trying to change this is because he was unaware of the winters here. "Java 429 is lucky because they get their streets plowed by the city". Running his business is a 24 hr a day a day. We get about 5 hours of sleep. We're not retired or city employees - -**Ogilvie** interjected and asked Evans to sit down.

**Elias** supported the request to address the chair and feels that everybody works hard. She was in the hotel business for 25 years, a 24-hour job.

**Storrer** recognized how hard Evans had worked. Her concern is that all the businesses in town have to meet the same requirements

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**Motion to adjourn moved Campbell seconded Fairchild, motion passed.**

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**Meeting adjourned at 11:45 AM**

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