

## 9. RECOMMENDED APPROVAL, GRILLS FAMILY RESTAURANT LAKESIDE

Applicant: Jake Wise, PE – Construction Engineering Group

Owner: Luke 82225, LLC

Location: 4315 N. Orange Blossom Trl., south of Lee Rd., west of Lake Fairview, and east of N. Orange Blossom Trl. (±8.17 acres)

District: 3

Project Planner: TeNeika Neasman (407-246-4257, teneika.neasman@cityoforlando.net)

**MPL2015-00023\*\*** Master Plan approval request to develop an 8.17 acre site with a restaurant, a restroom building, and a wooden deck with outdoor seating area and a tiki bar.

*Recommended Action: Approval of the request, subject to the conditions in the staff report.*

This item was presented by TeNeika Neasman, Planner I, Land Development Studio, City Planning Division. Using PowerPoint, Ms. Neasman discussed the site location, site survey, previous actions, future land use, zoning, project context, applicant's request, landscape plan, elevations, vehicular parking counts, and concluded her presentation with staff's recommendation. She noted that the reason for the approval recommendation by staff was because the applicant was not asking for a rezoning or a conditional use permit. A restaurant, eating and drinking commercial use was a permitted use on the subject site. Ms. Neasman stated that on August 29, 2015 the developer, along with the Homeowners' Association at Fairview Grand and City staff held a community meeting. Concerns addressed at the meeting were:

- a) Noise – in regards to performance noise, the conditions state that performers will be prohibited from using personal sound systems. All artists will be limited to utilizing the restaurant's controlled amplification system. The amplified speakers will be faced downwards towards the deck and will have a multi-speaker system.
- b) Entertainment – percussion instruments use will be prohibited on site.
- c) Safety – the restaurant will close at 10pm Sunday through Thursday and 11:30pm Friday through Saturday. The Zoning Official can approve up to six (6) waivers a year to allow for special events such as New Years Eve, 4<sup>th</sup> of July, etc. Applicant has also offered a Responsible Vendor Program which consists of all staff members handling alcoholic beverage sales being trained on intoxicated patrons' response techniques, in order to assist the patrons to return to their homes safely.
- d) Wild life preservation – in regards to the concern that motorized boats would endanger the wild life within the lake, selling, renting or leasing motorized vehicles will be prohibited. Paddle boats or non-motorized boats will be permitted for rental on site.

Chairperson Searl opened the hearing to the public.

Mr. Jake Wise, 2651 W. Eau Gallie Blvd., Melbourne, FL 32935, spoke as the Civil Engineer of the project. He stated that after the community meeting in which City staff was present, staff provided additional conditions to address the community's concerns. Mr. Wise noted that some of the conditions were very unique to this site, and they were voluntarily agreeing to all of them. He clarified that although the development had a bar, it was a family restaurant and that 70% of the business was the food portion. He noted that they did a sound test on the site and went around to different properties and were not able to hear the music until it was turned above the allowable decibel levels. He mentioned two existing restaurants that the applicant owns and stated that they have been very

successful. With respect to the wild life, they did environmental studies prior to making the application to the City, and the study concluded that there weren't any protected species on the property. There is currently a population of homeless on the site because the property has sat vacant for a couple of decades. This development would be an improvement to that situation. Mr. Wise pointed out that they have tried to comply with preserving as much as possible the existing vegetation, wetlands and trees.

Chairperson Searl acknowledged all the mail that was received from the community in regards to this application, as well as the addendum provided by staff.

Mr. Joe Fontana, 4177 N. Orange Blossom Trail, Orlando, FL 32804, spoke on behalf of Fairview Grand Condominiums and a group called Friends of Lake Fairview, in opposition of the request. He provided a handout to the Board members. Fairview Grand Condos is located in very close proximity to the proposed restaurant. Mr. Fontana stated that the outdoor elements of this restaurant do not need to be so close to their condos. He suggested that if the developer repositioned the exposure from southeast to northwest, the exposure would then be directed towards Fairview Marina and the Fairview softball complex. Other issues of concern were the threatened bird species that live on the lake. Mr. Fontana noted that according to the Audubon Society, the birds will not react well to the noise. Another concern was the proposal of a floating dock that would allow motor boats, which would endanger the children frequenting the lake like the Lake Brantley rowing club. He was also concerned about the grease and odor emanating from the restaurant and suggested ductless exhaust hoods to address that potential problem. Mr. Fontana expressed concerns on how they would address a noise violation. He strongly suggested flipping the project 180 degrees to avoid any problems with noise.

Mr. Ray Kilmer, 1762 Fairview Shores Dr., Orlando, FL 32804, waived his opportunity to speak, but made it known that he was in agreement with Mr. Fontana.

Ms. Kathleen Skambis, 4000 Anchor Way, Orlando, FL 32804, spoke on her behalf in opposition of the request. Her main concern was the noise that the outdoor music and tiki bar would create and noted that she did not want to be subjected to that every day. She stated that it was not appropriate for their neighborhood.

Mr. Christopher Skambis, 4000 Anchor Way, Orlando, FL 32804, waived his opportunity to speak, but made it known that he was in agreement with his wife, Ms. Skambis.

Mr. Paul Morrison, 4246 Grant Blvd., Orlando, FL 32804, spoke on his behalf in opposition of the request. His main concern was the noise level and concurred with Mr. Fontana that flipping the development towards the Marina would be a better option. Mr. Morrison was also concerned about what would happen if the establishment was owned by someone else in the future and questioned if the restrictions would apply to all future owners.

Ms. Marlys Hayes, 4177 N. Orange Blossom Tr. #605, Orlando, FL 32804, spoke on her behalf as an opponent of the request. Her three (3) main concerns were: a) Building orientation – she didn't want to be subjected to the noise every day and night. b) Recommended ductless exhaust hoods to prevent the fumes coming into her condo and the oil staining the side of their building. She noted that they would have to spend approximately \$7,000 to pressure wash the building. c) Protect wild life – Ms. Hayes stated that she has seen an eagle across her balcony and Osprey. She feared these birds would leave if their environment was ruined.

Attorney Thomas Callan spoke in representation of Gertrud Browning, the owner of 12 acres of lakefront property on the north side of Lake Fairview. Ms. Browning plans to build a residential development in the future. Mr. Callan provided the Board members copies of his letter with several points of objections to the requested master plan. As stated in his letter, his client was strongly opposed to the following:

- a) the outdoor commercial component
- b) the noise that will be caused by this use

- c) the orientation of the outdoor component to her property
- d) the location of the improvements on the shoreline of the lake
- e) the potential increase of boat traffic
- f) infringement of the riparian rights that all have on the lake that will result with the proposed master plan use
- g) the re-imposition of a use that was previously eradicated 20 years earlier on the lake.

Mr. Jon Vollet, currently resides in 521 Rugby in College Park, but he owns two properties in Lake Fairview, one which his elderly mother-in-law lives in and the other is located at 4212 Grand Blvd., directly across of the proposed property. His main concern was the noise he would have to be subjected to and stated he would like to see more investigation done. Mr. Vollet suggested deferral of the project to provide time for more investigation. He wanted to know specifically if the sound would be a problem and if so, what steps should be taken to mitigate it.

Mr. Wise noted the following:

- a) He believes all the conditions of approval will carry out to any future owners.
- b) In respect to layout of the site – the proposed location for the building is where there would be the least amount of impact on the wetland areas. Also, if it was flipped as suggested, then the kitchen, the delivery area and the solid waste containers would be visible to the neighbors.
- c) The bathrooms will be an enclosed structure which will help block some of the noises from the deck area.
- d) The photometric plan shows 0 ft. candles around the property and assured there would be no glowing effects.
- e) Ductless hood – this option was mentioned to their mechanical engineer and is being considered if allowed by City code for that site.
- f) Drainage – the site right now drains into the lake. Every drop of rain that hits an impervious surface on this site will be treated and percolated back into the ground or overflowed into the lake. The drainage will be much better than the current system.
- g) 15 conditions – the additional 15 conditions came out of the neighborhood and staff meeting. Mr. Wise stated that they were happy to work with the neighbors and agreed to everything they proposed, and will be happy to continue to work with them.
- h) Boats – they have agreed to prohibit motorized rental boats from their property. They might have un-motorized paddle boards in the future.
- i) The owner has proposed to move the existing dock further north, away from the neighbors to the south.
- j) The music test – during the sound test, they tried to emulate the type of music that has been agreed to at this site, which is one or two musicians at a time. The musicians will not be allowed to bring their own speakers or amplifiers. They have to use the site's permanent speakers. The sound engineer will help with the location of the speakers.
- k) Hours of operation - the kitchen section will close at 10pm during the week to allow the customers one hour to finish their meals and then the restaurant and the bar will close at 11pm. During the weekends the kitchen will close at 11pm.
- l) This is a family restaurant and family owned business – this is an allowable use on the subject site. Mr. Wise stated that they were making a commitment to work with staff and the neighbors and continue doing more sound tests to make sure the conditions of approval were met.

Ms. Neasman clarified some points:

- a) Staff will agree to add the ductless exhaust hoods as a condition if permitted by code.
- b) In regards to the six (6) times a year extension, that only relates to the hours of operation. They will not be allowed to violate the noise ordinance.
- c) The Orange Blossom Trail Overlay District is south of the subject site and doesn't apply to the site.
- d) In regards to the mixed-use – City code states that it is strongly encouraged, but it is not required.
- e) Lighting – there is a light ordinance that they will have to comply with.
- f) Stormwater mitigation – anything going on the site is currently being fed into the lake.
- g) Safety – having the non-motorized boats condition is key. Also reducing to 10 boat slips lots will result in a reduction of boats on the site.
- h) Wetlands – they are meeting all code standards.
- i) The master plan with all the conditions of approval relate to this site and will remain with the land, not the owner.
- j) The property is under one ownership, although it shows multiple lots on the site. As a conditions of Permitting, the owner will have to replat all the parcels into one lot in order to develop the land.
- k) A landscaping plan will be provided by the applicant which will include the buffering.

Mr. Wise noted that they had provided a survey with a full meets and bounds and legal description. Everything that they were applying for was within the property limits. The only exemptions would be sidewalks and utility connections on the right of way and the dock that goes slightly out to the lake. For those, the applicant will follow up with proper permits and requirements. This proposal is completely within the limits of the owner's property.

Ms. Hayes questioned if the developer would consider the suggestion of flipping the building over and moving the sound away from her home. Although the developer had mentioned that he was trying to get the sound of the deliveries away from her building, she noted that normally in a restaurant those deliveries were made when the client's weren't there, probably in the morning hours. Ms. Hayes believed that would have a lesser impact than listening to their music from 11am to 11pm.

Mr. Joe Penovich, 21 Country Club, Cocoa Beach, FL, spoke as the owner of the property located at 4315 N. Orange Blossom Trl., Orlando, FL (Grills Restaurant). He noted that their two other Grills restaurants, one in Port Canaveral since 1997, and the other one in Melbourne since 2010, have had no code violations. He stated that as a family owned business, he was committed to working with the neighbors and even gave Ms. Hayes his cellphone number. Mr. Penovich would make immediate adjustments, if there was a chance of any sound disrupting the neighborhood. He stated that he had personally made a promise to the community and would honor that promise. He emphasized that it was a family oriented restaurant and not a bar.

Board member Buchanan questioned Mr. Penovich if he had considered acoustical music for his restaurant.

Mr. Penovich clarified that the agreement was to have one or two musicians at a time with a guitar, not a live band with drums and percussion instruments. He also noted that his sound engineer recommended time delayed speakers around the deck, which would be of a much lower volume than the single one or two speakers. This would ensure they met the sound ordinance code restrictions. Mr. Penovich stated that he agreed with staff's addendum and would go above and beyond to keep the neighbors happy, since he would like to have them as happy customers as well.

Chairperson Searl closed the public hearing.

Mr. Shephard noted that there was an existing noise ordinance which provides a maximum decibel level depending on the emanating land use and the time of day. He pointed out that, whenever approving a master plan, the Board had the option of recommending conditions that were stricter than what is already in the code; but cautioned that if there were stricter and different standards for every master plan approved in the City, it would result in enforcement issues.

**Board member Tobin moved APPROVAL of the request, MPL2015-00023, subject to the conditions in the staff report and addendum, with an additional requirement that if the code permits the ductless venting, that it would be a requirement. Board member Burns SECONDED the MOTION.**

Before voting on the motion, discussion ensued in regards to the noise issue and how it could be addressed with additional conditions. It was concluded that various sound tests could be required prior to the final site plan approval. Mr. Penovich stated that he would agree to any additional conditions required by the Board and staff.

**Board member Tobin AMENDED her MOTION to include the following:**

**Prior to and as a condition of issuance of a certificate of occupancy, an as-built sound study would be submitted to the Planning Official as a Determination for code compliance, and the Planning Official will have the ability to make determinations on how to rectify any problems which would include the ability to require enhanced buffering or modifications to the sound systems, with the neighbors given notice in the same fashion that they would have been given notice both in terms of distance and time as were given for this master plan approval.**

**Board member Burns SECONDED the amended motion.**

Discussion ensued in regards to concerns about not having any set parameters or variables for the tests.

Mr. Shephard suggested that the language of the motion could be amended to say that the acoustic would have to be performed in accordance with the generally accepted industry standards. Mr. Lewis also suggested that the study be performed multiple times during different times of the day.

**Board member Tobin WITHDREW her previous AMENDED MOTION and MOVED to include the following additional conditions:**

**Prior to and as a condition to issuance of a certificate of occupancy, an as-built sound test will be submitted to the City, in accordance with industry standard methodologies as specified by City staff (which shall include a variety of samples of days of the week, times and weather conditions) with thereafter the Planning Official having the right to require any necessary mitigation, including additional buffering and/or changes to the sound system; with notice being provided to the neighbors per the master plan requirements in terms of time and area of notification (all property owners within 300 ft. of subject property).**

**Board member Burns SECONDED the MOTION, which was VOTED upon and PASSED by unanimous voice vote.**