

RECORD OF PROCEEDINGS

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Minutes of

SPECIAL COUNCIL

Meeting

DAYTON LEGAL BLANK CO., FORM NO. 1014B

Held March 1,

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The Council of the City of Centerville, County of Montgomery, State of Ohio, met in Special Session on Monday, March 1, 1993 at 8:00 P.M. in the Council Chambers of the Centerville Municipal Building. The Meeting was opened with an Invocation given by Councilmember James Singer and the Pledge of Allegiance to the Flag with Mayor Shirley Heintz presiding. Councilmembers and City Staff present were as follows:

Deputy Mayor Brooks Compton
Councilmembers C. Mark Kingseed
J. V. Stone
Sally Beals
James Singer
Mark Beasley
Clerk of Council Marilyn McLaughlin
City Manager Gregory Horn
Assistant City Manager Michael Haverland
City Planner Alan Schwab
City Engineer Norbert Hoffman
Acting Municipal Attorney Dave Eubank
Assistant to the City Manager Judith Gilleland

ORDINANCE NUMBER 4-93 ZONING ORDINANCE AMENDMENT FRISCH'S RESTAURANT REZONING

The Public Hearing was held concerning Ordinance Number 4-93, An Ordinance Amending Ordinance Number 11-86 Dated July 21, 1986, The Zoning Ordinance By Rezoning 1.910 Acres More Or Less, From Washington Township Special Use Classification To Centerville B-1 District Classification. Said Ordinance is proposed to rezone property located along the east side of South Main Street across from Sheehan Road upon Request of Frisch's Restaurants, Inc. The Planning Commission, by a vote of 4-2, recommended approval of this Rezoning Request to City Council. Subsequently, Attorney Hans Soltau on behalf of Charles V. Simms and Elizabeth Ann Simms filed an Appeal against this recommendation. Mr. Horn explained the fact that there is no mechanism contained in the Zoning Ordinance for an Appeal against a Planning Commission recommendation.

Mr. Schwab located the subject property on a map and outlined adjacent zone classifications and land uses. The present zoning of this land is Washington Township Special Use Office and Residential in accordance with a zoning plan approved by Washington Township in 1985. The subject property has not been rezoned to a Centerville zone classification since its annexation to Centerville in 1991. Mr. Schwab pointed out the fact that the City Planning Department supports B-1 or B-2 zone classification for the property in question.

Mr. Brad Judge, Judge Engineering Company, engineers on this project, introduced representatives from Frisch's Restaurants, Inc. Jack Merkle and Paul Barbro present at this Meeting to answer questions of Council.

Mr. Charles Simms, owner of property to the south of the 1.9 acre tract proposed to be rezoned, outlined his concern with the fact that entrance into this drive-through restaurant is proposed

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off a private drive. He expressed concern with increased traffic at the intersection of State Route 48 and Sheehan Road, wear and tear on the private driveway and safety for area residents. Mr. Simms pointed out the fact that this is the last piece of property to be developed in a large area already developed in accordance with the Washington Township Master Plan; in consideration of this he proposed that the present zoning be maintained. Mr. Simms fears traffic traversing through the property to the east to Mandell Drive. Mr. Simms submitted to Council a document prepared by the Institute of Transportation Engineers detailing trips generated by a fast food restaurant with a drive-through window.

Mr. Hans Soltau, Attorney representing Charles and Ann Simms, pointed out the fact that this is not just a Rezoning Request for B-1, it is also a variance and a site plan to locate a very large fast food restaurant on the subject property. He made reference to the definition of a fast food drive-through restaurant.

Mr. Bob Forward, 92 Davis Road, co-owner of the Williamsburg property, pointed out the fact that years ago a common property line existed between the property now known as the Harbour Club and the Williamsburg property. A partial easement was granted to the Harbour Club in order to avoid an additional curb cut onto State Route 48. This was considered the proper thing to do at that time. Mr. Forward committed himself to doing whatever is necessary to prevent cut through traffic east to Mandell Drive.

Mr. Judge advised that an easement agreement of record has been submitted to the City of Centerville to provide access to the Harbour Club and the restaurant. Improvements will be made to Capetown Drive and State Route 48 to improve the flow of traffic by Frisch's restaurant if plans are approved.

Mr. Soltau advised that maintenance of the entire easement is the responsibility of Mr. Simms. Mr. Schwab explained the fact that shared costs are included in the easement agreement. Mr. Schwab outlined issues contained in the easement agreement relative to maintenance and responsibility.

Upon question of Mr. Singer, Mr. Schwab advised that the extension of Sheehan Road to the east was constructed as a public roadway, and vacated by Montgomery County in 1987 upon request of Washington Township.

Mr. Singer questioned Mr. Soltau if he preferred B-2 zoning instead of the requested B-1 zone classification and would he prefer Capetown Drive to become a public roadway. Mr. Soltau advised that he did not believe B-2 was appropriate and he preferred the roadway to remain private to serve the Harbour Club apartments, the Williamsburg apartments, and office use.

Upon question of Mr. Singer, Mr. Hoffman advised that he foresees very few trips from the restaurant to the east to Mandell Drive. Traffic will be more oriented to the south and north. He believes that proposed roadway improvements in conjunction with the construction of the restaurant are adequate for traffic flow.

Upon question of Mr. Compton, Mr. Merkle estimates 13 to 15%

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of gross traffic will be generated by the drive-through function at the restaurant. Opening and closing hours will be determined by the Manager of the restaurant.

As requested by Mr. Kingseed, Mr. Schwab pointed out how rezoning this property to a business use coincides with land uses to the north to Spring Valley Road. Set backs required by the Zoning Ordinance will be adequate between the restaurant and residential uses.

Mr. Singer moved that the subject 1.910 parcel of land be rezoned to B-2 coinciding with B-2 zoning to the north and BPD, Business Planned Development, zoning across State Route 48. The motion died for lack of a second.

Mrs. Beals sponsored Ordinance Number 4-93, An Ordinance Amending Ordinance Number 11-86 Dated July 21, 1986, The Zoning Ordinance By Rezoning 1.910 Acres More Or Less, From Washington Township Special Use Classification To Centerville B-1 District Classification, and moved that it be passed. Mr. Kingseed seconded the motion. A roll call vote resulted in six ayes in favor of the motion; Mr. Compton voted no.

FRISCH'S RESTAURANT, INC. VARIANCE APPLICATION
SIMMS APPEAL TO COUNCIL

The Public Hearing was held concerning Appeals filed by Charles V. Simms and Elizabeth Ann Simms against decisions rendered by the Planning Commission during their Meeting on January 12, 1993 approving a Variance Application to permit the construction of a building in excess of the 5,000 square foot limitation in a B-1 zone classification, and a Planning Commission Special Approval Application to permit the construction of a restaurant along South Main Street across from the Elder Beerman Store.

Mr. Schwab reviewed the Variance Application submitted by Frisch's restaurant to permit the construction of a facility in excess of the 5,000 square foot permitted in B-1 zone classification. The Planning Commission, by a vote of 4-2 approved the Variance Application to allow a maximum building ground floor area not to exceed 6,500 square feet contingent upon the zoning of B-1 being approved by Council.

Mr. Schwab reviewed the Planning Commission Special Approval Application submitted by Frisch's Restaurants, Inc. to permit the construction of a restaurant at said location. He advised that parking spaces to be provided are in excess of that which is required. He defined the distance between this proposed facility, the Williamsburg apartments and the Harbour Club apartments. Mr. Schwab identified the evergreen buffer to be provided between the parking area and apartments to the east. Private sidewalk will be constructed along the north side of Capetown Drive.

Mr. Schwab outlined for Council Planning Commission's 5-0-1 vote to approve the Planning Commission Special Approval Application (Site Plan) with the following conditions:

1. The City Council approve a rezoning of the entire property to permit a table service restaurant use.

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2. Should the City Council approve to rezone this property to B-1 Neighborhood Business, the Planning Commission must approve a variance to permit this building to have a maximum gross floor area of 6,423 square feet instead of the maximum permitted 5,000 square feet.

3. The north driveway entrance onto State Route 48 shall be restricted to right-in/right-out maneuvering only with the final design of this driveway subject to approval by the City Engineer. It should be established to the satisfaction of the City Attorney that Frisch's Restaurant has full patron access via Capetown Drive.

4. Monies, in an amount approved by the City Engineer, shall be placed in escrow with the City in-lieu-of construction of a 5 foot wide sidewalk along the South Main Street frontage.

5. The final design of the improvements to Capetown Drive (the private street) shall be subject to approval by the City Engineer.

6. The 4 foot wide sidewalk shown along Capetown Drive shall be aligned at the curb cut across from each other subject to approval by the Planning Department.

7. Bumper blocks shall be placed along those parking stalls facing Capetown Drive to restrict encroachment of vehicles onto the sidewalk.

8. A 10 foot parking lot setback from the front edge of pavement of Capetown Drive shall be maintained.

9. All landscaped islands within and at the perimeter of the parking lot shall have raised curbing and shall incorporate rounded corners subject to approval by the City Engineer.

10. The driveway that provides vehicular access to the adjoining commercial property to the north shall be reduced in width to 29 feet and aligned with the parking lot driveway to the north subject to approval by the City Engineer.

11. A stormwater drainage plan shall be approved by the City Engineer showing stormwater drainage calculations and incorporating retention and/or detention and erosion control during construction in accordance with the provisions of the Stormwater Drainage Control Ordinance.

12. Plans for all exterior lighting shall be approved by the Planning Department.

13. The Planning Commission denies the applicant the use of the imitation stucco siding (dryvit) on the building. The Planning Department shall approve revised building elevations that substitute an approved building material in place of the dryvit.

14. Specific building colors shall be subject to approval by the Planning Department.

15. The screening of the dumpster shall be subject to approval by the Planning Department. All other utility installations on the east side of the building shall be screened by the extension of the brick screen wall and shall be designed to be consistent architecturally subject to the approval of planning staff.

16. Any sign shown on this application shall not be considered approved as a part of this application.

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17. Screening along the east property line shall be double-row staggered subject to the approval of the Planning Department.

In addition to these conditions, City Staff recommended that money to be placed in escrow by the developer with the City for the cost of one lane of pavement, sidewalk, curb, gutter and storm sewer along the South Main Street frontage and one fourth the cost of traffic signalization at the South Main Street/Sheehan Road intersection. If outside City funding of part of the cost for the construction of the South Main Street Improvement Project is obtained, the money placed in escrow by the developer shall be reduced to an amount to cover the City's share of the cost of constructing the above improvements adjacent to the developer's property.

Mr. Soltau cited his belief that requirements outlined in the Zoning Ordinance relative to the filing of a Variance Application were not met in this case. Standards were not met for the granting of this Variance.

Mr. Schwab advised that City Staff found a yes to all standards outlined in the Zoning Ordinance, he pointed out the fact that this Variance only pertains to the size of a building.

Mr. Compton moved that the decision of the Planning Commission approving a Variance Application to permit the construction of a building in excess of the 5,000 square foot limitation in a B-1 zone district, be upheld. Mr. Kingseed seconded the motion. A roll call vote resulted in seven ayes in favor of the motion.

Mr. Soltau advised that their primary concern with the Site Plan for this project is Capetown Drive, set back and screening between the restaurant and the Harbour Club. He objects to the construction of a sidewalk in a side yard, that being along the north side of Capetown Drive.

Upon question of Mr. Compton, Mr. Merkle pointed out the fact that there will be approximately a 200 foot buffer between the restaurant and the Harbour Club. To increase this buffer, parking spaces and green areas in the parking area would be lost.

Mr. Kingseed moved that Planning Commission's approval of the Planning Commission Special Approval Application for the construction of this Frisch's restaurant, be upheld, and the condition as recommended by City Staff "money to be placed in escrow by the developer with the City for the cost of one lane of pavement, sidewalk, curb, gutter and storm sewer along the South Main Street frontage and one fourth the cost of traffic signalization at the South Main Street/Sheehan Road intersection. If outside City funding of part of the cost for the construction of the South Main Street Improvement Project is obtained, the money placed in escrow by the developer shall be reduced to an amount to cover the City's share of the cost of constructing the above improvements adjacent to the developer's property" be included as a condition of approval. Mr. Beasley seconded the motion. a roll call vote resulted in seven ayes in favor of the motion.

NESTLE CREEK II SECTION TWO RECORD PLAN

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Mr. Schwab reviewed the Record Plan for Nestle Creek II, Section Two, the development of 9.597 acres of land into 19 lots north of Alexandersville-Bellbrook Road including the continuation of Marwyck Drive to the north. The zoning of the property is Single-Family Residential. Included in this Record Plan is a left turn lane along Alexandersville-Bellbrook Road into and out of Marwyck Drive. A temporary sidewalk will be constructed along Alexandersville-Bellbrook Road. The Plan includes buffering between residential lots and Alexandersville-Bellbrook Road. The Planning Commission by unanimous vote, recommended approval of this Record Plan to City Council, subject to the following conditions:

1. Detailed stormwater drainage calculations and plans incorporating retention and/or detention and erosion control during construction shall be approved by the City Engineer.
2. In lieu of completion of the required improvements prior to the recording of the plat, a Performance Bond or an Irrevocable Letter of Credit in an amount acceptable to the City Engineer shall be posted by the developer with the City of Centerville and a Subdivider's Agreement entered into with the City by the developer.
3. The developer shall place monies in escrow to the City, in an amount necessary to construct a full width improvement to Alexandersville-Bellbrook Road including additional lane of pavement, sidewalks, curb, and storm sewers, less the cost of constructing any temporary improvements, including a left-turn lane and sidewalk, deemed necessary by the City Engineer. The escrow amount shall be subject to approval by the City Engineer.
4. An access easement to the detention pond shall be established for emergency maintenance of the pond by the City.

Mr. Schwab reviewed for Council a recommendation from City Engineer Norbert Hoffman, that this Record Plan be approved conditioned upon receipt of the following:

1. Acceptable Subdivider's Agreement.
2. Performance Bond to cover the public improvements (Pavement, curbs, drainage, sidewalks, etc.) in the amount of \$183,000.00 of which \$21,300.00 is for public sidewalks.
3. The deposit of an escrow amount of \$11,150.00 with the City which is the estimated developer's cost for the widening of one full lane of pavement on Alexandersville-Bellbrook Road, including curb, storm sewer and sidewalk, minus the cost of widening for the left turn lane and any temporary sidewalk constructed as part of the current subdivision improvements.
4. Inspection fee in the amount of \$720.00.

A one year Maintenance Bond will be required when the public improvements are completed and the Performance Bond released. The amount of the Maintenance Bond will be determined at that time.

Mrs. Beals moved that the Record Plan for Nestle Creek II, Section Two, be approved as recommended by the Planning Commission subject to all conditions detailed by the Planning Commission and the City Engineer. Mr. Stone seconded the motion. A roll call vote resulted in seven ayes in favor of the motion.

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RESOLUTION NUMBER 7-93 CLYO ROAD EXTENSION

Mr. Horn reviewed the following bids received for the extension of Clyo Road from Bigger Road east to Wilmington Pike:

Pyper Construction Company	\$1,191,748.35
SK Construction Company	1,198,964.44
R. B. Jergens, Inc.	1,220,764.63
J. R. Jergenson Company	1,273,212.45
TdM Construction Company	1,309,440.70
Barrett Paving, Inc.	1,378,100.00
Schweitzer Construction Company	1,503,202.10
Ahern and Associates	1,568,154.70

Mr. Horn recommended acceptance of the low and best bid submitted by Pyper Construction Company. The bid document included an alternate for recycled asphalt, however the difference in cost was so minor, City Staff did not recommend the use of recycled asphalt.

Upon question of Mayor Heintz, Mr. Horn advised that costs for this project will be divided roughly 40% City, 60% property owners. The portion of this roadway being constructed by private enterprise will be coordinated into the overall project. Mr. Schwab pointed out the fact that assessments could be 22% less than estimated.

Mr. Singer sponsored Resolution Number 7-93, A Resolution Accepting The Bid Of Pyper Construction Company For The Clyo Road Extension Project In The City Of Centerville And To Authorize The City Manager To Enter Into A Contract In Connection Therewith, and moved that it be passed. Mrs. Beals seconded the motion. The motion passed by unanimous vote.

There being no further business, the Meeting was adjourned.

Approved: 
Mayor

ATTEST:


Clerk of Council