

Items PZ 21-05-01 Re-Plat**Ted Jendrisak, applicant****Baker Real Estate Holdings Ltd, owner****Baker's Acres Ph II, Lot 36 & 37 (PN 6010386 & 6010387)**

- For review and approval

Mrs. Hussing gave a short summary of the case.

The representative for the case, Ted Jendrisak, was sworn in.

Mr. Jendrisak had no information to add.

Questions/comments from the Commission with answers

None

The following motion was made by Mr. Larson and seconded by Mr. Heilmeier:

- **I move to approve the Re-Plat – Major Subdivision Application for Case PZ 21-05-01, applicant Ted Jendrisak, owner Baker Real Estate Holdings Ltd for the replat of Baker's Acres Phase II, consisting of the consolidation of Lot 36 & 37 based upon the following standards:**
 - Compliance with City of Tallmadge Thoroughfare Plan**
 - Compliance with zoning**
 - Compliance with design standards of these regulations**
 - Compliance with procedural requirement of these regulations**

Subject to no conditions, modifications and/or amendments based on the evidence presented.

No Additional Discussion

All members present voted in favor. (4-0)

Item PZ 21-05-02 Minor Modification**Nick Dadich, Delanie's Gastro Bar, applicant****Bill Mosholder (for Doris Bovard), owner****67 West Ave**

- For review & recommendation

Mrs. Hussing gave a short summary of the case.

The representative for the case, Nick Dadich was sworn in.

Mr. Dadich described the project according to the submitted site plan. He stated that the submitted drawing is basically what it will look like, but a couple little things could change.

Questions/comments from the Commission with answers

C: Once we approve your plan, we don't want a bunch of changes coming back that we didn't approve.

A: The only thing that may change is the sail because I have to figure out how I could do that without it being over the fire pit. It's going to be about 15 feet in the air, which is way above the fire pit and I'm sure there is a fire rating on it because there's not much BTU coming off the fire, it's more for ambiance. There's not a lot of heat. That may go away, and I may just go with umbrellas over the tables.

Q: Can you explain the fire pit?

A: It is natural gas that's run from inside and it will be constructed of paver stones. It will radiate heat across it. It will have an automatic kill switch run electronically from the inside and a shutoff box on the outside. It's not really meant to radiate a lot of heat. It's just more for ambiance. It's not a high output. The guy who's installing it said nothing is catching fire from this thing.

Q: The table is 16 feet?

A: Ideally that's what I would like it to be. I see there is some trepidation from the Fire Department because it will run into what is considered the right-of-way, but I would like to discuss with them what their apprehension is. I included pictures from Cuyahoga falls where it's right next to the road and right next to the building. (Filed: applicant submitted pictures accepted prior to the meeting and added to the PowerPoint presentation)

Q: Is this low or is it table top you can dine at?

A: It will be about 3' tall and about 3' wide.

Q: Is there any type of guard or is it an open flame?

A: It's open flame

Q: Do you find anything in the Staff Report that you don't agree with?

A: Yes. I don't think the bollards are necessary. As far as the fire... I would have to sit down and have a conversation with the Fire Chief and maybe the Mayor and see exactly what their concern is. I don't think the bollards are a concern. They want to put it there to protect people from what?

Mr. Taylor: I think they want to protect people in your restaurant in case someone would jump the curb there and you have people sitting there in the right-of-way that could get hit.

Mr. Dadich: Sure, I would love to see any kind of accident report from the last 50 years to show if a car has done that.

Mr. Taylor: It only takes one.

Mr. Dadich: Of course it takes one. We don't have them around the circle, and we have concerts on the circle. I just think they are ugly and unnecessary. I think the rod iron fence is enough.

Mr. Taylor: Would you be in agreement instead of bollards, to have maybe some masonry piers with the rod iron fencing between them?

Mr. Dadich: Here's what I'll say... If the City is going to say "We're not going to allow this unless..." Well then of course. Will I say it with a good conscience that it's a good decision, no. The design I have for my patio is classy and quite frankly it's awesome and it's needed on a road that is basically an auto mile. There are little pilons right next to the telephone pole next to the entrance way so I just think it's irrational to think "well that could happen...". There's a lot of things that could happen, I just find it unnecessary. But if the Board says... if there's 3 of you that says "we're not going to allow this unless you do this" ... well then you got me. What am I going to say? I just think it's unnecessary.

Mr. Taylor: We're just concerned with safety. I think you'll need to work with City Administration and the Police Department to come up with something.

Mrs. Oliver: I'm pretty familiar with that area in Cuyahoga Falls and I just wanted to bring to your attention that it is just a rod iron fence around the seating area, and I believe that throughout Cuyahoga Falls, that is the extent of what I have seen. I may have missed something, but even in the new areas, that is about the only thing you're going to see as far as protection and some kind of barrier between the patrons and the street. I understand the concerns of the Police Department and the Administration, even the Commission, and I of course have concerns myself, but I do believe that this is a standard in other areas and I'd like to think that we unfortunately cannot plan for every single eventuality that may occur. Although anything could happen, that area is supposed to be 25 mph so I'd like to believe that if we enforce that regulation and the speed is kept down that hopefully there will be no issue. Putting an undo expense on a business owner is not what I believe is in our best interest.

Mr. Larson: If you look at that picture that you just referenced, the distance between the road and the fence is considerable. What we're talking here is basically putting a fence right on the road. You basically have a sidewalk separating you from the road.

Mrs. Oliver: I believe that picture is a side road. To the front, I believe that distance over there is not... there is parking on the street, which is a difference, but if a car is going to jump a curb, it's going to go past what that sidewalk is there, in my opinion. I feel as though in many cases that this is a standard and the distance is not going to make a difference if a car is going to jump a curb.

Mr. Dadich: What you looked at is a corner and the design is a teardrop shaped to go around that alley. Mayor Kline can you go ahead a couple pictures? You see that picture on the bottom, right? Look where the eating [area] is under that lean to. It's just held up with 4x6 posts, there's no fencing. That is on Front St. The one to the left, that's the same kind of rod iron fence and it's about 8 feet to the street.

Mr. Taylor: Maybe you can come up with something, rod iron, which can take some pressure, and maybe the posts can be set in concrete, not just anchored to the ground. That would provide some protection. That's something you could work out with both those entities. Would that work?

Mr. Dadich: Like I said, looking at it, the way I brought the fence down even with the building, then you're getting into the driveway and getting out, that's the only way you can turn left. So, we're either shortening the gap of the drive space or we are shortening my patio. I don't want it to sound like I'm not concerned with safety, but I just think that there is proportional reality to it. If it's that important, I think the next P&Z meeting says there should be those pillars all the way around the circle.

Mayor Kline: That is being worked on. I like to sit on outdoor patios, in Cuyahoga Falls and in Florida. The ones in Florida have concrete barriers because the Cities are allowing access to the public right-of-way. The difference here is, you're asking to go into the public right-of-way. We have people going through the Tallmadge Circle once a month. We are looking at putting cement barriers to prevent that. A little difference because they're going straight on, but since you're asking us to allow you to have access to the public right-of-way, encroaching into the right-of-way, I think we can come up with some solution to protect this Commission who is maybe going to authorize allowing you to sit in the public right-of-way for your personal benefit and the public. We're making a lot over a couple bollards or a couple stronger posts. You're asking this Commission to go outside of the box that we've never done to allow access to the public right-of-way.

Mr. Dadich: You know I respect your opinion and if you guys say that's what we need to do... again, I'm just voicing my opinion. If we don't need it, I don't want it. If you guys are saying I have to have it, then I have to have it. I will say this, if I had to have it, I would probably put it on the inside of the fence. It would still serve the same purpose; I just wouldn't want the eye sore. Like someone mentioned, there is traffic stopped for 2 hours from 3-5 every day, and I envision people looking over and saying wow. What I'm doing is not just for seating and the dining and the covid, but a lot of it is just to have some pride in my restaurant in a building that's pretty old, pretty dated, and pretty weird, ugly colors so I would hide that a little if I put it on the inside. I'm not trying to argue and I'm not saying I won't do it, I'm just saying if you say that's the only way you're going to do it, then I'm going to say ok, then I'm going to do it.

Mayor Kline: But I think you're looking at the posts differently than what we are. You're thinking of a concrete barrier post. You can get a rod iron barrier post every 4' and it looks exactly like the fence I'm looking at on Water St.

Mr. Dadich: I will speak to my fence contractor tomorrow and see what they can do.

Mr. Taylor: I think that is reasonable, if you work with the City and the Police Department.

Mr. Larson: I agree that this is conceptually a fantastic project and it's going to look great. I'm very concerned about approving a project with very little factual details. I would feel much more comfortable if we had drawings that better represented the project and in greater detail. This, to me, just doesn't seem to be complete enough to make a decision.

Mr. Taylor: Nick, would you agree that there is more information that we need before we move ahead with this? I think you're pulling pieces together here and maybe we're a little premature. Maybe a little more information would be helpful.

Mr. Dadich: I don't know. I'm going to follow the guidelines on whatever the Fire Department says about the fire pit.

Mr. Taylor: I think there are just some things that need addressed that you need to work out a little more. What's the schedule for getting this done?

Mr. Dadich: The first thing that was going to happen was the pouring of the concrete and landscaping. I've already established with my staff that we are going to be closed for a week in June to redo a lot of that. That's like the 8th through the 14th. I told my concrete guy if everything goes well at this meeting, we'll be ready to pour on his schedule.

Mayor Kline: Mr. Larson, would you consider a preliminary approve so he can move forward with the concrete then he can come back with the details?

Mr. Larson: One of my concerns is we have a Thoroughfare Plan for the City and we have the right-of-way, but we also have that contingent. What happens if the City ever decides to widen West Ave? Have we made an accommodation for that? We're putting a permanent structure there, not just a parking lot. Looking at all those different things, I personally feel that we're just too vague to even give a preliminary approval.

Mayor Kline: If you were to widen West Ave, you would take all those businesses... I don't foresee... and this is slab parking so if ODOT were to approve, what you're going to lose here is fencing and concrete.

Mrs. Oliver: I would like to see us move forward with some preliminary approval. One of the driving forces, to me, is that we have a business owner that has been very negatively impacted by the last year and a half and what has occurred. He is willing to make a huge financial investment that will certainly benefit the City. I do see that there could be more detail that we could utilize, but the concept itself, unless Mr. Larson has some serious issues and we can't resolve the situation with the driveway, I think we could do preliminary so he could at least begin. By asking him for more detail, he is missing out on the time frame in which this project would be most beneficial to him.

Mr. Heilmeier: I would concur with Mrs. Oliver. If he wanted to do that concrete slab, what permit does he need?

Mayor Kline: He wouldn't need a permit, but I think it's the concept. He's not going to put a stamped concrete area in without knowing that you just need some further details.

Mr. Heilmeier: What do we need to do tonight to move this forward?

Mr. Taylor: I guess we need to come into agreement on what we're going to approve and when we would like to have him back is next month. There seems to be a lot of parts to this approval including the Fire Department and the Police Department and the City. I guess it's a lot of internal that probably the Mayor would be working with everyone to come up with a solution.

Mr. Dadich: Can I address something? My Zoning Permit is Conditional, so my liquor license is part of a Conditional Zoning permit. If I just decide to just do whatever I want and not what you guys are requesting, you can move to have my license revoked. So, I'm going to follow all the recommendations and it's going to have to be within the confines of the code.

Mr. Heilmeier: The only thing we're in disagreement with is the handmade map and what the fencing is going to be, correct?

Mrs. Oliver: In looking over the motion and the conditions and modifications, it appears that everything there, we could place in a motion this evening and add something to the extent... it says right there that a sturdy barrier must be installed... we don't say specifically what that is. I'm thinking everything that we are stating could be included in a motion this evening and if we felt that it's necessary to come back with more specific details regarding the fire pit, the fencing... but I would say everything we have here could be approved this evening to allow him to move forward but we can still put some kind of condition on here that allows us to take an additional look at this.

Mr. Taylor: The 2 motions in the Staff Report have a lot of detail that would cover us on just about everything. If he would disagree, he would have to work with the City. Nick, you've read the Staff Report and you are in agreement with the conditions? Maybe not 100% but you've read it and understand that there are some conditions that you're going to have to negotiate with either the City, the Fire Department, or the Police Department. I think the biggest thing is the safety issue. We approve it based on the plan that you submitted which may have some changes, and the conditions that were stated in the Staff Report, there's a lot of that stuff is spelled out. I don't think we need to go into details.

Mrs. Oliver: I fully agree with that.

Mr. Dadich: If I meet with this fence Contractor, and ask him if a rod iron fence would protect people and he says yes, would that be enough for you guys?

Mr. Taylor: A rod iron fence is something that's substantial if it's anchored to the ground.

Mr. Dadich: That's what's in my plan and I'm having a professional company install it. I checked with liquor control for the minimum height requirement and it's 4 feet.

Mr. Taylor: Mr. Larson, what do you think about this?

Mr. Larson: I just think we're really putting the cart before the horse.

Mr. Heilmeier: I think I can move forward as long as Mr. Dadich understands that for the fence, the City... has to come together on what is necessary. We need to either table this or vote something, but I think we're just spinning our wheels at this point. I know I could vote for everything understanding that the fence has to meet the City recommendations.

Mr. Taylor: I think at this point I would go ahead with the motion and he has to comply with all the things in the conditions and the modifications and to work with the City, the Fire Department, and the Police Department to provide a safe place for outside dining.

Mrs. Raber: If I can make a suggestion, if you want to beef up the condition of having a sturdy barrier and have that be subject to the approval of the Police Department, Fire Department and Zoning Department, then you have the assurance that it's going to come back and meet with those bodies' approval. It can enhance what that says now and let Mr. Dadich proceed with the project.

Mrs. Oliver: This is what concerns me. The Police Department already commented that they were looking for bollards of some sort, so I don't know if we say that we need police approval... are we in negotiations with them? The Fire Department I understand because of fire codes. With the

police, I'm concerned. I guess I would like that to be an Administration decision, knowing full well that the Administration is going to go along with what the police say. Unless they follow some kind of regulations related to that, I'm not sure I want them making that decision.

Mrs. Raber: I think they are open to other solutions.

Mrs. Hussing: I just want to point out that the Police Department made the same recommendation at the high school and our Administration is the one who reviewed it and approved it, not the Police Department. He also inserted in there 'an alternative'.

The following motion was made by Mrs. Oliver and seconded by Mr. Heilmeier:

I move to approve the Minor Modification to Site Plan Application: Case #PZ 21-05-02, Outdoor Dining Area at 67 West Avenue, applicant Nick Dadich and owner Bill Mosholder for Doris Bovard, based upon the application & plans submitted March 29 & April 28, 2021 to the Planning & Zoning Department subject to the following conditions, modifications and/or amendments based on the evidence presented:

That the conditions set forth in Ordinance 104-2009 remain in effect:

1. No banners shall be displayed outside of the building.
2. No alcohol advertisements shall be visible from the public right of way.
3. No neon signage shall be exposed to the outside of the building.
4. Amplified music is permitted within the patio area in compliance with the City's applicable noise ordinances.
5. Sales receipts shall be made available to the city annually or upon request.
 - a) That Condition 1 is amended to allow temporary signage as permitted by the sign regulations in the Zoning Code.
 - b) That Condition 2 is amended to allow alcoholic advertisements in temporary signage as permitted by the sign regulations in the Zoning Code.
 - c) That Condition 3 is amended to prohibit neon signage on the outside of the building.
 - d) That the location and number of tables, spacing of tables and access within the outdoor dining area must meet all requirements for accessibility.
 - e) That alcoholic beverages may not be consumed outside of the designated outdoor dining area.
 - f) That a sturdy barrier is installed to protect patrons in the outdoor dining area to be approved by the Zoning Department, the Police Department, and the Fire Department.
 - g) That a modification to the Zoning Code TCO 1181.04 (a) fences or walls not to exceed 3 ½ feet in the minimum front yard setback to allow a 4-foot height to be granted to allow fencing in the front yard setback and public right-of-way up to the sidewalk.
 - h) That no obstruction exists between the parking lot and building entry to meet the Fire Department's requirements.
 - i) That the gate on the west end be an egress gate.
 - j) That the firepit installation and use of meet the approval of the Fire Department.
 - k) That the sail cover, if installed, be fire rated and not located where it covers the firepit.
 - l) That for the portion of the outdoor dining area,
 - o The applicant shall provide at its sole cost and expense and shall maintain in effect during the entire period of the occupancy, insurance in the following manner:
 1. Worker's Compensation insurance in at least the required statutory limits;
 2. Comprehensive general liability insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least one million dollars (\$1,000,000) per occurrence, and one million dollars (\$1,000,000) for any single injury; and
 3. Prior to occupancy, the permittee shall provide the City with copies of the certificates of insurance for the required policies for each type of insurance naming the City as an additional insured party.

4. The required insurance policies shall each provide that they shall not be changed or canceled during the life of the Outdoor Dining Occupancy until thirty days after written notice of such change has been delivered to the City.
5. The applicant shall hold harmless, indemnify, and defend the City of Tallmadge from and against any and all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, consequential or otherwise, including reasonable attorneys' fees, which may in any way arise out of or be connected with the occupancy of the Outdoor Dining area which may in any way result therefrom, or from any act or failure to act by the permittee, its agents or employees.
6. The City shall have the right and power, acting through the Public Service Director to prohibit the operation of an outdoor dining area at any time because of anticipated or actual problems and conflicts in the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the public right-of-way, or from demonstrations or emergencies occurring in the area.

No Additional Discussion

3 votes in favor, 1 against. (3-1)

Items PZ 21-05-03 Site Plan Review

John Walsh PE, PS, applicant

Todd Jordan, owner

281 Southwest Ave

- For review and approval

Mrs. Hussing gave a short summary of the case.

The representative for the case, John Walsh, was sworn in.

Mr. Walsh had no information to add.

Questions/comments from the Commission with answers

None

The following motion was made by Mr. Heilmeier and seconded by Mr. Larson:

I move to approve the Site Plan Review Application for Item #PZ 21-05-03, applicant / owner Todd Jordan at 281 Southwest Avenue based upon the application & plans submitted April 22, 2021 to the Planning & Zoning Department subject to the following conditions, modifications and/or amendments based on the evidence presented:

1. **Approval by Summit County Department of Building Standards**
2. **Hours of construction shall comply with city ordinances**
3. **Submittal and approval of a Post Construction BMP Report by City of Tallmadge**
4. **Subject to review and approval by City Engineer and all necessary approvals from Summit County Soil & Water Conservation District**
5. **All utility plans, connections, and inspections subject to City of Tallmadge construction standards by review and approval of Public Service Department.**
6. **Approval by the City Engineer of a photometric lighting plan prior to any lighting installation.**
7. **Approval by the Planning & Zoning Department for signage installation**
8. **Approval of a Use & Compliance Certificate by the Planning & Zoning**
9. **Compliance with the Fire Department's directives as enumerated in the Staff Report**

No Additional Discussion

All members present voted in favor. (4-0)

Items PZ 21-05-04 Vacation Plat

City of Tallmadge, applicant

Bentley Place Entry Island

- For review and recommendation

Mrs. Hussing and Mayor Kline gave a short summary of the case.

Questions/comments from the Commission with answers

Q: Has the City been maintaining it?

A: We have not.

The following motion was made by Mr. Larson and seconded by Mr. Heilmeier:

I move to recommend the vacation of a portion of Bentley Place Boulevard to be known as Block A, being the entry island to Bentley Place based upon the Map of Vacation dated April 27, 2021 for Case PZ 21-05-04, applicant/owner City of Tallmadge subject to no conditions, modifications and/or amendments based on the evidence presented.

No Additional Discussion

All members present voted in favor. (4-0)

Items PZ 21-05-05 Vacation Plat & Dedication

City of Tallmadge, applicant/owner

Treat Blvd

- For review and recommendation

Mrs. Hussing gave a short summary of the case.

Questions/comments from the Commission with answers

None

The following motion was made by Mrs. Oliver and seconded by Mr. Heilmeier:

I move to recommend the vacation of 0.0879 acres of Treat Blvd, retaining the utility easements and dedicating a portion of PN 6000980 and the whole of PN 6000981, totaling 0.0974 acres for right-of-way purpose based upon the Map of Vacation & Dedication dated April 26, 2021 for Case PZ 21-05-05, applicant/owner City of Tallmadge subject to the following conditions, modifications and/or amendments based on the evidence presented:

1. That a modification to the Thoroughfare Plan be granted to allow a 50' wide width from the 60' requirement.

No Additional Discussion

All members present voted in favor. (4-0)

VII. Adjournment

A motion to adjourn was made by Mr. Larson and seconded by Mr. Heilmeier.

All members present in favor. (4-0)

Meeting adjourned at 8:49 pm

Respectfully submitted,


Kelli Funk, Secretary


Gerald Taylor, Chairman