

**I. CALL TO ORDER:**

The Planning and Zoning Commission meeting was called to order at 7:30 pm by Chairman Susanke.

**II. ROLL CALL:**

Present were Chairman Rogers Susanke, Commissioners Rick Gilmore, Ryan Kaufman, Jim Kotleba, Bob Martin, Brian Slovacek and Rick Magsamen. Also in attendance were Community Development Director Cathleen Tymoszenko and Village Board Liaison Tom Price.

**III. PLEDGE OF ALLEGIANCE:**

Chairman Susanke led those in attendance in reciting the Pledge of Allegiance.

**IV. APPROVAL OF AGENDA:**

**MOTION:** Moved by Commissioner Gilmore and seconded by Commissioner Martin to approve the agenda. The motion carried by unanimous roll call vote.

**V. QUESTIONS FROM THE AUDIENCE:** There were none.

**VI. NEW BUSINESS:**

Chairman Susanke introduced new Commissioner, Rick Magsamen, who has filled the seat vacated by Barry Shore. He also announced that Derek Rockwell has been hired as the new Village Planner.

**Petition 13-01  
1103 Barber Court  
Rear Yard Variation for Covered Deck**

**MOTION:** Moved by Commissioner Kotleba and seconded by Commissioner Slovacek to open the public hearing. The motion carried by unanimous roll call vote.

**The Public Hearing opened at 7:33 pm.**

Director Tymoszenko confirmed publication of the legal notice in the newspaper and certified mail notices to all property owners within 250 feet of the subject property.

Chairman Susanke noted that the property is located at 1103 Barber Court and the homeowner is requesting a rear yard variation to cover and screen in an existing back porch to the existing house. The applicant is also requesting that a variation be granted to classify the existing 22 foot by 14 foot deck, which encroaches into the required rear yard, as lawful nonconforming in compliance with Village codes. The property is zoned R-1 Residential District which has a rear yard setback requirement of 35 feet.

Ms. Kathleen Murray, the owner 1103 Barber Court, was sworn in as applicant. She provided testimony relating to why she is requesting a variance. She stated that the existing porch

contains a pergola roof and her desire is to provide a permanent roof and enclose the porch with screens, creating a three season room.

Discussion by the Commission was held. Commissioner Gilmore recommended a caveat that the porch is prohibited from being converted to permanent living space by any current or future owner.

**MOTION:** Commissioner Slovacek moved and Commissioner Kotleba seconded to close the public hearing. The motion carried by unanimous roll call vote.

**The Public Hearing closed at 7:40 pm.**

**MOTION:** Commissioner Gilmore moved to recommend to the Village Board to grant the variance request as submitted based on the finding of facts for 1103 Barber Court, with the caveat that the structure may never become permanent living space. After a second by Commissioner Kotelba, the motion carried by unanimous roll call vote.

**Petition 13-02  
1959 Huntley Road  
Special Use for Outdoor Dining**

**MOTION:** Moved by Commissioner Martin and seconded by Commissioner Kotleba to open the public hearing. The motion carried by unanimous roll call vote.

**The Public Hearing opened at 7:43 pm.**

Director Tymoszenko confirmed publication of the legal notice in the newspaper and certified mail notices to all property owners within 250 feet of the subject property.

Chairman Susanke noted that the property is located at 1959 Huntley Road and the business owners are requesting a special use variation for an outdoor dining area with liquor service. The property is zoned B-2 Regional Business District.

Mr. Mike Morrison, one of the owners of the Chubby Bullfrog Bar & Grill, was sworn in as applicant. He provided testimony relating to why the business is requesting a variance. He stated that a portion of the parking lot in front of the restaurant approximately 30 x 17 feet in size is proposed to be fenced in and furnished for use as an outdoor dining area. The existing handicapped accessible parking spaces at this location would be moved to either side of the dining area, in conformance with ADA size and location.

The outdoor dining area would accommodate 15-20 customers, and pursuant to liquor license regulations, could not be operated past 10:30 pm. Mr. Morrison stated that the dining area would be temporary, per the landlord's permission, and would be removed at the end of the summer.

**Discussion by the Commission was held and questions asked of the applicant.**

Landscape Architect Phil Schleifer provided testimony regarding the layout and infrastructure of the dining area, advising that the area would be enclosed with large custom built planters connected with wrought iron fencing, with parking stops along the front to prevent any vehicle encroachment. The planters will be approximately 5-6 feet wide, 3 feet tall and 3 feet deep,

weighing approximately 1100 pounds. Commissioner Gilmore stated the planters may need to be 42 inches tall for safety, and inquired about the Village's liability for the dining area. Director Tymoszenko noted that outdoor dining areas exist in the Village that are less protected than what is being proposed and that the code is minimal in this respect.

Commissioner Martin expressed concern about napkins and debris blowing out of the dining area and suggested that infrastructure extend to the ground. He also noted that food and beverage is not to be brought in or out of the dining area.

Chairman Susanke inquired as to the distance between the entrance to the proposed dining area and the entrance to the establishment and whether smoking would be permitted in the dining area. Mr. Morrison stated the distance was 4 feet. Commissioner Gilmore stated smoking is prohibited within 15 feet of any business entrance, per State law. Mr. Schleifer noted that about half of the proposed outdoor dining area would be more than 15 feet from the entrance.

Commissioner Martin asked if the dining area would be ADA compliant. Commissioner Gilmore noted that curb cut ramps exist within the proposed dining area and where the accessible parking spaces are proposed to be relocated.

Commissioner Slovacek asked if there would be adjacent parking. Mr. Morrison advised that there would be a 3 foot buffer between an open vehicle door and the dining area enclosure.

Mr. Morrison expressed an interest in sharing the outdoor dining area with neighboring Dessertful Bakery. He noted that furniture will be locked down outside of Chubby Bullfrog's operating hours. A key would be provided to Dessertful Bakery to unlock/relock tables and chairs for use during early morning hours. Commissioners Martin and Gilmore questioned whether this could be allowed.

#### **Chairman Susanke opened the floor for public comment.**

Mr. David Stokes, 2038 Waterbury Court, West Dundee, was sworn in and provided testimony in opposition to the application.

Mr. Stokes stated that his home is 550 feet from the establishment and for 8 years he has experienced loud noise originating from this address between 8:30 pm and 2:30 am on weekends. He referenced ordinances that prohibit noxious noises at a distance of 50 feet and before/after specific hours of the day from specific types of activity, such as lawn mowing. He stated that the establishment is in violation of noise ordinances and is disturbing peace and quiet without the special use. Mr. Stokes offers the following solutions: (1) not grant the variance, (2) close the Tartans entrance to the strip mall and add a berm to abate noise, (3) set up the outdoor dining at the rear entrance.

In response to Mr. Stokes' comments, Mr. Morrison noted that Chubby Bullfrog has been open only 6 months and that the Police Department has received no noise complaints. He stated that he had proposed outdoor dining at the rear entrance, but was encouraged by Village staff to utilize a front entrance layout to promote visibility and based on the existing configuration for access to the rear door/emergency exit. He added that they do not intend to have outdoor music, but would like to play radio broadcasts of sporting events at a low volume.

Mr. Stokes responded that he has not complained to the Police Department yet, and that the noise has been worse since Chubby Bullfrog opened.

Ms. Michelle Kembitzky, 2023 Spaulding, West Dundee, asked if the dining area would include a Bags court. Mr. Morrison stated it would not.

Commissioner Kaufman asked if the smoking area could be relocated outside the rear entrance. Mr. Morrison stated that the emergency exit would have to be reconfigured to allow patrons to use the rear exit, which is currently accessed through the kitchen. Director Tymoszenko added that the emergency access drive and common dumpster are located behind the rear entrance, which makes this a dangerous and undesirable location for patron use.

**MOTION:** Commissioner Gilmore moved and Commissioner Slovacek seconded to close the public hearing. The motion carried by unanimous roll call vote.

**The Public Hearing closed at 8:28 pm.**

Commissioner Gilmore recommended a caveat disallowing outdoor speakers. Commissioner Martin stated he would not support allowing TVs outdoors.

Commissioner Gilmore asked if maintaining the dining area as non-smoking could be mandated as part of the variance. Director Tymoszenko will seek that information and advised that the dining area must be used for service of alcohol in conjunction with food, not as a beer garden.

Mr. Morrison stated that the establishment is family friendly and any guest that becomes unruly is not served.

**MOTION:** Commissioner Gilmore moved to recommend to the Village Board to grant the special use petition as submitted based on the finding of facts and comments provided in the staff memo dated April 19, 2013, without allowance of public address, loud speakers or smoking. After a second by Commissioner Kaufman, the motion carried by a roll call vote of 5 to 1.

**AYES:** Commissioners Gilmore, Kaufman, Slovacek, Magsamen and Kotleba  
**NAYS:** Commissioner Martin

Commissioner Gilmore noted that outdoor dining is a legal and encouraged use and the property is zoned for this activity.

Director Tymoszenko stated that she will work with the petitioner to understand their design before forwarding to the Village Board. She anticipates presenting this to the Village Board for the May 20, 2013 Regular Board Meeting.

**VII. ADJOURNMENT:**

**MOTION:** Commissioner Gilmore moved and Commissioner Martin seconded to adjourn the Planning and Zoning Commission Meeting.

The meeting was adjourned by unanimous consent at 8:42 pm.

Kim Tibbetts, Commission Secretary Pro-Tem