

**OFFICIAL PROCEEDINGS OF THE
MARQUETTE CITY PLANNING COMMISSION
April 19, 2022**

A regular meeting of the Marquette City Planning Commission was duly called and held at 6:00 p.m. on Tuesday, April 19, 2022, in the Commission Chambers at City Hall.

ROLL CALL

Present: W. Premeau, A. Andres, Vice-Chair M. Larson, N. Williams, M. Dunn, N. Frischkorn

Absent: S. Mittlefehldt, Chair J. Cardillo (both recused themselves due to perceived conflicts of interest)

AGENDA

It was moved by A. Andres, seconded by N. Frischkorn and carried 6-0 to approve the agenda with additional materials submitted from the applicant for 04-SUP-06-21.

CONFLICT OF INTEREST and EX-PARTE CONTACT

City Planner and Zoning Administrator D. Stensaas stated that Chair J. Cardillo and member S. Mittlefehldt had let staff know they would not be present for this meeting because they wanted to avoid any conflict of interest, and although he didn't think it was necessary it is good to avoid even a perception of a conflict when it may be created. No other conflicts were stated.

CITIZENS WISHING TO ADDRESS THE COMMISSION ON AGENDA ITEMS

Lori Rowland, of 1619 Fitch Ave., stated that she is a sister of Alex Rowland, a local realtor, a homeowner, a member of the DDA Board of Directors and a board member of the Marquette West Rotary and has lived in Marquette for nine years. She stated that cares deeply for the residents and businesses of Marquette. She stated that Alex graduated from Michigan State University with a degree in biosystems engineering. She stated that he could have relocated anywhere to use this degree, but he chose the City of Marquette to open a business. She stated that after a few years Alex was able to purchase a business on Third Street which is a commercially zones area where many people were trying to start businesses. She stated that just down the street is Blackrocks and 808 Marketplace. She stated that Third Street seemed like a good place to purchase a building given that there was another thriving brewery just two blocks away. She stated that this brewery was also adjacent to a residential area. She stated that therefore it seemed like a pretty safe investment decision. She stated that the rules for businesses in the commercial district should be dependable and consistent. She stated that it would make it very difficult for an investor to advise a purchaser whether they would be making a safe investment in a commercial property if the zoning rules are inconsistent. She stated that after she graduated from Northern, she watched almost everyone she knows leave town or move away to more opportunities. She stated that most of the time they did not see Marquette as having much opportunity for a successful future. She stated that there were more young professionals coming out of NMU every year and most of them are going to continue to leave. She stated that if the new graduates see Superior Culture as an example, they will wonder if the City of Marquette want to support these types of business or does the city wish to shut down opportunities for entrepreneurs which could add some valuable assets to the city going forward. She stated that NMU students are watching and listening. She stated that taking away a very important part of Mr. Rowland's business is not very encouraging to the next generation who may be contemplating staying in Marquette. She stated that while she understands that there needs to be rules, but that in the commercial district there should be rules where everyone can feel satisfied. She stated that tourism is booming in the city and the brewery scene is just one of the categories that is bringing people to Marquette from all over the country. She stated that people enjoy being outside and they also live music. She asked if this was really the time to take away a big piece of Superior Culture and destroy their opportunity, particularly after they have invested so much within the city. She stated that if the city takes away the outdoor live music venue, they will be showing all of the other Northern and recent college graduates what happens if they also invest in Marquette. She stated that she appreciates the Planning Commission's consideration to allow Superior Culture to continue live music on Third Street. She thanked the Commission.

Sandy Gluski, of 212 W. Hewitt Ave, stated that she feels that if Alex Rowland had reached out earlier in the process, then the residents would have been more comfortable discussing a compromise. She stated

there could have been more back and forth dialogue. She stated that since Alex reached out to only a couple of households and so late in the game that the residents have lost some of their comfort with this idea. She stated that the residents do not have any reason to trust that Mr. Rowland will follow through, based on what had occurred up until now. She stated that she does not think that another extension should be given either. She stated that some people have stated that since the residents chose to live where they did, they should expect noise. She stated they do expect noise; people, cars, occasional events, et cetera, but this is not the same thing. She stated that the level of noise that comes from the back of Superior Culture is a whole different animal, and it is unfair to tell the residents that they have to endure that for the rest of their time. She stated that she and her husband have put in \$15,000 to \$20,000 and a lot of hard labor into their yard. She stated they live outdoors as long as the weather permits. She stated that they have earned the right to use it. She asked the members to think of when they use their yards, with their kids, with their extended family, and their friends and how it must feel when it is interrupted, and you cannot enjoy it. She stated that the residents support the DDA's commitment for Third Street, hoping they take the residents into consideration. She stated that she absolutely supports Superior Culture's indoor music, visual arts, health and wellness programs. She stated that Mr. Rowland's grant of \$25,000 to open up the other floor to accommodate more patrons to enjoy the indoor music should ensure his success without having outdoor music. She stated that she was worried about the back deck because it is directly across from her bedroom. She stated that she sent in a lot of videos and she wanted the members to hear what she hears in her backyard (she played the video). She stated she would like to play a second video, which was noise that was not music, but just patrons (she played the video). She stated that this was what she experienced from her bedroom. She stated that they have lots of videos and that the videos she played were probably the two worst, but they were all close to it and were still loud and you could still hear it. She stated that she did not think that anyone would think this is acceptable in their home. She thanked the commission members.

Igor Popovich, of 216 W. Hewitt Ave, stated that he wanted to state what this was about and what it is not about. He stated the need to put back the narrative created by Superior Culture before the previous hearing, in the form of an online petition suggesting that there is some type of warfare being waged on music and artists and musicians in Marquette, and specifically the music venue in the parking lot behind Superior Culture's business. He stated that one unfortunate consequence of the petition was that the war on music narrative appears alive and well today. He stated that it's been a couple of weeks and that they have received communication from one supporter of these music activities stating that, "In the war launched against Superior Culture, there is danger of not only alienating the other community members but against a small business who are genuinely working to better the community." He stated that he hoped that the writer meant "war" metaphorically. He stated that he still found that hues and implication of an alienated youth somewhat menacing. He asked again what this is actually about. He stated that it is known that there were several conditions passed at the end of the previous meeting. He stated that these conditions required that Superior Culture to implement a sound management plan in consultation with their neighbors. He stated that the neighbors did not hear from Superior Culture for almost six months since the last hearing and that time had already run out before today's meeting. He stated for this reason residents and other property owners got together and worked out as a group what an acceptable noise management plan might be. He stated that also the group initiated a meeting with Superior Culture in order to find out about their sound management plan which they were supposed to come up with in the first place. He stated that Superior Culture did not present any sound management plan at that meeting the previous week. He stated what this is actually about is the continuing concern that, as in the past, whatever additional or modified conditions may be stipulated to Superior Culture, they will not be implemented by the business effectively or they will not be implemented at all. He thanked the committee members.

Susan Bohor of 130 and 136 W. Hewitt Ave stated that last October in 2019 the City Planning Commission postponed on revoking Superior Culture's Special Land Use Permit until today's meeting in order to give the owner time to meet the conditions. She stated that one of those conditions was to develop a sound management plan in consultation with the neighbors. She stated that this did not happen. She stated that on April 13th, Mr. Rowland was invited to a meeting with the neighbors and as was stated earlier, no sound management plan was presented. When Mr. Rowland was asked about the sound management plan, he stated that he had met with a sound engineer who was a friend of a friend, but that he could not remember the person's name. She stated that his plan consists of creating some type of canopy over the stage with side curtains. She stated that when Mr. Rowland was asked what those materials would be, he was unable

to tell the group. She stated that Mr. Rowland had also said that he had agreed to have all of the musicians run their instruments through their sound systems so that they could control the noise, but when the group asked Mr. Rowland what the decibel level would be that would be deemed too loud and from what location he would be measuring the sound, he had no answer. She stated that Mr. Rowland's main offer was basically to limit the days and hours of operation. Ms. Bohor said that none of these proposals, however, can eliminate the harm to the neighbors and their property values that is caused by playing amplified music in what is essentially a parking lot surrounded by homes. She stated that under the city's land development code, this permit should not have been granted in the first place until the effect on the surrounding residential properties is known. She stated under Article 3, Section 54.322, the Third Street Corridor District form-base code, all Special Land Use Permits shall be granted if the following conditions are met: use does not constitute a public nuisance and use will not substantially injure the value of adjoining property. She stated under Article 14, Section 54.1403 of the code, it further states that the current use of adjacent lands and neighborhood must be compatible for the proposed use. She stated that the neighboring property owners are here to tell you that outdoor music is not compatible use with the surrounding residential properties, period. She stated that local realtors have written letters confirming that property values have declined. She stated that there is no way to play music in an outdoor parking lot that will prevent the noise for disturbing the surrounding residents, both in their back yards and inside their homes. She stated that they are not opposed to Mr. Rowland continuing to provide musical entertainment, as long as it is inside of his establishment and that it is in conformance with the city's noise ordinance. She stated that the desires of one business owner for an accessory use which is not an inherent part of his business should not be allowed at the expense of the homeowners and taxpayers whose quality of life and property values are so negatively impacted. She asked the committee members to please follow the dictates of their own Land Development Code and revoke the permit for outdoor entertainment and musical events. Ms. Bohor thanked the committee members.

Rebecca Finco, Director of the Downtown Development Authority, stated that she was there to express support for Alex Rowland and Superior Culture and their efforts to reach an equitable compromise with the properties adjacent to 717 North Third Street. She stated that since this issue was brought before the Planning Commission last October, Mr. Rowland has taken measures that were requested of him to pursue an acceptable resolution with the neighboring property owners and has acted in good faith to reasonably address the noise concerns brought forth by surrounding residents. She stated that his efforts have included consulting with a sound specialist to evaluate the site and agreeing to implement other measures and mitigation controls prior to the first seasonal outdoor performance. Second, undertaking substantial interior renovations with the help of a DDA grant of \$25,000 to increase his capacity to accommodate indoor performances, agreeing to eliminate Saturday outdoor evening performances at the residents' request and also eliminating the time, the volume, and the frequency of outdoor performances to Friday evenings, which is one night per week. She stated he also agreed to having an onsite manager present to manage the sound and the amplification and the other compliance measures that would be needed. She stated that as they knew, this would be with the exception of DDA sponsored Music on 3rd events - which would be four evenings throughout June, July, August, and September. She stated that this sound management proposal has been discussed and shared with the neighboring residents and that she felt that it represented a reasonable compromise to allow Mr. Rowland to continue responsible operation of his business, while also being respectful and courteous to the residential property owners. She stated that without a doubt, Superior Culture adds to the vitality of the eclectic Third Street commercial corridor and a spirit of cooperation and support of local business development. Ms. Finco stated that she would urge the Planning Commission to continue Superior Culture's Special Land Use Permit with the new measures clearly aligned within it. She thanked the committee members.

Paul Gluski, of 212 W. Hewitt Ave, stated that he believes that the Superior Culture location is not suitable for live music. He stated that the business faces Third Street while the other three sides are single-family homes or residential rentals. He stated that while Superior Culture is allowed live music, he asked who polices it. He stated that if there are regulations, they must follow them. He asked that if the regulations are not followed, what are the consequences? He asked will they all be back next fall coming before the commission with the same concerns. He stated that the residents had heard from the commission that they would not be able to limit the outdoor use to days and time. He stated that according to the land development code you absolutely can. He stated that since all of the problems in the past have been about outdoor music, maybe that should not be allowed. He asked have there been any noise complaint in the

last six months and that the answer is probably no, because there has been no outdoor music. Mr. Gluski thanked the committee members.

Linda Popovich, of 216 W. Hewitt Ave, stated she was there to show her support for the previous week's report which was submitted to the Planning Commission's consideration. She stated that she was also there to support her concerns about the level of noise that has been generated by music and patrons at 717 North Third Street for the last two years. She stated that she feels that is important to state that as a musician herself, she is not against music in general, not at all. She stated she was not against outdoor concerns in particular. She stated that she supports local businesses just as much as everybody else in the room. She stated that this is not an attack on Alex Rowland or his business. She stated that she knows he is a good guy and that he does a lot of good things for the community. She stated that there are just some locations, however, where outdoor music is not appropriate and stated that the lot that Superior Culture is situated on is one of those locations. She stated that after reading the City of Marquette's Land Development Code, items specifically concerned with the Third Street corridor, it seems that these codes support their claim that outdoor music is just incompatible with the surrounding residential properties. The stage is located far off of Third Street, behind a house that sits in the middle of the block. She states that the corner of the lot extends back into the center of the block's interior, thus affecting all of the houses and apartments that are located in this residential area. She states that on various architectural drawings, the stage looks to be about as close to her house as it is to Superior Culture's back deck. She stated that as she has mentioned in previous meetings, with all of her doors closed she can hear the music and the crowd noise inside of her home. She stated that they have received a couple of letters from local realtors indicating the negative effect that this has on the property values of some of their homes. She stated at the last meeting of the Planning Commission, there was a motion that required Mr. Rowland to create a sound management plan in consultation with his neighbors. She stated that over the past six months, she personally never received any invitation from Mr. Rowland to participate in such a plan. She stated that the document that was sent the previous week to her neighbors was lacking any details that would need to be approved. She stated that one of the residents' many concerns was Mr. Rowland's proposal. She stated that other concerns were that he still wanted to approve the drum set for the performances and vocals are still going to be amplified. She stated that he said the sound level would be controlled and would be held at a reasonable level, which seems very subjective to her. She stated that she would like to add that was the plan as of the last summer, also, and everyone kind of knows how that went with the sounds that they heard during the previous meetings. She stated that she was not sure what Mr. Rowland's plans were for Art Week but was wondering exactly what his plans were for closing his outdoor food and beverage on other nights of the week. She stated that aside from this, as one of her neighbors had mentioned, she's concerned about the deck that extends out of the upper back level of the house. She stated that it was very unclear to her how the deck would be used, if the patrons would be out there at all hours during the events that take place. She stated that that deck is high off the ground and that she can only imagine the negative impact it will have with other noise from the area. She stated that she supports the recommendation of the cessation of the outdoor music events and would just like to see the music events moved indoors. Ms. Popovich thanked the committee members.

Bernie Huetter, of 224 W. Hewitt Ave., stated that he has been a resident and taxpayer for over 40 years in that area. He stated that he has experienced over the years a lot of changes on Third Street and that they have all worked in well with the community. He stated that this particular property projects itself back into the residential area, unlike many of the other business properties along Third Street. He stated that this can be easily depicted by the zoning map that was looked at and agreed to by the committee members a number of years ago. He stated that he has attended all of the meetings concerning how could a nightclub be there. He stated that he remembered comments made by various commissioners and initially that this didn't look like a suitable site for this type of outdoor entertainment. He stated that again, at that meeting compromises were developed, a trial period was developed. He stated that after the trial period was over, there were some things that were not met during that trial period. He stated that another meeting was held, again it was reviewed and that issues were brought up by several of the residents. He stated that another compromise was agreed to and again, there were parts of that compromise that was agreed to by all parties involved that were never followed through on. He stated that in fact, there was a comment by a member of this group that said, though not a direct quote, something to the effect that the agreed-to items in the past have not been met and that that person stated he or she did not see why in the future that the items would be met and that it's time that maybe the process should be started all over, based upon the

reviews that have been done, the compromises that have made and the process and the changes that keep on continuing to be developed, that the whole thing should be looked at again before permitting, based upon what is being proposed now plus what is happening now. He stated that it was said that there would be a serious consideration to not continue forward. He stated that those are the things that are concerning him about this, the follow through on anything that's agreed to, and the fact that this has been compromised from what should have been there according to the city rules right from the beginning. Mr. Huetter thanked the commission members.

Ron Sundell, of 130 and 136 W. Hewitt Ave, stated that the persons present know the development code very well, he was sure. He stated that therefore he would not repeat it all. He stated but if you look at the sections that are pertinent to this issue, one that the special use permits will not constitute a public nuisance. He stated yes, it does. He stated that it will not injure the value of adjoining property values. He stated that they'd all already heard comments there that it will. He stated that it is also stipulated that it will be in harmony with the proximate land uses. He stated it is not. He stated if you take a look at other items on the sections and operations of use, in that section, Part C, Number 5, "not in conflict with surrounding properties and uses for the operation." Mr. Sundell stated it is. He stated that there was supposed to be meetings that were to be held and hosted and that all the neighbors were supposed to be involved in. He stated that it was the neighbors that actually had to get the meeting going and started in order for Mr. Rowland to come to talk to them. He stated that there is no sound plan. He stated that Mr. Rowland said "a friend of a friend" is gonna do some work. He stated that he certainly has not seen any detailed analysis of what the noise would be like or a sound plan to mitigate all of that noise. He stated that these were all things that the committee members had said at that last meeting, that Mr. Rowland was supposed to have done prior to coming to meet with the residents and then coming to the present meeting to make a final decision. He stated that he wanted to be clear that the only solution is for Mr. Rowland to have the music inside. He stated that the residents were not against music, but that that they are against the noise that disrupts their ability to live in peace and harmony with the neighborhoods, with their neighbors, and be able to have a decent life on weekends and weekdays and not be subjected to all the noise. He stated that he calls the committee members to think about all of that and make a decision and that there is actually one decision and that is for Mr. Rowland not to have the permit and not be allowed to have the music outside. Mr. Sundell thanked the commissioners.

Caden Reed, of 421 N. Front St., Apt. 2, stated that he doesn't have a lot to say, but the point of the meeting was not for neighbors and business to argue back and forth. He stated that the desire to have a compromise has been brought up multiple times and for the commissioners to make a decision based on what they hear. He stated that he thought that one thing to consider that's really important in all of this is a lot of the comments about past behavior, past decisions not being followed through very well. He stated that as towns change over time, people do as well. He stated that the first year and a half that he was working at Superior Culture, he was 21 years old and had no manager experience at all. He stated that Mr. Rowland was a one-man-show, kind of running everything. He stated that since then, especially the last year, he realized that Mr. Rowland not only could not do it on his own, but that if he himself wanted to stick around and help Mr. Rowland, he needed to just step up to that position and start learning what it meant to manage a business. He stated that it is worth at least considering that people can change and that there is opportunity for the interested parties at Superior Culture to be serious about enforcing the change at the business, keeping the volume to a reasonable amount. He stated that he thought that one of the key things that sits a little weird with him is the amount of comparisons specifically to last year's behavior. He stated that he has personally seen Mr. Rowland grow a lot, and he himself, they have both grown a lot and he knows that they are both capable of keeping this in check a lot more this year. He stated that that they realize that this is serious because it keeps getting brought before the City and that he understand that it is not something they want to keep having to hash out. He stated that one of the bigger things that has been talked about is compromise. He stated that he knows that there is noise and that he knows the neighbors are looking for a bit of peace and quiet and that that is completely understandable and he thinks there are spaces for both. He stated that he thinks that a request for one night a week for summer season in the town, especially with being a couple of blocks down from another brewery, isn't too much to ask for. He stated that the business has the capabilities of dealing with it and that he thinks there are a lot more details that they need to get down and that they aren't going to be doing anything outdoors for at least another month or so, giving a couple of more weeks after that, even. He stated that he knows that he can develop a plan for that, and that they know how serious this is and that they will work really hard to get even one

night that they can bring people outside. He stated that it is difficult to run a brewery if everything is only inside. He thanked the committee members.

OLD BUSINESS

A. 04-SUP-06-21 – 717 N. Third Street

Zoning Official A. Landers stated that in the agenda packet that the commission had received a new memo from Dave that gave the last Planning Commission meeting motions and the special land use information. She stated that also included in the packet are the minutes from October 19th, and as this was an old business item, the previous items from October 19th were attached to the agenda. She stated that yesterday the applicant submitted the documents regarding timing management and proposed additional noise abatement tools. Also submitted was a calendar that showed tentative events, indicated in pink for May, June, July, August, September and October. She indicated that correspondence from the neighbors was also included.

Mr. Alex Rowland, owner of 717 N. 3rd St. and Superior Culture, stated that duty of the Planning Commission is to manage the needs of the City of Marquette and find a compromise that works for the whole. He stated that if they were to make the decision to shut down the music entirely that would be no compromise with him and that it would set a precedent that neighbors can dictate which businesses can or cannot operate in the Third Street commercial district. He stated that the Planning Commission should not pick and choose which businesses can succeed or fail and that it is up to the free market to do that. He stated that the Planning Commission can enforce common standards for all businesses, but a few households who make the conscious choice to live very close to a main business corridor cannot decide who has to play by the rules and who does not. He stated at the last meeting, they discussed zoning differences between Blackrocks and Superior Culture. He stated that he would argue that they are more similar than they are different. He stated that as the city of Marquette continues to grow and property becomes more scarce, not every new business in a commercial district is going to fall on a corner lot. Mr. Rowland stated that if the desires of individual owners are to be considered in the issuance of these permits, the number of homeowners should not make a difference.

He stated that the complaints made regarding Blackrocks' outdoor entertainment were similar to what is happening in today's current meeting. He stated that Blackrocks was given the opportunity to work it out to make it the hot spot that it is today. He stated that the city has already made the decision to make Third Street a main business corridor, complete with a long-term plan, and a summer focus on Music on Third and other city-wide events. Mr. Rowland stated that he understood that it can be frustrating but that everything changes and the fact that his business was not operating when the neighbors purchased their property is not reason enough to negate the business operating within the limits of their commercially zoned property. He stated that one of the residents of the condos overlooking the harbor decided that the festivals make too much noise and interfere with their ability to enjoy the waterfront. He asked what if they decided to band together to circulate petitions and ban any music on the harbor. He asked if they are going to ban beer fest and other events that are so integral to Marquette's financial success as a tourist destination. He stated that although his business is obviously operating on a smaller scale, it is one of many that makes Marquette such an exciting place to live and to visit.

He stated that he has also heard the argument that music is not his business. He stated that although the business started with small scale beverage production operations, they have since grown their wholesale with over 50 retailers across the Upper Peninsula. He stated that they still attend the farmer's market every Saturday and numerous festivals across the Midwest every summer. He stated that when the tavern was opened in 2018, music quickly became an integral part of their success. He stated that since that time they have been able to fill their space with patrons every weekend through the use of music. He stated that by giving the business numerous days of outdoor events, they earn tens of thousands of dollars over the course of the season. He stated that it will still be said that he will be able to operate music indoors, but he asked the committee members if they had their choice of packing into a crowded bar or sit under the evening sun in the middle of July and enjoy live music, which would they choose. He stated that this again ties back to his point of having common standards for all businesses as it is directly tied to their success.

He stated that everyone in Marquette wants to enjoy the short summer season, homeowners and music lovers. He stated that he has an engineering degree from Michigan State and that he has been successfully operating a business for six years. He stated that the suggestion by the neighbors that he is unable to follow through, which was stated in the most recent letter, is not only an insult but that it is simply wrong. He stated that his business sales have doubled every year from 2017 to 2019, increased by 10 percent by the difficult period of 2020, and despite further limitations in 2021, increased by over 60 percent from the previous year. He stated that as of today he has invested over \$700,000 in his business and another \$200,000 in a personal property within the City of Marquette. He stated that this was money that came from him personally in order to grow this business from scratch, starting from two 5-gallon jars in his home kitchen. He stated that he plans to continue investing in his business and properties moving forward but will be unable to grow if strong restrictions are placed on operations. He stated that with that being said, he is willing to make significant compromises regarding outdoor operations in order to find a peaceful solution going forward.

He stated that with the proposal that he has submitted, outdoor music would be reduced to one time per week. He stated that the proposed timing of 7:00 to 9:00 p.m. on Fridays only, with the back deck lights out at 10:00 p.m. He stated that this is a compromise from their original proposal, after having been to the last week's meeting with the neighbors, of running a singer/songwriter series on Thursday and larger events on Saturdays since he heard their desires to utilize their yards without disturbance on Saturday was important to them, and so he altered his proposal. He stated that just like they needed a night to enjoy their back yards, he needs a night to capitalize on the short Upper Peninsula summer season. He stated that the exception would be, like Rebecca said earlier, that they would be operating from 6:00 to 8:00 p.m. on the third Thursday, June – September, for Music on Third as well. He stated the tentative music schedule will run from mid-May through October, depending on weather conditions, they could potentially start later and end earlier.

He stated that he has a couple of other small-scale events that would not include music that they would like to be held in the outdoor space and the back yard would still be able to be utilized by patrons during our hours of operation, not limited to Friday evenings, without the use of live music. He stated Friday would include larger acts with no use of a live drum kit, as is stated in the proposal. He said that everything would be passing through the businesses' sound system, including an electronic drumkit which can be significantly diminished in sound as opposed to a live kit. Mr. Rowland stated that in regard to exact metrics, when it comes to decibels and what is actually reasonable, everything is completely dependent on the act that is playing. He stated that one thing at 50 decibels could sound completely different than another act. He stated that this was the reason he does not have exact specifics, because again, it depends on who's going to be there. He stated that the business was there to monitor the sound to ensure it is under its reasonable level, using a soundtrack before patrons come to the building, before every night and that way that things would be held at a consistent volume throughout the course of the night. He stated that putting an exact metric on that would be extremely difficult at this time. He stated that the overhead canopy is the one thing on the original proposal from last year that that they didn't get done, he discussed in the October meeting that they had issues with a dead tree in the area. He stated that they were on the corner of three different lots, but that he personally had to pay to get the dead tree taken out of there and repair the whole block wall. But he said that basically an overhead canopy will be installed in the back yard this year, that everything's good to go and that he finished up that block wall before last winter.

He stated that is talking about sound dampening curtains and there's a lot of different products that he has in mind that would be placed on either side of the stage and then reinforcement for that sound wall. He stated that when he met with Brian Staples, a person who records a lot of music in the city and he met through a friend, he stated he didn't remember his name offhand previously, but that he did actually have a very long meeting with Mr. Staples. He stated that Mr. Staples actually used to live in Mr. Rowland's house on Third Street back in the 1990s. He stated basically during that meeting they discussed everything that had been done by Mr. Rowland up until this point. He stated that Mr. Staples suggested that actually with the retaining wall, it would be referred to them as being an amphitheater. He stated that really more what they want more than anything is this mass around it. He stated that Mr. Staples also suggested some other options which were not as expensive such as hay bales. Mr. Rowland stated that he has also looked at other foam-based properties trying to find things that are weather resistant to be able to better reinforce that sound wall on top of the sound dampening material that has already been put on there, going forward.

He stated more than anything he is present during the meeting of that evening in order to be able to try to find a compromise, and that he is requesting one night per week, which he stated did not seem unreasonable when there are other events happening in Marquette all the time. He stated that that was what he was hoping to get out of tonight's meeting and thanked the commission members.

It was moved by M. Dunn, seconded by N. Frischkorn, and carried 6-0 to suspend the rules for discussion.

M. Dunn stated that he wanted to start by correcting some misinformation that seems to be flying around. He stated that first of all this is not, to clarify for everyone in the room, it is not the Planning Commission's job to negotiate conflicts between neighbors. He stated that that is not what the commission is there for. He stated that they were there to interpret the code and to make sure that the code is followed. He stated that they did that when the Special Land Use permit was originally approved. He stated that however they knew at that time that it was a somewhat risky proposal in that it is very close to residential properties, and there is a statement within the code that states that the use should not be in conflict with the neighboring properties. He stated that they knew that it was going to be tough and he believes that they stressed at the time how important the management was going to be. He stated that that is ultimately what they are talking about here. He stated that the commission is not out to get anybody and they are not out to prevent music. He stated that obviously there are several musicians and that he thinks that most of the committee members are probably music lovers.

M. Dunn stated that he was also like to bring up is that they keep hearing comparisons to Blackrocks and although that business is within the same zone, we have at this point - based on not words, but based on previous actions - at this point in time Blackrocks no longer receives noise complaints. He stated that Blackrocks have figured it out and that they have worked with their neighbors and that they have made sure that they do not have an issue. He stated that again, that is what the board needs to be looking at, what are they looking at for facts, what are they looking at for complaints, what are they looking at for how is this working with the neighboring properties. He stated that he is just kind of randomly going through some of the thoughts that came to his mind as they were listening to the comments made. He stated that he wanted to get those things cleared up and that he also wanted to mention that this is not a commercial zone, this is a mixed-use zone. He stated that that is why they are dealing with some of the issues that they're dealing with and that these issues would probably have to be dealt with again, unfortunately.

M. Dunn stated that is what happens when you have a vibrant type of zoning in close proximity to neighbors. He stated that he would urge everyone in the room, and the real estate agent that he heard from earlier as well, make sure you know what the zoning is before you purchase. He stated that that is, again, for everybody in the room. He stated they should take a close look at that, what you are allowed to do by right and what might be a special use, because a special use is not an entitlement. He stated that you do not get to have a special use automatically. He stated that no one up on the commission panel is up there trying to pick and choose which businesses get to do something and which businesses do not. He stated that, again, that is not what they are there for. He stated that all they are doing is trying to interpret the code as best they can. He stated for the homeowners there is a level there that when you're behind something right next to mixed use, it is kind of a throw of the dice what business might move in next door to you. He stated so again, he would encourage everybody to pay very close attention to what uses are going to be around in each person's particular zoning. He stated that he had a couple of questions for the applicant, if he could. He asked why the sound management was submitted just yesterday or two days ago, and asked why it took so long to get to this point.

Mr. Rowland stated that he spent the winter consulting with his employees and the sound professional and trying to refine his thoughts. He stated he called all of the neighbors 3 ½ weeks before the city meeting. He stated that he received a text from them the following week and set the date for the meetings with the neighbors of the previous Wednesday and that is when he proposed the sound plan. He stated that it has been a very long, busy winter and that he had been thinking about this issue but he wasn't going to be able to address all of these concerns and that it took a lot of thought to get to the point of him deciding what he thought he was willing to sacrifice as a business and the compromise that they were going to make.

M. Dunn stated that he did not want to make any judgement upon the applicant, but if it were him and a critical part of his business was on the line, he would not wait until the last minute to get it taken care of, but that was just him. He stated that the additional question that he had was whether or not the bike racks were present now.

Alex Rowland responded yes.

M. Dunn asked if here any other complaints between the last meeting had been and this one.

D. Stensaas stated that the police department had not conveyed anything to them.

A. Landers asked the applicant if they had been doing any outdoor events during that time.

Mr. Rowland said no events were held outside.

M. Dunn acknowledged this and said he had a final question. He stated that in the sound management plan he had read that the backyard lights would be out at 10:00 p.m. He asked if that meant that everyone is going to be cleared out of the back yard at 10:00 p.m.

Alex Rowland responded yes.

M. Dunn acknowledged the answer. He stated that he wanted to make it crystal clear that just turning off the lights is not going to do anything about the noise necessarily, and it is up to the applicant to make sure this was handled.

Mr. Rowland responded by agreeing and he stated that they turned the music off at 9:00 in order to give everyone an opportunity to clear out and then by 10:00 the lights are off and everybody would be out of there.

M. Dunn acknowledged the response. He stated that that was all that he had at the current time and thanked everyone.

N. Frischkorn stated that he wanted to start with a few more questions for the applicant. He stated that in the proposed sound management plan it states that the business is going to get additional noise mitigation. He stated it says that overhead canopy will be installed, that sound dampening curtains will be installed, and that it says that sound fence will be reinforced. He asked when will those things happen.

Alex Rowland stated before they start anything outside.

N. Frischkorn then asked if the applicant had ordered the materials.

Alex Rowland stated no.

N. Frischkorn asked if the materials had been chosen.

Mr. Rowland stated that he had "like a million tabs open" on his computer right now and he is not going to make any investment until he knows that they can actually go forward. He stated that he spent too much money last year in doing things. He stated that he had also been talking with the sound person and that no matter what they are going to do that it will never be 100 percent contained within the back yard. He stated that they can do their best to mitigate things, but that is why his sound management plan is more so about mitigating with time and frequency than it is about spending a lot more money on materials that may or may not do anything. He stated that this is what the sound person had reiterated to him as well, that is if they put in an 8-foot fence with sound blocking material the entire length and breath of the yard and that is still not enough, what more can they do except fully enclose the space and make it an indoor venue basically.

N. Frischkorn asked then if so, they see the diagram that had been submitted; the canopy, the curtains,

the sound wall, that none of those were current there right now.

Mr. Rowland said the posts for the canopy are already there and he has to order the curtains, and that the curtains were not part of their original proposal and neither was the sound bar there. He stated that yes, none of the items were there except the anchors for the canopy in order to have everything lined up in order to be able to do it. He stated that again, he was just waiting on the decisions here.

N. Frischkorn stated that another question he has was about the calendar was submitted along with Mr. Rowland's applications. He asked if this was not the applicant's current proposal.

Alex Rowland said no, there were two calendars in fact. He stated that this might be confusing. He stated that there was the original one that he went to the meeting last Wednesday with, which was proposing Thursdays and Saturdays. And then he stated there was a revised calendar that is proposing just Friday nights.

N. Frischkorn asked if the calendar was looking at was not the correct one, but the one before the revision.

Mr. Rowland said yes, that is correct.

N. Frischkorn acknowledged this response and said that he had one more question regarding the sound curtain and sound wall - what materials would these be made out of?

Mr. Rowland responded that for canopy itself what they have been looking at is a repurposed sailboat sail. He stated that the curtains that would be going on the side wall would be some type of polyester with insulation within it. He said the sound wall itself would be some kind of exterior-rated foam paneling that would go on that wall.

N. Frischkorn asked if the applicant had an estimate of how thick the materials would be.

Alex Rowland stated that he does but does not have that specification on hand.

N. Frischkorn acknowledged the answer. He stated that is all the questions he had for the applicant.

M. Dunn stated that he had one more question while the applicant was still up in front of the committee. He asked if the back yard was going to be utilized by patrons at all hours of operation, not only Friday. He asked if that would continue to the 10:00 p.m. time.

Alex Rowland stated that yes that was the cutoff time that they were looking to do in the back yard.

N. Frischkorn stated that he did not have more questions, but he did have comments. He stated that he wanted to echo something that M. Dunn has previously stated that this issue will come up again. He stated that the town is changing and there are new businesses and that he did not know if there were any kind of brewery bars 20 years ago anywhere, let alone Marquette. He stated that businesses change, towns change, and as one of the commenters had said, people change over time. He stated that he thinks that it is important to recognize that there are two members of the DDA who were speaking tonight. He stated in regard to the first commentator that he thinks it is very important to keep in sight the issue of the importance of entrepreneurship and attracting young talent, as young people do not stay in Marquette because there is no opportunity. He stated that that is just the way that it is and it has been that way for awhile and that this is a problem. He stated that with the applicant, here they have someone who made opportunity for himself and he thinks that is something to keep in mind. He stated that he thinks that the proposal presented did alleviate many of the concerns - reducing the timing, the frequency, that it is earlier and less often. He stated that arts and culture are an important part of the Community Master Plan. He stated that Marquette has made a commitment to that aspect of their community. He stated it does give him concern that these steps have not been taken, and he that he understands why the steps had not been taken and that the applicant does not want to make more investment before knowing the outcome of this. He stated he thinks that another commentator had commented that Third Street is a commercial corridor. He stated that the DDA works on Third Street and Third Street is part of downtown. He stated

that this business was not there when all of the neighbors bought their homes, but they bought homes right next to downtown. He stated that noise is going to happen. He stated that he would be interested in hearing how much property values are being harmed, because there is a big difference between property values declining by \$500 or by \$5,000 or by \$15,000 and is this harm substantial, because that is the standard in the land development code. He quoted the land development code as stating, "a substantial harm to the value of the property." He stated that while he has heard testimony that this business's activities are harming the value of the property, he does not know if it is substantial. He stated that it would be nice that if they had a realtor that could provide testimony, rather than just the letters from the realtors. He stated that although the shape of the lot is unique in that it is kind of setback, it is on Third Street, nevertheless. He stated that he also shared everyone's concerns that the applicant kind of waited until the last minute to reach out to the neighbors. He stated that he sees where both sides are coming from but he stated that he guessed he would have a hard time trying to shut down this entrepreneurship and the opportunity to actually allow someone to stay in Marquette because they really needed to attract young talent. He stated that is a problem that needs to be addressed. He stated that those are the comments that he had and thanked the committee.

M. Dunn stated he had kind of a smart aleck rebuttal to Commissioner Frischkorn's comments, but he thinks that all of them had a hard time shutting down an entrepreneurial business such as this one, which is why they have been there three times for the same applicant.

W. Premeau stated that N. Third St. is a historically a residential neighborhood. He stated that a comment was made at the last meeting was that the homeowners bought their house there and that they should have known better. He stated that they bought their properties before this whole thing started. He stated that the DDA has only been on Third Street for a very short time. He stated that the DDA have not been there for 20 or 30 years, it has been just recently that the DDA took over Third Street. He also stated that there were also two comments made, one was that nobody complains about the waterfront and trying to shut it down. He stated that that was not true and there is currently a lawsuit going on over that, though he thinks it's settled now, trying to shut it down. He stated the other comment was that they were trying to destroy something. He stated that they were not trying to destroy anything. He stated that he knows like in his own business he could not tell you if he could have your house built in six months, six years or two. He said that you cannot know because the lead time on materials, like the sound curtains in question, a lot of the wait time on the materials now is 20 to 24 weeks. He stated that it is not as if you can pick up a catalog and have materials there the next morning. He stated that it needs to be looked into as to when exactly can the materials be obtained. He stated that in today's world it is really tough to get anything. He stated that other than that, he thinks that the neighbors have a good idea. He stated that the applicant also has an argument and the DDA also has an argument.

A. Andres stated that he understood the applicant was trying to run a business and that he also understood that the residents have their right to live in their home and not have it be interrupted by loud music and to live without the disturbing and sometimes irritating influence that they may not like. He stated that he thinks the time of when the meeting was held with the residents and the timing of the current city planning meeting is a little suspicious. He stated that he did not know if there was really any progress since the last meeting. He stated he just thinks it is a bad location and that they are not trying to destroy the applicant's business, they are not trying to eliminate anything, they are just trying to mitigate issues between different parties. He stated he also thinks ultimately whatever decision they come to, no one is going to be happy no matter what the committee does. He thanked the commissioners.

N. Frischkorn stated that he wanted to reply to Commissioner Dunn and state that yes, he was aware and saw that this issue has been going on for awhile and a lot of people who aren't even still on the commission have also done a lot of work on this case and so he knows that this has been going on for a long time.

N. Williams stated that he wanted to speak to the idea that this is minimizing nearby property values. He stated that he thought if anyone in downtown Marquette were to list their house tomorrow, even behind this business, they could have 100 people purchase it or put offers on it in a bidding war and they would get more than the asking price. He stated that businesses like this are the reason why property values in Marquette have escalated to what they are right now. He stated that people want to be here, they want

fun things to do, people want to live near downtown so that they can walk to places such as this business.

N. Frischkorn stated he would like to clarify that the schedule they have is no longer correct and that the singers would not be there on Thursday nights.

Mr. Rowland stated that was correct and that the revised schedule would be Friday nights only, with the exception of every third Thursday during Music on Third. He stated that that would be from 6:00 to 8:00 p.m. He also stated that he wanted to reiterate that he included the original proposal and schedule to show that they had made a compromise from the meeting they had the previous week and that was the only reason and he apologized, he had tried to specify that in the email.

M. Larson stated that at the previous meeting there were three items for Mr. Rowland to follow. One of them was no food for the music events, understood. He stated another one was that bike racks would be added, that has been the case. And the third one was that the sound management would be developed in consultation with the neighbors. He stated that originally at the meeting it was proposed for Thursday and Saturday and now Friday only has been presented. He asked if this was the first time that the neighbors were hearing about that or did the neighbors understand that Mr. Rowland was offering a Friday only, reducing it to one night, and asked if there was any agreement upon that.

Mr. Rowland stated that no agreement was made but at the end of the meeting last Wednesday he agreed that he would submit and updated proposal and that they would take the weekend to share that with the rest of the neighbors who could not attend the meeting and kind of look that over prior to today's meeting. He said it was not agreed upon at that meeting but it was agreed upon that he would submit this for their review, for them to come to tonight's meeting with that knowledge.

Mr. Larson thanked him for the explanation.

Mr. Rowland stated that there are two completely different sides of this argument and it is really hard to find a compromise there when both sides want completely different things and that is why he is proposing the one night a week in order to give them six nights a week of nothing happening back there as far as loud noises and that leaves one Friday night for two hours for six months of the year.

Mr. Larson stated he understood and thanked Mr. Rowland. He stated that from his point of view this has been a learning experience, and from the first time the Planning Commission considered this they knew that there was potentially some issues that were going to be involved and thus they set a one-year review to fall on July 22 of 2022 for that review of the outdoor entertainment and food and beverage service that was associated with that, just due to the unique nature of this site. He stated that originally when the Planning Commission had made a consideration, they were looking to have some consistency with other Special Land Use Permits that had given on Third Street and other locations within the city. He stated that, however, they may have failed to understand the unique characteristics of this site and how far back it goes and how that might affect some of the neighbors. He stated that at that time, as well, they did not have a strict schedule of how many nights per week was the music was going to happen and what were the safeguards in place to ensure that there is some sort of mutual respect of rights for both the applicant and the neighborhood that is there. He stated that therefore this is really a bit of a learning experience that they are going through. He stated that he thought the commissioners would agree that there are unique characteristics to the site. He stated he was not exactly sure what the right answer is at this point. He asked does the commission feel that a good faith effort has been made to create a plan in consultation with the neighbors, as put forth at the previous meeting. He asked has that level been met. He asked does something more need to be said. He asked does this plan require any more details to it as some of the neighbors may have suggested. He stated that there are a number of things that the commission can think about and he asked his fellow commissioners if they have thoughts on this, can they have that discussion. He stated that if nobody else has thoughts on that, then he guessed he would entertain somebody to make a motion, but he would like for further consideration given the historical background, plus understand what the applicants have been asked for as of the last meeting and whether or not this satisfied the commission up to this point. He stated he had a final thought which was the original special land use was supposed to be reviewed in July and does this satisfy that early review of that. He apologized that his questions were a little bit all over the place, but he stated that these are the things that

he's thinking about. He stated he would welcome his fellow commissioners to think about them.

M. Dunn stated that had there not been an abundance of complaints and that the commission had gone all the way through to July, then it would have been pretty easy for him to make that a permanent granted permit. He stated that however they keep coming back to this, and as the applicant stated, they have two sides that are determined to not see each other's perspective. He stated that this was unfortunate, but that was sort of what the point of the last meeting was was to kind of put it back in their lap to them to work something out so that the commission didn't have to. He stated on the other side, he did have to compliment how much the applicant has been willing to compromise and to go down to one night a week impresses him quite a bit. He stated that again, in any other situation that would have made it easy to approve the Special Land Use Permit with that kind of compromise and working with your neighbors and seeing their perspective on it. He stated that as far as the conditions that were imposed last time, where they met; he stated that yes, he thinks they were, barely and kind of last minute, which makes him uncomfortable and think that the applicant is not taking this as seriously as he would personally. He stated that however if it were looked at technically, yes, he did do what he was supposed to do as far as the three additional conditions. He stated that the thing that he just keeps coming back to is - are the rights of the neighbors going to be respected at this point going forward? He stated that in his mind that is the thing that they've been teetering back and forth on all along - is this in harmony with the neighborhood, is this detrimental to the neighboring properties. He stated that again, this just comes back to management every time. He stated this use could very well fit in just fine in this neighborhood because they are surrounded by a lot of other music lovers. He stated that it could fit in if it is managed properly and that is why they have been here three times. He stated that the history is showing him that it has not been managed responsibly and he does not know if it will be going forward, and that's where he is coming from. He stated that the only other little detail that he is trying to figure out is if they are dealing with music only on Fridays, which he thinks is awesome, they need to remember that a lot of those complaints were not due to just the music and that he thinks, though he is unsure, that the majority of the complaints were about crowd noise and talking coming from the back yard. On a lot of the recordings, he said, that was obvious. He stated that that also has to be controlled and if that is out there every single night it's kind of a game-changer.

Mr. Rowland stated that some of that crowd noise issue was kind of post-music and at shut down and there was some issue about moving people out of the back hard. He stated that crowd noise is certainly an issue and that there are other nights of the week to be considered through the 10:00 hour as well. He stated that people are a little livelier after a show than when there is not a show. He stated that he is thinking of these things as well.

A. Andres stated that he wouldn't agree that it comes back to "are they going to be respectful of the neighbors" and stated that if things haven't been working well, he does not know what will. He stated he was more in favor of the neighbors than the business at this point. He stated that the Planning Commission is not shutting down his business, they are just taking away the outdoor music, which is everyone's grievance.

Mr. Rowland stated that he would like to point out that this is a continuation of that meeting and not necessarily a separate incidence, just for clarification. He stated that they are not there because of new complaints, just for clarification.

N. Frischkorn stated that he would like to ask one more question of the applicant and stated that he would like to know if a price estimate has been obtained for the canopy, the curtains and the sound wall - or a price range.

Mr. Rowland stated that the curtains only run a couple of hundred dollars apiece; the sound panels probably another \$2,000 to \$3,000 to continue it and finish. He stated that the canopy stated would cost probably around \$500, he guesses.

N. Frischkorn stated so that's about \$4,000.

Mr. Rowland stated that he would guess that that is the estimate at this time and he stated that they would

not be holding any music in the back yard until all the materials were installed. He stated that any delays in shipping or things like that would be on the business and it would be hurting the business, not hurting the overall project.

D. Stensaas stated that he wanted to remind the commission about something related to the sound dampening. He said they found out at that meeting in October that the stage had been properly dampened, the rear of the stage, but then wood slats or panels were put over the top of the sound dampening materials and that was brought up at the last meeting. He stated that this is another issue and that he does not know where it stands, but he just wanted to remind the committee that that was another element that was a potential problem with sound attenuation.

N. Frischkorn stated that he would like to ask another question and inquired if the wood panels have been removed from over the sound dampening material, because it kind of defeats the purpose.

Mr. Rowland stated that material he used behind the stage was actually a sound blocking material, so it's mass that's meant to prevent the transfer of sound through it. He stated that the panels on the front shouldn't have affected the effectiveness of that sound dampening material, but that he had actually looked into because it is all covered there, he would get away with further foam materials that wouldn't necessarily be able to be used as far as the fence line goes and something more on the back of that stage. He stated that he guesses that it all kind of comes back to where he was earlier, which is would it be more thousands of dollars of investment and it still gets back to the same point, which is that cannot be entirely contained in an outdoor space. He stated that the best management plan he thinks is just the frequency and the understanding that there will be some bleed around the times that it occurs. He said that something will be audible, but just trying to limit to such a short frequency that it doesn't become an everyday nuisance.

N. Frischkorn stated that the only question he had left, which was his second question. He stated that looking at the minutes from the last meeting, in October, the conditions were there would not be any outdoor live music until the sound dampening materials and acoustic fabric are installed, which has been met partially because it has been winter. He stated that also he thinks that what the applicant is proposing is even more sound dampening materials than were addressed then, and additionally that the block wall repair was completed as required. He stated that the applicant testified that he completed that himself. He stated that, number two, the bike racks were added, and that requirement was met. Some of the sound management planning was built in consultation with the neighbors, which I think the point has been made, and it's true that we don't know that the applicant and the neighbors will ever come to an agreement that is acceptable to all parties. He stated that consultation is discussion and that does not necessarily mean agreement. He stated that this revised schedule of one night a week, from previously it was three nights a week, is very fair and that plan came as a result of consultation based on the testimony that has been heard. He stated that again, it is not an agreement and yes it was probably closer to today's meeting than it should have been, but that there was consultation and the plan reflects the results of that. He stated that again, he does not think there will ever be an agreement between the two sides. He stated that looking at those conditions, he stated he feels like they have been met. He stated he did not know the answer to the Chair's question about how this affects the July review hearing. He stated he does think that no live music will happen until these sound dampening materials are installed is still a condition, so there can be no live music until the applicant does install these. He stated that he also thinks that it would be good to update the conditions to include these new proposals with the sound wall and the additional curtains. He stated that that is where he's at.

W. Premeau stated that the applicant will be spending a lot of money for sound curtains that aren't going to work.

A. Andres stated that from everything they've seen or heard they have no drum kit anyway and the noise is still there. He stated that taking away a drum kit isn't going to prevent sound from traveling anywhere in his opinion.

M. Dunn stated that he does not want to do it, but if he has to make a motion it is going to be to revoke. He stated that there has been too many drawbacks and again that it comes down to the management and

that there is a history of it being mismanaged and that he just can't keep kicking the can down the road hoping that it is going to get better. He stated that however he is not making a motion at this point. He stated that he hopes there will be some support the other way and he gets outvoted, he stated that what he is hoping, but by the letter of the law he can't see how to keep this going.

M. Larson stated that he would also point out that even though it's not the Third Street corridor, other cases have been heard by the committee in which they have not necessarily revoked but they have not approved outdoor beverage of outdoor entertainment recently in a commercial location as well due to similar issues of being in a [residential] neighborhood. He stated he was talking about the Lakeshore area. He stated that this would not be necessarily out of character for what they had decided based on surrounding community character in the past, if that's the way it went.

Mr. Dunn stated that that was a mixed-used district as well.

D. Stensaas that it was a parcel that was mixed use and that was a mixed use building historically, dating back to 1912 and the residential neighborhood developed in that same era around that building and it was that way for about 110 years before a Special Land Use Permit was requested for Outdoor Entertainment venue there.

N. Frischkorn stated he would like to follow up on what was stated by saying he thought there were different standards when you are deciding whether to approve versus rather to revoke something that has already been approved.

N. Williams stated that as a hypothetical situation if the neighbors decided that there was too much noise coming from some part of a business like an air handling unit and then that business said that they would do sound dampening to our air handling unit in order to quiet it down, at what point would the commission say "you've done enough" if the neighbors are going to continue complaining. He asked how they would determine the sound dampening was enough for that, because they could keep complaining when it's still silent all the time, he stated people just complain sometimes. He asked how they decide what is enough. He stated that he knows that the land use states disturbance to the neighbors but they have to decide if there is merit each time and if that disturbance is a true disturbance.

D. Stensaas stated that there are some precedents. He stated that the most recent case would be a Special Land Use Permit issued to the MARESA property on Ohio Street, and because the multiple air handling units on the roof making noise that was irritating the neighbors. The neighbors asked of the commission to intervene because of the noise, and MARESA staff was present at the hearing and agreed to have the air handling units checked out and repaired or replaced, and that follow-up action did satisfy the neighbors. He stated there was also, even more recently, the case of the new gas-fired power plant on Wright Street. He said the complaint didn't come to the Planning Commission and they didn't have a Special Land Use Permit, but they did go through site plan review and the BLP had done studies prior to installing these engines and opening the facility and said there shouldn't be noise problems, but then there were some significant noise problems. He stated that they addressed those problems and did satisfy the neighbors, and nobody went to court. He also stated that he thinks that there has to be some common sense applied by neighboring parties when these kinds of issues come up and he stated that you could face a situation where there is not common sense applied. He stated that at such times there may be one person who simply will not give up on complaining, but that generally you can see if that is an issue or not. He stated that if something were done there to allow this to continue you have, like M. Larson said, the right to put a condition on having a report given to the Planning Commission in August or whenever, the permit can be revoked at any time if violations are found. He stated that if you decided to vote to extend this based on new conditions, the violations of those conditions, it seems, would almost certainly result in the revocation of the permit.

A. Andres stated to Commissioner Dunn if he makes the motion to revoke the permit that he would support he motion.

M. Larson stated that prior to anything else he would just like to address the comment that Commissioner Williams made. He stated that understood that he was talking about music for two-to-hours a week, but

that they also needed to take into consideration the back yard. And so one final question from him was , although he thought it had been addressed previously, when you do have individuals in the back yard are there going to be tables and asked how that is going to be set at other times when there is not music going on.

Mr. Rowland stated that they have six patio tables with six seats at each table and they are all underneath the tent and that is all that they have for seating out there. He stated that outside of music it tends to not have a large crowd and all of those noises on the videos were from nights where there was excitement in the air after the music had finished. He thanked the commission.

N. Williams asked if prior to this were there any rules for the applicant on nights that he could have music outdoors.

Mr. Rowland said they did not have any limits.

M. Dunn stated they did have a time limit but that it was not followed consistently. He stated that was kind of what had got us back here.

Mr. Rowland stated that he just wanted to follow up again and if they go back to the videos that were submitted at the meeting in October, maybe there was a couple of them that were taken at 10:03. But we shut down the music at 10:00 every night as was their condition in the original plan.

M. Larson asked to clarify if they were looking at two separate permits and two separate actions and if that was correct.

A. Landers clarified it was the food and beverage service permit and also the outdoor entertainment permit.

M. Larson stated that he did have one more comment to make, as Commissioner Dunn was kind of thinking. He stated that in the past there have been violations of the conditions that were put on the applicant, however, the last meeting what he wanted to try to do is give the applicant an opportunity to repair some of those actions. He stated that he didn't know if he was actually given that, though he was given an opportunity to come up with a plan, but we haven't had any action of that beyond being kind of shut down. And he thinks that would be his final piece - that they haven't had a new trial of anything that has been altered to this point. He stated if this passes the applicant is certainly taking on risk to purchase those items and that may be money out of the applicant's pocket, because there are lot of eyes on the applicant and there are conditions of approval, violations, reprobation and changes of this. And so, if violations occur, he would certainly be with them on taking up that violation and that this may be the last option, depending on which way this goes. And he stated that despite how much money may go into this, there is still a balancing act and the complaints could still continue and if a violation is found, if there was a motion for staff to come back in July or August with a report saying what they found while talking to neighbors and seeing if there is any issues, then he would not see any reason to not revoke at that time, if there were any additional violations. He stated that again, he didn't know how this is all going to play out, but he just wanted to make that clear.

M. Dunn stated, "you're killing me" and then that he wanted to ask a question kind of on the flip side of how this could be revoked at any time for violations of the conditions, especially the land use permit. But if it was removed what are the applicants' options for reapplying at some point in the future.

D. Stensaas stated that that was a good question and he was not sure exactly what the answer is. He stated he thought there are some practical considerations the applicant would have about reapplying, as that might not seem to be logical, and that maybe the more logical thing would be to take the case to court, to take the Planning Commission to court and find if it was a decision made properly.

M. Larson stated that I know you're looking at Commissioner Dunn to make a motion but if he does not, I can go. He asked Commissioner Dunn if he had another comment.

M. Dunn said that he could go but he was flip-flopping, just to warn him.

Mr. Larson stated if discussion was done, he would make a motion.

M. Dunn asked if he could sneak a comment in first. He stated what Commissioner Larson mentioned about us giving the applicant more time, that he actually remembers at that October meeting thinking that we're putting this off, but how are we going to know whether it is going to work or not until we get into the summer months, because there is no reason to go outside anyway. So, I can relate to that comment. He stated that he really did want to give the applicant a chance to make this work. He stated he thought that he could vote in favor of not revoking, but that before moving on he would like to make his point first. He stated that this is kind of ridiculous that they are there again and talking about this again. He stated that he can only look at it as a business owner himself. He stated that if he was a business owner, and on the verge of losing an important piece of his business, he would do everything in his power to make sure that he was repairing relationships with neighbors and that he was going over and above whatever was stipulated. He stated that doesn't think that they should be here again, but there they were. He stated that he would still like to see the business succeed and he thinks that the compromise down to one night with the music is huge. He stated that it is going to be critical even for just the outdoor food and beverage service. She stated that people can get rowdy when they are eating. He stated that it is going to have to be managed very well and it is going to have to be managed like you are babysitting.

A. Andres asked how many questions they were going to give the owner.

M. Dunn stated that that was a very good question.

N. Frischkorn stated that he just wanted to say that this is a continuation of the last meeting, so it was first brought to them for this revocation at the last meeting and that they had postponed a decision on that. But he stated that that was the first time it came before the commission to revoke the piece itself.

A. Andres stated they have done that three times.

N. Frischkorn stated that just to clarify, and he is baffled by it too in the fact that they are there again, but he wanted to make sure that it was known that the applicant didn't have any additional complaints or anything like that and that there were no additional violations. He stated that they were just there to see if the plan was put into place. He stated that any kind of disappointment that he is expressing is just because the sound management plan happened so late. He stated that nevertheless it did happen, so that is why is at where he is at.

D. Stensaas stated that just a quick history is that the application for an outdoor food and beverage permit was granted the year before the outdoor entertainment and community events permit was granted. He said that they had started doing live music during the pandemic and has complaints, which is what brought them in for the outdoor event permit. So, last October was the first time there was any intervention on the permits.

A. Landers stated that that was the original outdoor food and beverage, but there was also an expansion to that as well as the outdoor events permit in June of 2021.

D. Stensaas stated, yes there was an expansion of the outdoor food and beverage service in 2021. But the original permit did include some outdoor activities, but then they had received a lot of complaints and told the applicant that if he was going to hold such outdoor music events then he needed to do it properly and build a stage and have a managed area for outdoor performances. He stated that then they got a lot of complaints after that permit was issued in the summer of '21 and by the fall they had the hearing. He stated therefore it is not really correct to say that they have been there three times for complaints because this is, as Michael said, a continuation of the last time. He stated that he just wanted to point out for the sake of motions, motions should be in the affirmative with conditions if it is to approve or with reasons to revoke if it is to revoke. He stated that in either case you need four votes to affirm a vote, because there are six commissioners present.

A. Landers stated that she would just like to say the motion need to be separate than the use request.

Mr. Larson stated that outdoor food and beverage and outdoor entertainment could be one motion.

A. Andres stated he agreed with that, but he asked again how many changes you are going to give it.

Mr. Larson gave a last call for anyone for people to bring up any other additional conditions that ought to be placed if the request was requested.

N. Williams stated that the only one that he could think of is forbidding the use of all drums, even if they are electronic. He stated this would be one more level that would be removed from neighbor concerns. He stated that is not necessarily what the applicant wanted, but that would be one other piece.

M. Dunn stated that he didn't want to get into the details of trying to manage sound. He stated that he appreciated where the commissioner was going with that idea but felt that that was an area outside of their expertise.

N. Williams stated that while he agrees that while they are not acoustic experts, nevertheless he feels that would add a new level to product from noise.

D. Stensaas addressed the Chair and stated that if they wanted to have a report back to the planning commission that could prevent another public hearing, which costs the city a significant amount of money to hold, and if there is not a reason to maybe it makes more sense to just come back to the Planning Commission with a report at some time. He stated that it would make a lot of sense, especially aren't any significant issues that come up in that time period.

A. Landers stated she would like to clarify that they would need to provide a date. D. Stensaas agreed.

N. Frischkorn stated that he had a comment before he made the motion, he wanted to state that he was considering conditions explicitly limiting music to Fridays only, with the exception of Music on Third. Also, no use of a live drum kit except during Music on Third, and that all instrument and vocals would be controlled by staff. He stated that conditions seem to be incorporating some of the key provisions in the sound management plan, as conditions on the permit. He stated that therefore if the applicant violates the plan which they have proposed, they will be in violation of the permit, not just their plan.

N. Williams asked that was it also a condition that no live music would be held outside until the everything is repaired and so on.

N. Frischkorn stated that that is correct, and he was going to expand on this to include not only just sound management materials as per the site plan review but including these current sound boards which have additionally been proposed.

N. Williams inquired about how much sound dampening would be considered correct and if that meant that a person could not hear sound outside of the lot. He stated that this could go on forever.

M. Larson stated that he certainly understood the point and that this could be the last opportunity they have with the commission. He stated that if there is a violation, it could certainly be revoked and he didn't know how they could not revoke if there were further violations. He stated that a violation could lead to another hearing and that the applicant has the neighbors that will certainly watching for those scenarios. He stated again that N. Frischkorn's motion may not pass and there may be other motions, depending on how they want to vote. He said from his point of view, the risk is upon the applicant and that they have everything to use in this scenario if they don't make it work. Mr. Larson stated that from his point of view, this is an opportunity for the applicant to prove himself, saying that one night a week is not Tuesday, Wednesday, Thursday, Saturday and may be some other nights where they previously had these issues. He stated that also goes for the 10:00 p.m. rule in the back yard. He stated that from his point of view the conditions have to be narrow enough so that the applicant understands what those special conditions are.

M. Dunn stated he would like to ask that all of the sound dampening things that were mentioned as a condition, if that was all stuff that was proposed by the applicant. Mr. Larson stated that was correct.

M. Dunn asked if they did not add anything additional around that. N. Frischkorn stated that no, but there was some things on the diagram that are additional. He stated that canopy was in the site plan, but the sound wall and the side curtains were not. He stated that he would propose to include those and that they would be required.

M. Dunn acknowledged this and then stated he would like to ask for clarification regarding the condition of microphones controlled by staff.

N. Frischkorn stated that that was in the sound management plan, that the volume would be controlled by staff onsite. He stated presumed that would mean ,as opposed to being controlled by the musicians themselves, and that he invites the applicant to correct him if that is not a correct understanding.

Mr. Rowland stated that that was a correct understanding, and that he wanted to clarify before everything is done and he could not speak any further, that when it comes to restrictions on individual instruments - just because music is so subjective, what happens when some guy starts sort of slapping on his guitar as he is playing for example. He stated that he did not want anything to be so restrictive that it could be interpreted as a violation when in fact everything was done in their power to make it not a violation.

A. Andres stated that in his opinion if the commission was planning to give this business an opportunity to produce in good faith the outcome that the neighbors wish and that he can still have outdoor music and food and beverage, then the restrictions have to be such that he does not feel that could get specific enough to allow the applicant to continue doing this without there being an issue and him coming back for a third or fourth hearing or however long this was going to drag out. He stated that he would be in favor of allowing the permit or not allowing the permit and calling it that way.

M. Dunn stated that he has a last point that just struck him, but he stated the compromise of one night a week just keeps pulling him back because that is a huge statement by the applicant and that he commends the applicant on that. He stated that the thought hit him that realistically the best zoning that could hope for as a resident and as a homeowner is to have additional residential zoning right next to you. He stated that the reality is that you could have a neighbor that likes to play music around his campfire with his friends every single night. And as long as follows the noise ordinance of 11:00 p.m. there is not much you can do about it. He asked them to keep that in mind, too.

It was moved by N. Frischkorn, seconded by N. Williams, and carried 4-2 that after review of the Staff Report and 04-SUP-06-21-INT & 05-SPR-06-21, and after conducting a Public Hearing for this case, the Planning Commission finds that the conditions of approval of the Special Land Use Permit granted for Outdoor Entertainment and Community Events to Superior Culture LLC have not been met and hereby amends the conditions of approval as follows:

- 1) that no further live music events are held outdoors until all site plan elements related to outdoor music, specifically the sound-dampening materials on the back of the stage and the acoustic fabric canopy are installed; additionally, before live music events are resumed, that*
- 2) the sound wall and curtains proposed in the applicant's sound management plan are installed; additionally,*
- 3) that outdoor music will only occur on Friday nights from 7:00 to 9:00 p.m., with the exception of the Music on Third events; additionally,*
- 4) that there will be no use of live drum kits except for the Music on Third events; additionally, that*
- 5) all instruments and vocals will pass through the businesses sound system on site rather than being controlled by musicians; and*
- 6) that the applicant provide an updated site plan that includes all of the additional sound-dampening materials and provide that to staff; and*
- 7) that a report regarding the status of the applicant and the existence of any complaints by July 19th.*

Yes: Frischkorn, Williams, Dunn, Larson

No: Andres, Premeau

M. Larson stated that the motion carries. He also stated that this is a long process, and to the residents we certainly hear your issues that have come up, and from his point of view reducing it to one night a week on this basis is providing an opportunity for them to prove they can hold it. He also stated that we are going to be watching this and he doesn't think that if this comes back to us again that we are going to be able to offer a second chance. He stated that the residents have a right and responsibility to come back and there can be another hearing to revoke.

M. Dunn stated that as a point of order we need to vote on the Outdoor Food and Beverage permit.

It was moved by N. Frischkorn, seconded by M. Dunn, and carried 4-2 that after review of the Staff Report and 04-SUP-06-21-INT & 05-SPR-06-21, and after conducting a Public Hearing for this case, the Planning Commission finds that conditions of approval of the Special Land Use Permit granted for Outdoor Food and Beverage Service to Superior Culture LLC have not been met by operations outdoors exceeding the 10:00 p.m. limit on several occasions and causing disturbance to the peace and enjoyment of the neighboring property owners, and hereby amends the conditions of approval as follows:

- 1) That all outdoor operations in the back yard will cease by 10:00 p.m., and*
- 2) That the canopy, curtains, and sound wall identified in the sound management plan will be installed.*

Yes: Frischkorn, Williams, Dunn, Larson

No: Andres, Premeau

M. Larson stated to Mr. Rowland that he hopes he will continue to work with the neighbors and let them know and be honest with them about any issues that come up, and to work in concert with that neighborhood and we'll see what happens. He stated that staff will report back to us in July and we'll be talking with the neighbors and yourself to see where this goes. He thanked everyone for attending the meeting.

CITIZENS WISHING TO ADDRESS THE COMMISSION ON NON-AGENDA ITEMS

Ron Sundell, of 130 and 136 W. Hewitt Ave, stated that he has a question. He asked if, on any issue, it was the job of the Planning Commission to enforce the Land Development Code or to reimagine or reinterpret the Land Development Code. He stated that what you did here tonight was reinterpret and not follow what the Code says, because the Code is clear.

TRAINING

A. Article: "9 Zoning Hacks for Missing Middle Housing", *Planning*, Spring 2022

D. Stensaas stated that the timing of this is interesting because just this week Chair J. Cardillo and I were contacted by employees of MSU-Extension about our willingness and availability to do an interview that will be filmed and that we can use locally about the strategies we are taking to address the local housing situation. He also stated there are many good ideas here and that some of them have been used here for several years. The Planning Commission and staff discussed the article and related topics briefly.

COMMISSION AND STAFF COMMENTS

A. Andres stated it was a doozy.

W. Premeau stated the caution that many agencies are involved and that he's not sure telling someone they have to turn their lights out at ten o'clock would fly with some of them, because there are safety issues like the Fire Department manages.

N. Frischkorn stated that since there are still neighbors here, he wanted to thank them for their comments and apologize that a comment he made may have come across like I meant that the neighbors don't matter. He stated that he thinks the conditions that they have imposed reflect the concerns of the neighborhood. He stated that one thing he would like to say is that for any of the neighbors to Superior Culture, if issues arise, he would encourage them to speak directly to Mr. Rowland first before coming to the Planning Commission. He stated that he thinks that their neighborhoods work better when neighbors work together instead of against each other and if Mr. Rowland were still present he would say the same thing to him. He stated again that their neighborhoods work better when neighbors work together. He stated he would encourage all sides to try to work together before filing complaints or coming to the City Council or the Planning Commission or staff. He stated that he would encourage all sides to try to work together first. He stated that with that being said, he would encourage the neighbors to keep an eye out. If Mr. Rowland does violate the conditions, he knows they'll let them know. He stated that he did not have the intention to say that the neighbor's opinion or property values or issues with the property don't matter and again he apologizes if it came across that way.

M. Dunn stated that he thought N. Frischkorn's comments were great. He stated that Commissioner Andres was just trying to mess with you. He stated that he wanted to throw his opinion out there about when they were talking about what the Biden Administration is trying, and that he is usually happy with a lot of the things that he does, but that was shocking to him to see that the federal government was going to try and get involved in local zoning. He said that that just scared him to be honest and that they may need to check it out.

D. Stensaas stated that the only thing he would comment on is what Mr. Sundell said before he left about reinterpreting the LDC. He stated that he thinks that that's partly an ongoing process, because a lot of the standards in there are not easily defined and it sort of takes deliberation to come to a consensus over what they actually do mean in the context of each case. He stated that in a mixed-use neighborhood, as Commissioner Dunn pointed out, it is not just commercial uses and it is not just residential uses, and the expectations for how each kind of separate use interacts with the other is hard to define. He stated that each person has their own expectations and each resident may have some slightly different expectations and be willing to tolerate a little bit different set of circumstances, but there is no one set of circumstances you can put your finger on and say, "This is absolutely what the neighbor should expect", especially given that the district did approximately 10 years ago become DDA controlled and at some residents, like Mr. Heutter, had lived there a lot longer than that. He said that some like Ms. Gluski had moved there within that time period, so they probably have different expectations based on their investments and their time spent here. He stated he just wanted to point out that it is something that he was thinking about through the meeting actually, too, and that he thinks that it is very important to understand within this particular zoning district it is really hard to put a clear definition on what some of those standards mean. He stated that he thinks the Planning Commission has done a pretty good job of trying to balance the different interests and come up with an outcome that is going to allow everybody to have their voices heard.

A. Landers stated that her only comment is that the first meeting of May is the 10th because of the election on the 3rd, and that there will be three cases for that meeting and three cases for the meeting on the 17th, and so May is going to be a busy month.

M. Larson stated that his comments are that he has been thinking about what Commissioner Premeau said about being potentially unfair by setting folks up to potentially fail and to him maybe there is a little bit of truth in that. He stated that by allowing such opposition on one side and then even though a lot of concessions were made - down to essentially one day for live music and there were conditions put on that - that Mr. Rowland may fail by spending another \$10,000 or \$15,000 on whatever and then again to have the same complaints arise and there may be something substantial at that point. He stated that they tried to make that clear, that risk is upon them to be a good neighbor within that. He stated that however, when you put it like that, he thinks there certainly is validity to kind of thinking along those lines and how in some instances it may be fairer to say yes, a complete yes or a complete no, either of the two things. He stated that he has his fingers crossed to see how things move forward. He stated that was his final comment.

ADJOURNMENT

The meeting was adjourned by Vice-Chair M. Larson at 8:35 p.m.

Prepared by:

David Stensaas

David Stensaas, City Planner and Zoning Administrator
Planning Commission Staff Liaison
Transcribed by iMedat/Edited by D. Stensaas