

**OFFICIAL PROCEEDINGS OF THE
MARQUETTE CITY PLANNING COMMISSION
June 1, 2021**

A regular meeting of the Marquette City Planning Commission was duly called and held at 6:00 p.m. on Tuesday, June 1, 2021, by remote means (due to the COVID-19 pandemic).

ROLL CALL

Present: A. Andres, W. Premeau, M. Dunn, S. Mittlefehldt, Vice-Chair M. Larson, Chair J. Cardillo
Absent: E. Brooks (excused)

AGENDA

It was moved by M. Larson, seconded by A. Andres, and carried 6-0 to approve the agenda.

MINUTES

The minutes of May 4th was approved by consensus.

CONFLICT OF INTEREST

J. Cardillo stated that she has a conflict regarding the SUP case for 717 N. Third St. due to her business being the design consultant for the project, and she will leave the meeting during the case, but her partner will represent the applicant this evening. No other certain or potential conflicts were stated.

PUBLIC HEARINGS

A. 01-PUD-05-09-A8 – Amendment to the Picnic Rocks Planned Unit Development located at 1001 Lakeshore Blvd. and 1301-1317 Picnic Rocks Drive (PIN: 0370070, and 1300010 to 1300150)

Zoning Official A. Landers stated that Julie Bowerman, Lakeshore Residences LLC, and Picnic Rocks Pointe Association are seeking approval of an amendment to their previously approved Planned Unit Development (PUD) consisting of 15 residential units in the form of single-family dwellings. She stated they are requesting to revise paragraph 7.6 - Codes and Ordinances - of the PUD Master Deed. She also stated it states that "In addition to the construction requirements in this section, all buildings and other structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected." She stated they would like it to read that "In addition to the construction requirements in this section, all buildings and other structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected with an exception to permit the existing six-foot-high closed construction vinyl fence on Lot #9 to remain in place." She also stated the Planning Commission should review the request and send a recommendation to the City Commission. She stated that the Planning Commission has received the agenda packets, which included the application for a Major Amendment to the Picnic Rocks Pointe Planned Unit Development, the PUD Master Deed amendments, the area map, the block map, and photos of the site. She also stated that there were several items of correspondence in the packet, which were briefly shown on the screen. She stated that staff received many items of correspondence and those received prior to the agenda being posted are in the agenda packet and that most were received after the agenda was published and will need to be read. She read a form letter that was sent separately by 33 different parties in support of the application, along with the name and address (if supplied) from the 33 different parties. She and City Planner-Zoning Administrator D. Stensaas read 14 other pieces of correspondence, with one piece of correspondence including photos that were from the applicant and shown on the screen (11 items of correspondence were in favor of the request and 2 items were in opposition; please refer to the video of the meeting and/or the printed file in the Planning/Zoning office for details of all of the correspondence read into the record).

The applicant, Ms. Julie Bowerman of 1301 Picnic Rocks Dr., stated that she just wanted to say that contrary to what some of the people have said, before she bought this property she asked about the fence, and she was told by Dan Keller that they could get a variance for that. She stated that when she submitted her plans, the fence was on there. She also stated that they even handwrote it on there. She stated that it was approved at the meeting by everybody. She stated there were four people on the board at that time. She also stated that two of them do not remember that they approved this. She stated that she is not sure

why, but they do not. She also stated that everybody else at the meeting remembers this, including the other board members. She stated that her builder did not understand that he had to get a separate fence permit in addition to his building permit, so when he built the house, he did not know that. She stated that it was his first house. She stated that she understands that was a mistake, but then the fence has been up since then. She stated that it was not done in malice at all, and this is something that she has been dealing with for, like, a year here, and she understands that it is against the regulations, but they did not know when they wrote the PUD that they would have to change that, which is why they approved it in the first place. She stated that they thought that they had the authority to approve a variance for this kind of fence. She also stated that she knows that some of the neighbors are saying that it obstructs their view, but the houses obstruct their view. She stated that she could have built two stories, but she did not. She stated that she only built one. She also stated that she built the smallest house that she could, and she just would really appreciate it if they could come to some kind of agreement. She stated that they are not asking that everybody has a fence. She stated that the board understands that it was a mistake, and they are just trying to get the variance for this one fence. She also stated that she would like to say to all the people that live in the condos behind her that her last house was 416 E. College. She stated that she lived at the very end of College Street, and she bought the house in 2002, so for 10 years, she had an unobstructed view of the lake, and then they built those condos, and the whole neighborhood lost their view of the lake. She stated that is how it goes. She also stated that since she lost it, she moved closer, so she just does not understand how all of them are saying that it is obstructing their view when she could have had a house double the size.

J. Cardillo opened the public hearing and asked if anyone wanted to speak.

Brian Bloch, of 908 N. Third St., stated that Ms. Bowerman is a friend of his, and he has spent a lot of time at her house and when she was considering buying it and building it. He stated that he has been in real estate for over 30 years and that he has been an attorney for 20 years, and he has walked around that fence, he has driven around that fence, he has walked all over, looking at it from different angles, and in his opinion the community interests underlying the reason for the fence ordinance do not apply to this circumstance. He stated that it is set far enough away from the road that the concern about vehicles and pedestrian traffic are not a concern. He also stated that Ms. Bowerman could have built a two-story home with the footprint of her home into the area that she decided to make a backyard. He stated that she built the yard because she wanted a dog, and she built the fence because it is a busy corner, and she wants some privacy. He stated that the majority of the homeowners in her development support her. He also stated that the great majority of the surrounding neighbors who would have been given notice support her or are ambivalent. He stated that the letters received from other parties are disingenuous. He also stated that as to the request to amend the PUD to allow her fence, if you look at pages 32 and 33, the photographs, you will see that the issue of obstructed views from which he thinks there is only one unit in the corner of the FIR building 200 feet away, there is a tree. He stated if you did not have the fence, the view is obstructed by the tree in her front yard, or technically in the common area just on the other side of her property line. He stated that is all he has to say on the issue.

J. Cardillo closed the public hearing.

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

M. Dunn stated that he has got a couple of questions for staff about variances, and he will start with the big-picture one, and that is why this would not be a zoning variance request for the BZA. A. Landers stated that you cannot get variances for a Planned Unit Development [PUD]. She stated that the process that it is going through is the only way that you can get a variance. She also stated that a planned unit development is what you apply for, it is a contract with the City, and they have to meet the Master Deed. She stated that this is the process for planned unit developments. She stated that it is not a regular zoning district that would allow for variances. D. Stensaas stated that it is something he is surprised by, that Dan Keller, the developer's representative, was not aware of, but that is what is being said. M. Dunn stated that to kind of go on from that, when the original PUD was agreed upon, they did not have any design guidelines for fences. He asked if that is correct. D. Stensaas stated that the PUD agreement itself has a clause that requires that all development, of anything that is not directly approved out of the pattern book, would have

to meet City ordinances and be permitted by the City. M. Dunn stated that is kind of a bummer because usually when they do a PUD, the intent of that is to have everything set up ahead of time so that they do not need to get into sticky situations like this and handle these things, where a PUD usually has all these things mapped out, and any appeals to those things should go to the HOA Board rather than coming to the City. He stated that he guesses that kind of leads him into his other thought here, and that is that he is trying to figure out why they would be approving something for, he guesses, an individual member of that HOA by changing the entire Master Deed for the entire HOA and having one specific lot pulled out and indicating that, so he is having a hard time thinking of that, and he is wondering if the City is going to get involved with - if they are not going to stick to what the City's standards are for fences in this particular case, it seems to him that there should be some design guidelines put forward by the HOA. He asked if they know what he is saying. He stated that if they are going to have to be in the position where they are deciding on which fences are okay and which ones are not, their options should be either they go by the City's guidelines or they should not handle it at all, and the HOA should be handling it with their own design guidance because, to him, this does not seem like the kind of problem that they should be dealing with, and he knows that they need to, and he gets that, but he is trying to think of a way that they can take care of this without having it go forward and now they are looking at, he guesses, 13 other homes that may or may not want to come forward and look for changes to the PUD so that they can do the fence that they want to do.

J. Cardillo stated to Ms. Bowerman that they are going to let everybody on the Commission have their discussion, and if they need to, they will come back to her, but they are going to try to sort of let the process roll through.

D. Stensaas stated that to address Commissioner Dunn's question in his comment, the fact that he is having this hearing is because it is a remedy of sorts that is available to the applicant. He stated that it is far from preferable or ideal, but once this fence is built without a permit, the options are extremely limited, and so this was one of the options that exist, to go back and go through this extremely complex process of amending the PUD, and he did have some discussion with Ms. Bowerman and talking with the HOA board about whether or not they wanted to consider a larger PUD amendment to address further amendments to fences or to make this applicable to all the lots on these through-lots aligned with Ms. Bowerman's lot, and that, he was told, was not the option that was chosen. He stated that they decided that just - and Ms. Bowerman certainly has the right to decide with her application whether or not she wanted to even go there - but that option was taken off the table and was just looked at as this one lot.

M. Dunn stated that leads him to his next question, which is what happens if the City approves this and then a neighbor that does not like it comes back and holds the City responsible for their damaged view or someone from the HOA comes back and says, "Well, why are you overstepping our authority?" He stated that from what he read in the application, there is obviously some controversy as to whether the HOA agrees on approving the fence anyway, and so he is not convinced that the entire HOA wants to amend the PUD, so for them to change the PUD based on the request of one individual in the HOA, it just does not sit well with him. He also stated that if they had a formal motion that - and, again, he saw in the packet there was a little statement there from the HOA Board of Directors, but it was not signed, he does not know who did what, and there seemed to be some controversy there, and he does not want the City getting involved in some sort of dispute that is going on in the HOA. He stated that he feels like the HOA needs to sort out what they want to do, and if the HOA together as a body wants to change the PUD, then they can talk about changing the PUD, but based on one individual coming forward wanting to change it, and then there is some controversy as to whether the Board of Directors and the whole HOA wants to do that, it just seems like a very precarious situation for the City to get involved.

M. Larson stated that he agrees with M. Dunn that he thinks that is a little bit of a situation in applying consistency with the fencing ordinances and ordinances in general where it gets built first and essentially asked for forgiveness later. He also stated that he had the same question of why it is just for one particular lot, one lot here that you are going to change the entire deed for this particular lot, and asked if that opens them up for consistency's sake that a neighbor two houses down builds a fence without a permit and then comes and requests a similar change to it as well. He stated that he thinks there are some issues along those lines that he does not feel entirely comfortable with, and, also, just for a point here is that they are making a recommendation to the City Commission here today, and so whichever way they vote, the City Commission, it will be heard there one more time.

S. Mittlefehldt stated that she shares a lot of the thoughts that Commissioner Dunn and Commissioner Larson just mentioned about the issue of precedent and consistency, and she guesses she has got another question for A. Landers or D. Stensaas about that. She stated that it is an illegal fence by the City Code Standards, and maybe the builder did not know or whatever, but nobody wants to waste the money and resources of making the applicant tear it down per se, so she is just wondering if there is a way to not make this a precedent. She stated that it just seems like she does not know what that compromise would look like in this situation. She asked D. Stensaas if he is saying this is it - it is kind of all or nothing at this point. D. Stensaas stated no, and that was never the case. He stated that when this was first reported to them, and they reached out to Ms. Bowerman and talked to her about this situation and her options, the goal of trying to enforce the Land Development Code in a situation like this is to achieve compliance with the code, so that option was put on the table that the fence can be reconstructed to conform to the code. He stated that was the first conversation they had, and they will recall that during the later part of 2020 when the Planning Commission was entertaining the whole variety of changes to the land development code that ended up as dozens of amendments, one of the things he presented to them was the option to create a 5-foot fence for front yards, and they first said no, they do not want to allow 5-foot fences. He also stated that maybe it had been a long time since the City considered allowing 5-foot fences in front yards, but he thought that was another potential remedy to this situation that he brought to the Planning Commission as an option with amending the Land Development Code since they are already looking at other amendments to it, and it was considered at more than one meeting. He stated that at the first meeting, the result of that was basically, "Well, if we could maybe envision an option where the fence was open on the top but closed on the bottom," maybe that was another way to address the 50% open thing with a 5-foot fence, and that was brought to them with illustrations, and that was rejected as a potential amendment to the Land Development Code, so they first went through the option of reconstructing the fence. He stated that was rejected by the applicant, and they brought that potential amendment to the Planning Commission. He stated that then as a staff, they go back to, "Okay, this Planning Commission is not interested in amending the code, so you are still in violation of the code. You either have to bring the fence into compliance, or the other option on the table was to amend the PUD." He stated that this is not the first case in this particular PUD where an amendment has been made for one lot - and A. Landers could tell them about that - and it is a very unusual thing. He also stated that he does not know that there is another PUD in the City where they have made an amendment for a fence on one lot, but they made an amendment to another lot in the same PUD, and he will let A. Landers talk about that. A. Landers asked if he is referring to the setback one? He stated yes. A. Landers stated that they just asked for a setback to go for example from 10 feet to 9 feet or something like that, and that was reviewed and approved. J. Cardillo asked if that was done at a staff level or if that came before the Planning Commission. A. Landers stated that was a Zoning Administrator approval. D. Stensaas stated that there are two levels of amendment to a PUD, the minor - which would not have affects beyond the property boundary is the basic criteria - and the major.

A. Andres stated that he just thought of a couple of questions. He stated that the first is why the applicant did not want to amend the fence to meet the code in the first place. He stated that he would like to ask that question. He stated that the second statement that he has is he is not really in favor of amending a PUD for one individual. He stated that if the Association wants to make it allowable for everybody, then okay, but that is on the Association, and he does not think they should get into any more politics than they have to. J. Cardillo asked A. Andres if he can just restate his question for the applicant, and we'll let her answer that question. A. Andres asked why she did not just amend the fence to meet the existing fence regulations.

Ms. Bowerman stated that the reason that she did not want a 4-foot fence is that her dog can get over it, and she knows that, which is why before she bought the property, she asked if she could have a 6-foot high fence and if they would be able to give her a variance for that. She stated that the other question that he had was why isn't it for the whole neighborhood, and they consulted with a lawyer who wrote the PUD and said that it probably would not get approved by the City if they did it for everyone, but if they could ask for just this one, that they might approve it. She stated that the other question if they do not mind her talking about this too, is that when she originally had her plans with the fence on it, it was approved by every board member. She stated that there were only four at the time. J. Cardillo asked if she is talking about the HOA specifically. Ms. Bowerman stated yes, the HOA. She stated that they approved it, they approved the variance, and it said 6-foot vinyl fence right on it. She stated that when she wrote that, everybody approved it. She also stated that when it came back through from the City that it was against the rules, that is when

they had to regroup again and talk about it, so they had another meeting. She stated that now there are five people on the board at this time. She stated that there are two people in this neighborhood who are against it. She also stated that everybody else in her neighborhood that owns a house has written a letter for support, and it was an e-mail chain, if they would allow me to go for this amendment for her fence because it had already been approved by them. She stated that everybody in the neighborhood supported her going ahead with this except for the two neighbors. She asked if can just say one more thing about it. J. Cardillo stated briefly please. Ms. Bowerman stated that they did have a meeting about it, and the Board met, and they approved it. She stated that she knows that they are saying that Dan Keller was against it by proxy, but he wrote a letter of support.

J. Cardillo stated that they do not want to get too deep in the politics of it. She stated that they want to keep this at sort of a higher level of sort of what is their obligation as a Planning Commission, so she will just briefly state that.

J. Cardillo asked W. Premeau if he had a comment.

W. Premeau stated that he does not see anything wrong with the fence himself. He stated that he can get into all the complications they want. He stated that there was more support for it than there was against it, and mistakes are made, and there should be some remedies. He stated that the only thing they did not do was tear it down, spank the people that did it, but asked what good it does. He stated that he really does not see anything wrong with it, and he thinks they should just go ahead and approve this. He stated that the Board told her she could do it. He asked what more can you can do. He stated that as far as knowing if they have to have a permit and all that, he knows a lot of people that just do not know that. He stated that they know, they are supposed to know, but he tried to do a couple of little things, and it gets very difficult and very complicated. He also stated that he thinks they should just leave it alone, let the fence there. He stated that the lady explains why her dog will jump over a 4-foot high fence. He stated that if it is half-open by 50%, you have still got a dog that can bark and scare the living hell out of you, so he does not see anything wrong with it. He stated that he would go along with all the people that support it. He stated that there are very few against it.

J. Cardillo asked if anybody else has anything they want to add or ask.

M. Dunn stated a question for staff and asked if there is a way if they can postpone enforcement of this. He stated that here is his contention, and he does not have a problem with the fence. He stated that the only reason he is having a problem with this is that it is one individual that is named as the applicant and that one individual is coming forward and asking us to change the PUD Agreement for an entire neighborhood, and he does not feel good about that, and he does not think that is a smart move on the City's part, so what he is wondering is if they can kind of postpone any kind of enforcement of the fence and let the HOA figure out what they want to do and come back as an HOA. He stated that he guesses he does not know what the process would be. He stated that maybe it would be the same process, but the HOA is the applicant, something to that effect so that the City is not on the hook for changing a PUD that is going to affect everybody in the neighborhood. He stated that, again, he does not have a problem with the fence. He stated that he just does not like the way this is happening, for lack of a better term.

D. Stensaas stated that M. Dunn has an interesting point, but the longer this is drawn out, they could have a completely different board vote, and maybe the vote that was done is or is not - the comment from one of the board members that it was not a legitimate vote, that is not really for them to determine at this point, but one thing that he thinks is sort of being missed here is the reason that this is at a hearing right now at the Planning Commission level, why this is not a minor Planned Unit Development request is that this has effects beyond the property boundary, and if it did not, then the Homeowners Association making a decision about what happens within their PUD, that seems perfectly logical that they should be able to make rules that affect them. He stated that they could have 10-foot fences around everybody's house, but that is not the rule because some things affect beyond the property boundary, and that is why this is an issue for the City. He also stated that obviously, there are points on each side. He stated that not everybody agrees and that supports the point that this was a legitimate item to have at a public hearing, and the fact that the Board whatever they decided came out the way it did really at this point hardly matters because this issue really needs to get settled, and the applicant brought this forward in this manner to settle it.

M. Larson stated that he guesses what he is hearing is even though there is a lot of support for it, you have folks that have moved into that neighborhood or had a house built in that particular neighborhood that had a set of rules that were in mind potentially for that, and potentially doing this, he asked if that is changing the rules beyond what that is - not the neighborhood in which they initially signed up to live in as a planned unit development, and so he guesses there could be some issues that are associated with that as well, even if there is nothing wrong with the fence per se, but kind of coming in with one set of rules and then changing it because the rules were not known to one individual potentially causes a problem.

S. Mittlefehldt asked another question for D. Stensaas in response to his comments. She asked if he is saying when he is saying that this example of a 6-foot high fence which does not meet the code and has implications for people in the PUD beyond just this one property, but if this could hypothetically in a hypothetical future if somebody could on West Crescent or the west side of town or anywhere else in the city build a 6-foot fence and then come to us and say, "Well, there is a precedent. We have 6-foot high fences now," and try to make some amendment to our Land Development Code or something like that. She asked if that is what he was saying. A. Landers stated no, they review everything on a case-by-case basis. She stated that it is the same for variances. She also stated that a major amendment is like a PUD variance. S. Mittlefehldt stated that it would only be a precedent, which they have already started seeing a lot of special requests for this particular PUD, but that makes her feel a little better that it would not be like opening a giant can of worms in terms of precedents across the City.

J. Cardillo stated that she guesses she just wants to chime in the fact that the whole point of the PUD is that it is sort of all set out at the beginning, and the idea with the PUD is that you get to sort of not follow the rules of the City necessarily to the T because you are sort of setting your own set of rules which you agreed to abide by, so she guesses the issue she is having is that as much as she is sympathetic to the sort of narrative of how the applicant got in this situation, the whole point of the PUD is that all of this was gone through in incredible detail at the time that the PUD was approved. She also stated that these properties, it was known that they would have two frontages, and so as much as she feels bad for the narrative that got her into this situation and sort of information that was not properly disclosed, she has a hard time, especially on an individual level, in saying they should change this one lot. She stated that as Commissioner Dunn said, it would be one thing if they wanted to come back and change the design standards for the whole PUD, not that she is saying that she would be in support of that, but that would be something that she could entertain more rationally, but for her, she is very much challenged by having language in there that says with the exception of this one lot, so that is kind of how she sees it.

J. Cardillo asked if there were any further pieces that anybody wanted to bring into this. She asked if anyone wanted to make a motion. M. Dunn stated that he could give it a go in just a second.

It was moved by M. Dunn, seconded by A. Andres, and carried 5-1 that after conducting a public hearing and review of the PUD application with support information, staff memo and attachments for 01-PUD-05-09-A8, the Planning Commission recommends that the PUD amendment request be denied by the Marquette City Commission for the reasons discussed in the meeting.

Yes: A. Andres, M. Dunn, M. Larson, S. Mittlefehldt, J. Cardillo

No: W. Premeau

B. 04-SUP-06-21 (05-SPR-06-21)– 717 N. Third St (PIN: 0330420): Special Land Use permit for an expansion to their previously approved Outdoor Food and Beverage Service, and a Special Land Use Permit for Outdoor Entertainment and Community Events as a Principal Use

J. Cardillo exited the meeting due to her aforementioned conflict of interest and M. Larson assumed the role of acting Chair for the case.

Zoning Official A. Landers stated that Superior Culture LLC and Alex Rowland are seeking a Special Land Use permit for an expansion to their previously approved Outdoor Food and Beverage Service, and a Special Land Use Permit for Outdoor Entertainment and Community Events as a Principal Use to be located at 717 N. Third Street. She also stated that the Planning Commission has received agenda packets which included the staff report and analysis and showed that on the screen, and she also showed

the applicant's Special Land Use Permit application with attachments including the area map with the parcel outlined in blue, the block map with parcel outlined in blue, photos of the site, site plan set, lighting sheets, excerpts of the Planning Commission minutes of January 9, 2018, and May 7, 2019, and one piece of correspondence with attachments. She also stated that several items of correspondence were received after the agenda was posted. Correspondence from Igor Popovic of 216 W. Hewitt Ave. in opposition to the request was read into the record. Correspondence from Sandra and Paul Gluski of 212 W. Hewitt Ave., opposed to the request, was read into the record. Correspondence from Steven Wahlstrom of 723 N. Third St., in support of the request, was read into the record. Correspondence from Susan Bohor and Ron Sundell of 130 W. Hewitt Ave. in opposition to the proposal was read into the record.

The applicant, Mr. Alex Rowland, owner of 717 N. Third St., stated that he has been in business for going on five years now. He also stated that the last year has been the greatest struggle of that time, but they managed to persevere through COVID, doing takeout and delivery. He stated that when they were able to reopen in May, they moved their operations into the back yard as their taproom is quite small and cannot necessarily accommodate enough people to keep going, so where they stand right now, they employ five employees. He stated that they kind of got that going last year, and they are continually hosting live music, and he has a place for artists to present their music and get paid throughout all this. He also stated that the success of last summer allowed him to purchase the building in September of last year, so he is planning on being here for quite some time. He stated that with this project, he is hoping to mitigate the sound and separate their commercial space as much as possible from these residences while still maintaining their rights as a commercial business owner on Third Street. He also stated that he thinks that looking at other businesses that are coming up on Third Street like Blackrocks or the Third Street Marketplace, he thinks they are beginning to set this precedent for what a business owner should be able to do in the downtown district. He stated that where they plan to put the stage is underneath the retaining wall. He stated that it is about 4 feet tall. He also stated that behind the retaining wall is where they hope to put up this fence. He stated that they will be using acoustic sheeting within the entire fence as well as within the covered stage as well as running cables up above overhead and running some sheeting there, so they are looking to contain this as much as possible, but looking at the property that he owns, the inside space is so limited, so he thinks the only way to accommodate, especially last year, safety all the traffic that they have had is by utilizing this outdoor space.

Mr. Joe Rom, the applicant's design consultant, stated he will just maybe touch a little bit on a couple of points. He stated that he means they are not designing sort of a proper amphitheater, but they are trying to use a lot of the best practices to try to mitigate a lot of the reverberation or kind of echoing of sound waves there, and the shape of the pavilion they see in the support material is kind of wedge-shaped, and the bottom surface of that roof would have acoustic panels on it for absorbing sound as would the proscenium or basically the surface behind the performer, so really just trying to make the sound go to the audience and limit its propagation. He also stated that, obviously, this is an outdoor space, so it is not going to be sort of whisper-quiet, but they believe the acoustic treatment on the stage area coupled with the change in elevation that Mr. Rowland had mentioned coupled with the acoustic treatments on the fence, which is an absorptive treatment where the sound waves go into the material and then the energies basically disappear at that point, and the design intends to reduce the decibel levels through that. He stated that then the addition of the kind of wedge-shaped panels between the tent and the stage area to try to capture any additional sound that might be traveling upwards, so that is kind of one point he wanted to make, and another one is he saw that one of the letters kind of against this action had a lot of decibel readings, and he knows sound, obviously, degrades with the distance traveled, but just relative to overall decibel readings, some of these levels in the 40s and 50s and even low 60s, those are relatively low levels. He stated that if you look at a decibel chart, those levels are soft radio music or background audio and things like that, so it is not like the roar of a jet engine and those sorts of things. He stated that their hope is that through this process and Mr. Rowland's great management and these acoustic properties, they are taking steps to try to be a good neighbor and also maximize the potential of Mr. Rowland's business. He stated one other thing, just the additional discussion about lighting. He stated that maybe Mr. Rowland can speak to the lighting that was maybe present in the tent when that photograph was taken that was referenced in the letter, but as they can see from the cut sheets that were introduced as part of this SOU application, they are looking at a lot of downlighting and such, so there is no obscene lighting that they are trying to introduce here. He also stated that everything is to try to keep everything down.

Mr. Rowland stated that he just wanted to say that he is not entirely sure about the angle and the dark background of that picture, but the lights that are shown within that picture, are soft LEDs that are underneath the tent, so it does give the tent a soft glow, but he does not think it is intrusive. He stated that it is not radiating up into the sky. He also stated that he will also note that they, throughout the entirety of last year, shut down everything by 10:00 p.m. every night, which is well before the 11:00 p.m. noise ordinance.

M. Larson opened the public hearing and asked if anyone wanted to speak.

Paul Gluski, of 212 W. Hewitt Ave., stated his comments will probably exceed three minutes, so his wife will continue when he is done. He stated that they are speaking in opposition to the special land use permit application submitted by Alex Rowland and Superior Culture, and he is asking the Planning Commission not to approve it. He stated that furthermore, they would also ask the Planning Commission or whoever has the authority to prevent Superior Culture from continuing to have a tent, lighting, and live music in their outdoor space because, as they understand it, they have done all this without permission. He stated that when they purchased their retirement home in 2016, they researched what sort of businesses were nearby at that time. He stated that in addition to quiet residential homes, their home backed up to an optometrist, a hair salon, and short-term rental property. He stated that since then, Superior Culture has moved in. He stated that at first, it was not an issue because he was just manufacturing, and it was just an outdoor service. He stated that, however, in May of 2019, they applied for and were approved for outdoor food and beverage service. He stated that, in theory, they were not completely opposed to this. He stated that they were not, especially because, at the Planning Commission hearing, the following statements were made by the owner, Mr. Rowland. He stated that Mr. Rowland described it to the Planning Commission as basically creating a natural space where people can hang out. He stated that Mr. Rowland indicated that the capacity will be no more than 15 people. He stated that in an apparent effort to downplay the outdoor stage, Mr. Rowland stated that there would be not much of an appeal to sit in the back since they are not looking to propose any lighting out there. He stated that when directly asked by Commissioner LaChapell about whether or not there would be music. He stated that Mr. Rowland specifically said once a month or maybe even less than that. He stated that Mr. Rowland did not mention a 20-by-30 tent that would be erected. He stated that since that date, they have definitely exceeded 15 in capacity, a large tent was set up within sight of many of the homes, outdoor lighting was hung and very loud, live music has been occurring outdoors up to four nights a week in the summer and fall months, including school nights, and they are fostering a niece and nephew, so they are surprised and disappointed all of those things are allowed to happen since they are all contrary to what Mr. Rowland stated at the Planning Commission in 2019. He stated that they do not support the "ask for forgiveness, not for permission" approach Mr. Rowland has taken, and they do not believe that it should be rewarded with approval. He stated that truth be told, they enjoy venues with outdoor seating and live music. He stated that many of the venues in Marquette seem to be a good fit for that. He stated that, however, Superior Culture is unique as it backs up almost entirely to residential home lots and not an ideal location for these types of outdoor events. He stated that his wife will finish with hers.

Sandra Gluski, of 212 W. Hewitt Ave., stated that they support the growth and expansion of business along Third Street, and they want to support small businesses near them, but they also believe that expansion and growth need to be balanced with the needs of the residents. She stated that they have spent between \$15,000 and \$20,000 making their backyard an extension of their living space. She stated that they have before and after pictures that were submitted. She stated that, however, the loud patrons and live music in the outdoor space have effectively made their outdoor living space useless. She stated that to further cause insult to injury, even if they move indoors to socialize, they have to close their windows and doors during beautiful summer nights due to disruptive sound. She stated that this is their home. She stated that this is where they plan to live the rest of their days. She stated that they made a deliberate decision to move to and invest in Marquette and are now heartbroken that they cannot enjoy their space. She stated that Mr. Rowland wrote a letter to us and our neighbors, expressing how he feels his business has positively impacted the community, especially during COVID. She stated that the letter effectively dismissed how his business has absolutely negatively during COVID. She stated that during summer when outdoor socializing was the only way they could spend time with their son and daughter and their friends, the noise from live music prevented us from being able to do that. She stated that Mr. Rowland indicates that he wants to be a good neighbor, but she and her neighbors have approached Superior several times, and their concerns and their needs were dismissed. She stated that just saying you want to be a good neighbor does not make you a good neighbor. She also stated that, finally, they would like to say that just because something meets the

criteria does not mean that the Planning Commission must approve it. She stated that they sometimes feel that businesses are given a bigger voice because it appears that they are investing in their community but attracting and retaining owner-occupied homeowners is also a way to invest in the community. She stated that homeowners who make improvements to their front and back yards are also investing in their community. She stated that they believe there needs to be a better balance, and the needs of the businesses cannot outweigh the needs of the people who live here and are equally invested.

Bernie Huetter, of 220 W. Hewitt Ave., stated he owns 224 W. Hewitt and 220 W. Hewitt, directly in the backyard of this proposed project. He stated that he did attend the meeting on May 7th, two years ago, where he indicated that having lived at 224 W. Hewitt that there is a natural amphitheater created by this property the way it extends into the backyards of strictly residential property and has a natural effect. He stated that it is very impossible to correct this with the devices that have been proposed. He also stated that what was approved back in May of 2019 was not adhered to, was extensively expanded, and has caused disruption for the people in his residences and surrounding neighbors. He stated that police have been called a number of times based upon the disturbance. He stated that they have a limited effect on the disturbance, and once they leave, it just seems to escalate. He stated that one of the bad things, he raised four children in 224 W. Hewitt, and the noise and language that comes out of that is inconducive to that type of residence and that this property has been for over 125 years used that way and is still viable. He stated that he thinks that in Mr. Rowland's letter that was proposed showed that he can produce his products and market them way beyond Third Street and has done so with success. He stated that this venue is not necessary for him to maintain a business on Third Street. He stated that he guesses that those are the only comments he has to make there.

Linda Popovic, of 216 W. Hewitt Ave., stated that she will speak for three minutes, and then her husband, they are sharing the same computer, Igor. She stated that he will speak after she is done. She stated that she would like to voice her opposition to Mr. Rowland's proposed plans to expand his outdoor food and beverage service and his plans to construct an outdoor entertainment venue at his place of business, Superior Culture, which is located at 717 N. Third Street. She stated that she is also asking the Zoning Commission to revisit the original food and beverage permit that was approved on May 7, 2019, for Mr. Rowland's business because of the events that occurred at Superior Culture last summer and fall of 2020. She stated that last week, she submitted documents to the Zoning Commission to review. She stated that these included her letter outlining her concerns about the noise level Superior Culture generates. She also stated that she also submitted a log of dB levels of Mr. Rowland's events from her house and back yard from September the 24th through October 31st, 2020, a letter that was given to Mr. Rowland on October the 9th, 2020, from his neighbors, 13 of them, that expressed concerns about the level of noise Superior Culture was generating from live amplified musical events and a calendar of events, also, that Mr. Rowland had posted on his Facebook page from Superior Culture. She stated that she would like to point out that Mr. Rowland generally held amplified singing and instrumental events three to four nights each week throughout the summer and fall last year, all of which were conducted without proper permits. She stated that she cannot support any of the new changes Mr. Rowland is proposing, as he has proven to her that he is not able to conduct his business in a manner that would address the concerns she has over the noise level. She stated that Mr. Rowland did nothing to mitigate this issue last summer, and she has no reason to believe that he would act any differently moving forward. She stated that the sound generated from the back area of Superior Culture carries throughout the neighborhood into her backyard and her house. She stated that not only do these events sound like they are in my back yard, but she can hear them and the crowd inside her house, even with all her doors and windows closed. She stated that the noise was so loud last year that I filed multiple noise complaints with the police throughout the season. She also stated that in May 2019, the Planning Commission wanted to trust Mr. Rowland and give him a chance to prove that he was listening to his neighbors and heard their concerns about noise levels. She stated that Mr. Rowland had his chance, and now she is asking the Zoning Commission to consider the effect this business has on the surrounding neighbors. She stated that Mr. Rowland morphed the proposed art therapy and health and wellness projects to be held on his back porch into raucous, amplified musical events and concerts that culminated in a full-blown rock concert, which disrupted the entire neighborhood, and all of this took place in the middle of a pandemic when any singing event was considered to be a very high risk for spreading the virus. She stated thank you so much for your time and for taking her concerns into consideration.

Igor Popovic, of 216 W. Hewitt Ave., stated that he is a joint property owner and resident with his wife, and

their property touches Superior Culture's lot in their northeast corner, and so most of his comments were covered by the reading of his letter at the beginning of this hearing, so he can just summarize here. He stated that on the onset, he would like to say that he is somewhat familiar with decibel measurements, having spent the last 25 years planning and conducting acoustic wave surveys for the industry, and he is also aware of the difference between decibels measured at the source and the receiver, so the measurements that they have logged throughout the events in their backyard are measured at the receiver, so 70 dB at the receiver is considerable. He stated that with the current application it appears that Superior Culture is now applying for a permit to continue doing what they were doing last summer and fall already. He stated that drawings in their proposal suggest that some noise attenuation will be attempted. He stated that, however, the measures described appear to me doubtful to be affected. He stated that the acoustic canopy shown there is really just a disjoint set of shade sails. He stated that a new temporary tent appears to be the one he used last year, and that tent has been set up this year for over a month already. He also stated that, finally, the proposed acoustic fence is unlikely to have an appreciable effect as its top will be still below the grade of virtually every property west of Superior Culture's back parking lot, which will continue to function like an orchestra pit with the entire neighborhood behind and west of it as a target. He stated that, finally, he needs to say that he is skeptical of Superior Culture's execution of what they propose, seeing that they barely have implemented the conditions attached to their last permit from two years ago. He also stated that, by the way, one of those conditions included a fence to be erected adjacent to the MDR zoning district, which Superior Culture implemented as three 8-foot segments of lattice, and that whole contraption is in the process of falling over already. He stated that in concluding, he would like to assert that he is not principally against open-air live-music concert venues. He stated that he does believe that as successful a business Superior Culture may be that it has more than outgrown its current location, in particular in view of the current proposal and to the detriment of an entire MDR-zoned neighborhood.

Julie Bowerman, of 1301 Picnic Rocks Dr., stated that she also works at the Third Base, and she works the door every weekend, every Thursday and Friday, ever since the pandemic began, and she is just going to tell them that as the person standing outside waiting to let people in and check IDs, she has never once heard a loud noise from the kombucha place. She stated that, but, again, she is only there on Thursday and Friday nights, the busiest nights for the weekend. She also stated that they also have five other people here who would like to comment.

Pasqual Stabile, owner of 236 W. Prospect St., stated that it is right there where the kombucha place is, and he supports Mr. Rowland on this one because, first of all, the music and noise coming out there is very, very low, and it is not annoying at all, and on top of that, even in the middle of downtown, it is right on Third Street, and it is a vibrant, young, growing town with students, and people want to have a little bit of life without bothering anyone, and he thinks they are being really, really, really nice about it. He also stated that they are trying to make all the adjustments to reduce the noise, and they are okay with cutting down the music early at night. He stated that they were doing it at 10:00. He stated that he thinks nobody gets to sleep before 10:00, especially in the summertime. He stated that to be honest, it is still light out, so he totally supports Mr. Rowland, and he hopes they can think about this because this guy is work hard, he is trying to make a living, he is trying to support the City, he is trying to make it appealing for the young people, and let us live life, and if you want to sleep at 9:00 at night, you should not be buying a house in the middle of the town. He stated that he is sorry, so he supports him.

Sara Stabile, owner of 236 W. Prospect St., stated that she is also talking in support of the business as well in agreement with a lot of what has been said already. She stated she is from Marquette. She stated that she has lived here all her life, and Marquette has always been a downtown area where things have been active and to think that you can have a retirement home right outside of Third Street does not seem like a good, viable plan. She stated that if you want a retirement home where you plan on spending some quiet hours, she would do it outside of the city center. She stated that she understands that some type of agreement has to be made, but as Mr. Rowland had said, he is stopping a lot of the music at 10:00, which is before the 11:00 ordinance, so she thinks he is already respecting those rules and those ordinances that are already put in place, so she thinks that he, as a young man, a young entrepreneur, trying to make his way in this world, she thinks he is doing a really good job, and we should be supporting him instead of putting him down.

Heather Pickett, of 921 W. Fair Ave., stated that she spends a lot of time in the Third Street area, and she

just thinks that kind of the precedent has already been set by the Blackrocks music policy. She stated that they quit playing music at 10:00. She stated that seems to make everyone happy, and people who come to spend money and support this town are able to still come and spend their money without upsetting the people who live in that area.

M. Larson stated that with that, they can move into commissioner discussion and if they have additional questions then, they can direct them back to the applicant.

M. Larson closed the public hearing.

It was moved by S. Mittlefehldt, seconded by M. Dunn, and carried 5-0 to suspend the rules for discussion.

S. Mittlefehldt stated that she guesses she just had a technical question about the acoustic fencing and the acoustic tiles, the triangular shapes. She stated that she thinks just trying to understand a little bit about how the space might function to mitigate the noise issue. She stated that they have not necessarily, and another proposal is the Cognition Brewery that they just recently looked at and certainly Blackrocks. She stated that she does not know if they have ever seen efforts to actually show this level of kind of acoustic engineering, so she was wondering if maybe Mr. Rom could explain some of that a little bit.

Mr. Rom stated that they do not have an empirical sound transmission coefficient or reduction target. He stated that the goal with this exercise was to reduce the amount of acoustic energy that is propagating outward, which was very astutely noted by some of the letters that were presented, so the acoustic fence is a well-known product. He stated that there is a lot of support information there where basically, with general kind of acoustic panels, what you have is you have kind of an outer sort of acoustically permeable layer, and then the sound basically goes within that layer and then kind of bounces around between the outer fabric layer and the backing layer, and it loses a lot of its energy that way, and so that is to kind of stop the energy from bouncing and not being reduced and going out into the neighborhood, so the fact that the performance area is dropped down and the fence is actually above the retaining wall, so there is four feet of retaining wall and there is the additional fence, so you have you know the effective top of the fence is actually significantly higher than just the overall fence height, so that is perimeter fence, which is actually they are working to extend around both sides to really create kind of a horseshoe shape sort of surrounding the stage area, so that is kind of step one is this acoustic fence product, which is a national product and international product. He also stated that then within this kind of stage pavilion that is proposed, having the roof basically over the performer's head and also from behind and having that treated with acoustic properties, and that with a little bit more of a traditional kind of acoustic panel, which is basically like foam with a fabric on it, which is very, very similar to the type of acoustic paneling and tuning that you would see in any sort of venue that you would go to. He stated that, obviously, in an orchestral scenario or an auditorium, it is a higher degree of refinement, but here they are deploying all of those same principles, so within this pavilion, you have the sound. He stated that they are trying to really limit a lot of wayward and errant acoustic energy, so those are kind of the two major items, and then to bridge the schism, if you will, between the performance stage and the tent proper, these wedge panels or sail panels are there, not to 100% block any acoustic energy from escaping, but really to try to diffuse that energy and to lower the sound any which way they can, so between those kind of three items, the nature of the tent and the fabric and all of the trees and vegetation, they believe that is making an earnest and honest effort to mitigating the sound levels.

M. Dunn stated that he was just looking back at minutes to see what they have done with similar situations where they have several different property owner rights to consider. He stated that, obviously, the business has a right to do what is within the code, and they would all like to see that happen, but they also need to consider the homeowners that are there and the right to their quiet enjoyment of their property. He stated that it sounds to him like the design is doing everything it can to mitigate the noise. He stated that looking through everything else, he does not see any other sticking points other than the noise. He stated that everything else seems fine, so he guesses he is wondering a couple of things. He stated that he guesses one question would be for the applicant, and that is a very simple solution, and he is wondering how critical electrically amplified music is to their business if Superior Culture's unplugged might fly.

Mr. Rowland stated that they have actually done some acoustic shows in the back yard, and with just general crowd conversation noise if you are standing towards the back, you can not necessarily hear it, although one thing he will say that will be different, last year was doing everything they could to survive and stay alive. He stated that he was using some of his amplifiers and then would also allow some musicians to bring in their equipment, which caused variation in noise levels. He stated that this year with some more financing going forward, he is looking to invest in a PA system that would connect, and basically every musician that came would plug into the same PA system. He stated that it would have the levels controlled by them rather than the musicians, and he also owns a decibel meter, and he last year was going to the corners of the property, the front corners, the back corners, trying to get as close to these properties as possible. He stated that he was trying to keep the noise level roughly 50 decibels 50 feet from the point source, so he thinks with some of these advancements with their sound system that he thinks they will be able to do a lot better job of controlling those levels, but he does believe that outside the acoustic is just not quite enough.

M. Dunn stated that he guesses the other thing he would like to hear from the other commissioners on is if whatever they do here, he wants to make sure that they are consistent with what they did at Blackrocks, with what they did at the market. He stated that he thinks that 10:00 was pretty consistent for the other businesses, but again, just coming back to the noise thing, he is trying to go through the old minutes to see if they did anything else as far as trying to control noise when they were right next to residential properties, but he is just looking for other commissioners' input on that.

A. Andres stated that he believes Blackrocks is at 11:00. He stated that he thought they came before them and they moved it from 10:00 to 11:00, which is the cutoff time. He stated that he is not sure about that, but it is worth keeping the standard with everybody else to all at 11:00.

W. Premeau stated that you can stop the noise going through the side and through top maybe, but what good would your audience be that the noise has to go out in order for people to hear it, so he does not believe that you are going to be able to stop the noise at all, and he knows Third Street has changed. He stated that they have never seen it when it was a residential neighborhood. He stated that if you made noise, the cops would come down, and, I mean, I watched them beat the hell out of a crippled kid because he was making noise in front of Vangos, which was Dimbles then. He stated that it is silly, and they are not going to stop the noise. He stated that it is not going to stop it. He stated that it is still going to come out the front. He stated that otherwise, what would you do, put your audience somewhere inside or what. He stated that other thing that he did not understand on the survey plan, they show that tent. He asked what is the intent of the tent that covers that patio.

Mr. Rowland stated that basically, towards the end of last summer, they realized that all it would take is a rainstorm, and they would have a very mediocre night, and you can't necessarily afford that, especially in the middle of a pandemic, so kind of going off of the emergency order for the City of Marquette, that is when they ended up purchasing and installing that tent in September of last year, just to give people a place to go and still be able to sit at their distance tables outside while being covered from the weather. W. Premeau asked if that is going to continue. Mr. Rowland stated yes, that was the plan. W. Premeau asked if they are going to have the music in the back yard, people in the tent. He stated that he does not understand. Mr. Rowland stated that the tent is open on - it would be the east and west sides. He stated that it just has walls along the sides, but it is a big, pointed tent that continues right up to the front of the stage area, so you would be able to view all of that from within the tent.

S. Mittlefehldt stated that she really empathizes with what they have heard from the residents, but this really is not a new issue for them. She stated that she means they saw this with Blackrocks, and they saw this with the recent marketplace with Cognition. She stated that she remembers parents and multiple young families concerned about music and a brewery literally in their backyard, the same situation, and she thinks they came to a compromise. She stated that she thought it was a 10:00 and stated that maybe D. Stensaas remembers, which it sounds like Superior Culture has already been doing the 10:00 outdoor service is done, outdoor music is done, anything outdoor would be done at 10:00, and she thinks they also talked about acoustical fencing in that scenario to try to mitigate the noise. She stated that she thinks Commissioner Dunn said it well, like trying to balance the rights of the business community with the rights of the residents, and if they already have these precedents of allowing, she believes it is Cognition Brewery

that is going to be in that marketplace, Blackrocks, then are they not putting Superior Culture at a sort of economic disadvantage if they have a different set of rules for this business owner as opposed potential competitors now that they are serving more than just kombucha, so she does not don't know. She stated that she is really empathetic and empathizes with the neighbors, but at the same time, they already have kind of had this conversation with two other establishments.

M. Larson stated that one of his questions for the applicant is it was brought up that in his previous outdoor food and beverage service that you put forth that it was stated that there would be fewer individuals out there than there actually were and there would be a limited number of events. He stated that, however, then it was shown that there were essentially events every weekend from there, so kind of coming from what was originally told to the Planning Commission to kind of what actually came into being, he was just hoping he might be able to comment on that and them thinking about kind of moving this forward, just as it was pointed out, and he thinks there is potentially some valid concern on that portion of saying the right things at that one time to help calm folks' nerves and then having that be essentially music every weekend. He stated that to just give him the opportunity to talk about that.

Mr. Rowland stated that the number one factor in all of that was COVID, and the last year changed everything that he ever knew as a business owner. He stated that it changed the entire way they operated, so they had to move outside, and there are all of these artists that were looking for an avenue to express themselves, all these people looking for socialization to happen with safe distance and outdoor practices, and that is kind of how that backyard came into being, and since then, they have had hundreds and hundreds of people coming through this area and enjoying themselves, enjoying the beverages, enjoying the music, and they are just kind of trying to keep that alive for them, and having this consistency with these events allows them to plan them further ahead and pay out these artists and give people something to predict that can happen every weekend in this area.

M. Larson stated that a question for staff, just thinking about the local residents in the surrounding area, if there is a recourse that they can come into if the conditions are not met or if they move out of conditions of this if this were to move forward.

A. Landers stated that she does have one thing to note. She stated that the proposal is for a 6-foot-high solid fence, but the Third Street corridor does allow it to be up to an 8-foot-high for an approved commercial outdoor food and beverage service and the outdoor entertainment and community events, so she just wants to throw that out that the code allows for that. She also stated that if there are conditions placed on an approval per se, and if they are not meeting the conditions, then there is something in the code where you could look at revoking that permit if it seems as if they are not meeting that.

D. Stensaas stated that their discussion jumped around from Blackrocks to the Third Street Marketplace. He stated that he looked at the last three cases for Blackrocks. He also stated that, of course, they have the brewery over on Washington Street as well. He stated that he would have to go back even farther, but he is pretty sure there is a 10:00 outdoor food and beverage service limitation, and that is what was set for the Third Street Marketplace. He stated that they were required to construct an 8-foot-tall, sound-dampening wall. He stated that they were required to limit food and beverage outdoor service to 10:00 p.m. and then the mobile food operations had to be separately approved, but the other thing he wanted to mention, just to dispel the kind of notion that City staff or whatever did not respond to the fact that there was a change in the way the business was conducted over the past couple of years. He stated that largely, that is a product of the City Commission adopting a resolution to support local businesses during the pandemic by allowing temporary outdoor seating for food and beverage service, and the noise part of this, after listening to all the testimony, he is not sure why they did not get any complaints, and he is not speaking in favor or support of the applicant or anything, but they did not get a complaint about anything related to this until this February, and that is when they contacted the applicant and notified them they were in violation of the code, and that brought up on this request to kind of modify the facility to be more responsive to that and continue to do that kind of thing, but you can place conditions on this. He stated that, of course, the police are going to continue to enforce an 11:00 p.m. noise ordinance, but the Planning Commission could potentially set up a maximum number of complaints that if it exceeds that number of noise complaints, you would hold a hearing and potentially revoke this special land use permit for outdoor entertainment.

A. Andres stated to correct him if he is wrong, but he does not think they have ever done that for any other business.

D. Stensaas stated that has not been done. He also stated that does not mean you cannot do it. A. Andres stated that he is just thinking of being fair to the business here.

M. Larson asked if they have any other additional discussion on this matter or any reaction to what D. Stensaas has stated here. He stated that he thinks there is one thing that A. Landers brought up. He stated that they did suggest an 8-foot fence for the other facility that was there. He stated that if the Commission is leaning towards making it conditional that there is an option. He stated that otherwise with D. Stensaas' potential of some number of particular complaints and that would just trigger a hearing to discuss those particular issues, that is another option.

M. Dunn stated that he has got a quick technical question for A. Landers, but they have a condition that indicates an 8-foot fence, if that is measured from the grade of the subject property and if the 4-foot retaining wall would be part of that 8 foot high measurement. A. Landers stated no and showed the site plan on the screen. She indicated that the fence is by the property line, and that the retaining wall was setback into the property.

Ms. Larson stated that he would also just point out that there are potentially some unique characteristics here of the way the lot is set up that may set this slightly apart from other locations, just given the number of properties that it is touching at that point in time. He stated that he does not know if that is worth a discussion or kind of anybody's thoughts, but just point putting that out there.

M. Dunn stated that he is trying to put together something just so the Commission knows what he is thinking for whatever that is worth. He stated that he is inclined to approve this with similar conditions to what they did for the market. He stated that he guesses his only remaining reservation is the number of people. He asked if there is a cap on the capacity because, with the market case, they were approving it for outdoor food and beverage, which this location already has, so this is beyond going to the outdoor entertainment and community events. He stated that he is wondering about capacity. He also stated that it is the only limiting factor on capacity, fire department codes, or something like that. He stated that he is wondering what they might be looking at as kind of a worst-case scenario for a number of people.

Mr. Rowland stated that as far as he knows when it comes to outdoor capacity, he has talked to the fire marshal last year, and it basically goes on seating room versus the standing room, so it is 15 square feet per person if it is a seated area or 7 square feet per person if it is standing room, and that is the only restriction that he knows of other than what might fall back into building code where it comes to bathrooms and occupancy. He stated that he is not entirely positive about all that. M. Dunn asked if he has done that math already. He stated that he will get out his calculator there and see how many people that might be. Mr. Rowland stated that he only has the capacity for inside currently. M. Dunn asked what that is. Mr. Rowland stated 47. M. Dunn asked then with the outside if he knows if the outdoor area would be considered all standing or if part of that seated and part of that standing as well. Mr. Rowland stated that as of right now, the seated area would be underneath the tent, and then he guesses he is not entirely positive on what would be considered. He stated that there are still the two parking spots and the driveway, so he thinks that would be excluded entirely, so it would be whatever is on the east side of the tent and whatever is on the west side of the tent that is not already some other structure, kind of running in a straight line almost from the back of the building to the retaining wall.

M. Dunn asked for staff how capacity is factored into other outdoor entertainment venues. He asked if that is just limited to the size. He asked if they have not made any decisions as far as limiting the capacity of outdoor areas.

A. Landers stated that when it comes to tents, the Fire Department will look at the tent capacity, and if it is in a zoning district that requires parking for uses, that is what they would look at, which they have done before, but this zoning district does not require parking for this use, so it would be something that the Fire Department would look at for the tent as far as the outdoor stuff. She stated that she can show it on screen here. She stated that what Mr. Rowland was indicating was this area and this area may be the standing and

this would be the sitting area underneath the tent.

A. Andres asked if they have any comment from the Fire Department. He stated that he did not see any in the correspondence. A. Landers stated that the Fire Department asked for more information on the tent and its fabric type and structure, and then they provided that information, and then the Fire Department did not have any issues with the tent information, so it is going to meet their requirements for a tent.

M. Larson asked if there was any follow-up discussion.

S. Mittlefehldt stated she is going back to D. Stensaas' idea about like 3, 4, or 5 strikes, and then the permit gets revoked idea. She stated that she thought Commissioner Andres' comment about it might be unfair to others. She stated that she is trying to remember back to Blackrocks when they were getting started. She stated that she means they have never done this kind of 3 strikes and you are out or however many numbers of strikes, and she remember there being quite a bit of residential neighbors concern about that proposal, and then obviously the last one they looked at on the Third Street Marketplace. She stated that she guesses she is just curious what other people think about the potential. She stated that she thinks she definitely would support the 8-foot fence, adding that as an additional condition of the permit, but she is thinking about potentially a fourth condition. She stated that she is looking at the list. She stated that there are already the two that the staff recommended and then if they added an 8-foot fence and then a fourth. She asked how others feel about that.

M. Larson stated that he thinks it is an interesting idea. He stated that it is, he guesses, hard to determine what the level of strikes would be. He stated that he thinks it would be hard to determine how many strikes those are and not necessarily that the permit is revoked, but it essentially brings a hearing or a discussion on how you can approach that or if it has gotten better or has not gotten better and what the redeeming factor is there, so he does not know if it would go straight to some sort of revoking of the permit or not. He stated that it is an interesting idea. He stated that he is not sure where he fully stands on it, but interesting to think about.

W. Premeau stated that if they said, he does not know, say, 50. He stated that he could go get 50 complaints. He stated that he does not think that is a fair way to do it. He stated that Blackrock had plenty of complaints, but nobody paid any attention to them. He stated that there were complaints from blocks and blocks away. He stated that he thinks it is a real unfair burden to say, I could get 50 of his friends to make a call and then to shut somebody down. He stated that is not right. He stated that it sounds like all of them are for it, so he thinks that would be totally unfair. A. Andres asked what would be unfair. W. Premeau stated to put a condition of a number of complaints before they come in and have to come to a hearing or get shut down. A. Andres stated that he is not for it. M. Larson stated that he thinks it is just up for discussion.

D. Stensaas stated that W. Premeau made a really good point that is certainly subject to sabotage, for lack of a better term, but another option might be something that the City Commission does every so often with projects, and he thinks they did it with the marijuana ordinances, is to require a follow-up in a certain amount of time to look at. He stated that, for example, you could require a hearing in one year to review complaints that have been lodged to the Police Department for noise violations or to staff in our department and just go from there.

M. Larson stated to the applicant he thinks they have asked others in the past if to go from a proposed 6-foot high to an 8-foot high fence, is that something that he would consider as one of those options. Mr. Rowland stated that yes, absolutely, and he guesses he would propose perhaps that it would maybe just be on the south side or the west side as he does not see really any opposition coming from the northwest side of the property. He stated that it basically butts up to a rental unit parking lot. He stated that he could do it if need be, but it is kind of following that grade up towards the west side of the property. M. Larson stated that if that is something that they think might be appropriate, he does not know if they need to bring that up on the screen so they can take a look at that, not to keep this going here. He stated that this is where the new fence is projected here. A. Landers stated that it is in the red, so this is the west side and the south side that he was referring to, and here is the north side. She asked Mr. Rowland if he said this north side was what was adjacent to the parking lot. Mr. Rowland stated yes. A. Landers stated that this would be the west

and south that he was referring to. M. Larson asked Mr. Rowland if that leaving that side there just up to the north side to be limited the 6 foot. Mr. Rowland stated that yes, he means either that or the far west side fence line is also at the highest point of the property, so he guesses, depending on what everybody thinks there, he thinks definitely along that south side seems appropriate.

M. Larson stated that he thinks D. Stensaas' suggestion might make sense, just like a review similar to that they did for the other facilities. He stated that maybe that makes sense in this. He stated that he does think there are some unique characteristics to the location of this in comparison to some of the other sites that they have considered that may warrant at least just a revisitation after some point in time. He stated that, again, if he is overruled on that, that is perfectly fine, but he thinks that might make sense.

D. Stensaas stated that he just wanted to add that one of the things that - this is maybe the third facility where there is going to be outdoor food and beverage on Third Street, and that is part of what he is seeing is concern with the public comments is it is kind of a cumulative thing for some of the residents to be experiencing outdoor noise that they have not been accustomed to, but one of the things Blackrocks did in the beginning after they started their food and beverage service and had their first kind of request to expand their facility is they said that they were policing themselves, and they had some proof that they had been cracking down on people that were getting rowdy and trying to keep it more neighborhood friendly, and so he thinks that really would support the notion that having a review within a certain period would put the onus on the applicant here to do the same thing to really try to mitigate the - you are going to have that in any kind of situation where people are consuming alcohol, so it really becomes incumbent on them to crack down on bad actors, and he thinks that review period would help them feel more confident that they have some control in the future.

S. Mittlefehldt asked D. Stensaas if he was thinking like a one year and then come back in for review, if that is something the Planning Commission would need to review, or if that could be something that administratively could be reviewed. D. Stensaas stated that it would be good to review it at the Planning Commission level just for the sake of having public being able to come in and provide testimony and submit written correspondence once it is on their agenda. He stated that it can be scheduled as a business item to review, he thinks. He stated that they would have to talk about the details but putting it on their agenda at a specific time would help, he thinks, with the public being able to contribute testimony.

M. Dunn stated that he was sorry to kind of repeat himself, but he guesses he still did not really get any clear answer. He stated that he is wondering if staff can tell me if there is any limit on the capacity with the approval for outdoor entertainment. D. Stensaas stated that he does not think there is. He stated that there is nothing that he can think of that is baked into the codes. He stated that other than the fire safety considerations, he does not think in our ordinances that there is anything in the outdoor area, and even for events. He also stated that he was a board member of the Blues Society, helped plan the Blues Fest, and has been involved with some other music events like that, and he does not know in their city parks that any certain capacity limits are set by Code anywhere. He stated that he thinks it comes down to the Fire Department's considerations for life safety.

M. Dunn stated that he guesses for the rest of the Commission, he is still thinking about some sort of condition to limit the number of occupants here, but he does not want to pick an arbitrary number, and he does not know enough about it, so he is looking for input on that, but it just seems to him that based on the standards, the 54.1403, one of the standards that they need to consider is #7 is the number of people, and then also on 54.1402 under E10, they are looking at nuisances and that those two things, it just makes him think that they should limit this to some degree. He stated that he hates doing that to a business because you want businesses to grow and do as much as they can, but at the same time, in fairness to the existing property owners, it just seems like there needs to be some sort of limit so that they do not have 300 people packed into a back yard listening to a rock concert. He stated that he is looking for input as far as whether that would be something you guys would be okay with and what number might make sense if they are okay with it.

M. Larson stated that he thinks that is partially a question to them and partially a question to Mr. Rowland as far as the numbers anticipated. He asked M. Dunn if that is partially a question to them, or if that more of a question directed at the applicant. M. Dunn stated both. He stated that he would love to hear what the

applicant is thinking the numbers are going to be, but then he also wants to hear from Commissioners if they are okay with that suggestion and what is the number that makes sense to them.

A. Andres stated that if it moves along, he would love to revisit this in a year if they can do that. He stated that he is not in favor of putting any number limit on it, but if that is something to move it forward, he will be okay with that if they can just move this forward, he thinks it is a good idea. He stated that he thinks it should be approved.

S. Mittlefehldt stated that she went back and checked out the proposed space in preparation for this meeting, and it is not a very huge space, and she thinks in the past they have things that defaulted to fire code, so maybe they could add something like occupancy will comply with fire code whatever, but she is kind of with Commissioner Andres. She stated that she does not think beyond that, it is not a huge space. She stated that she cannot imagine 300 people fitting back there.

A. Landers stated that she would echo S. Mittlefehldt's comments because she is thinking that is the only way they could be able to enforce it is it would have to meet the fire safety codes. She stated that she does not think they can just assign an occupancy number unless there is some kind of code, some kind of requirement, so if that is where they want to go with the condition, she thinks it would have to be a condition that as long as what is being proposed would meet the Fire Department's required codes, she thinks, and it does not violate their occupancy requirements or something if there are any for outdoor, outside of the tent.

M. Larson asked Commissioner Dunn before they talk to the applicants if they have to even vote to that if that satisfies him. M. Dunn stated that yes if that is what the Commission wants to do. He stated that it does not sound like folks want to have a cap on it, and that is fine. He also stated that he would still like to hear from the applicant just to have it on record of what they think their crowds actually would be.

W. Premeau stated that the only things he can think of that would limit the capacity outdoors in most areas, you have got huge areas that you could get out of in case there is a fire or something and have an exit. He stated that in this case, you have got a limited amount of exit space unless you want to jump over the 8-foot fence, so he does not know of any other thing that limits capacity, but that could be one.

M. Larson asked the applicant if he would like to kind of think about what capacity of that area might be. Mr. Rowland stated that yes, so last year due to COVID restrictions, they actually did enact a 50-person capacity, and that was on the entire premises, which then makes it really hard to control with the way that they built their wraparound deck in 2019, but they had multiple people. He stated that there were like three of them there every night of the weekend, and they were doing everything they possibly could, using baseball number counters to make sure they were meeting those capacity restrictions for that time, so there were definitely times where they would be hitting that 50-person capacity on a Friday night, say. He also stated that he cannot really imagine it is going to go much over 100, but, again, it does make it very difficult to control unless you are putting fencing and gates and having people at all points of exits on an outdoor space, and they will actually be having somebody running the back yard as well as somebody running the inside and somebody kind of going between and watching the front door, but he guesses he does not know. He stated that he imagines it would be right around there on a busy night. He stated that maybe there are 100 people there, but it is hard for him to put an exact number on it as they are in this growth phase, and he guesses he has not seen it go beyond 50 really at this point. M. Larson stated thank you, and he thinks he can appreciate they are taking this time because they are certainly trying to balance the interests of all parties, him as well as the residents around and trying to figure out how they can mitigate this, and he thinks he is trying to take steps to mitigate some of the issues that have been brought up, but then also just to make sure that the onus is put on the applicant to help police their own facility and patrons that live there and hopefully to help to remove bad actors from that situation, so he thinks this is just one of these situations, and to D. Stensaas' point, in his mind, there is a little bit of a commutative situation going on as well with other facilities that have outdoor events and you have competing music on similar days, depending on that, that coupled with his slightly unique location, to his mind anyway, in comparison to some of the others, do, he thinks, warrant some of this further discussion that they are taking there today. M. Larson asked Mr. Rom if he would like to say something to that.

Mr. Rom stated yes, just to maybe follow up with what Mr. Rowland said with respect to the occupancy and

based on what they had discussed with you know the projection of the rear of the house to the tent to the stage, just a crude sketch and outdoor spaces, obviously, this can be interpreted a few different ways and they would certainly defer to the expertise of the Fire Department and what they would want to see, but just looking at the numbers, Mr. Rowland's number of 100 is pretty close to what the prescribed occupancy would be. He stated that the area under the tent is 640 square feet, 15 square feet per person, that is 42 people, and then in front and behind that, that is going to be about 57 people potentially between the tent and the stage and then maybe about another 20 behind the stage, so that is going to get us to about 125 maximum just space-wise. He stated that, of course, that can be limited further, but then looking at International Building Code Regulations for egress width per occupant, it is typically .3 inches per occupant of exiting width that you would need, and it is under 4 feet for that type of space, and there is porosity on the site, but there's also the driveway that goes to Third Street and then around the other side of the house, so there are kind of two ways around the house to get to the street, and both of those ways have enough width. He stated that it would more than satisfy the requirements from a just a really basic, quick, back-of-the-napkin kind of egress conception. M. Larson asked Commissioner Dunn if that helps. M. Dunn stated yes, that is great.

It was moved by M. Dunn, seconded by A. Andres, and carried 5-0 that after review of the site plan dated May 4, 2021, and the Staff Report/Analysis for 04-SUP-06-21 & 05-SPR-06-21, the Planning Commission finds that the request meets the intent of the requirements of the Land Development Code Sections 54.635, Section 54.636, 54.1402, and 54.1403, and hereby approves 04-SUP-06-21 & 05-SPR-06-21 with the following conditions:

- 1. That an amended plan is submitted to meet staff comments*
- 2. That the bike racks are added to the property to meet code.*
- 3. That the applicant constructs an 8-ft tall fence with sound dampening materials on all sides, as shown on the site plan as a proposed 6-ft high fence.*
- 4. That operations outdoors will stop at 10 p.m.*
- 5. That the applicant will return to the Planning Commission for review in July of 2022 to review all complaints received by the City for the prior year.*
- 6. That the capacity in the outdoor area will meet fire and safety code requirements.*

Yes: A. Andres, M. Dunn, S. Mittlefehldt, M. Larson, W. Premeau

No: None

J. Cardillo rejoined the meeting. D. Stensaas suggested taking a brief recess.

It was moved by M. Larson, seconded by S. Mittlefehldt, and carried 6-0 to take a 10-minute recess, until 9:05 p.m.

It was moved by M. Larson, seconded by A. Andres, and carried 6-0 to reconvene the meeting.

03-REZ-06-21 – 1651 S. Front St. (PIN: 0020251): Request to rezone from GC-CR to GC

Zoning Official A. Landers stated the Planning Commission is being asked to make a recommendation to the City Commission regarding a request to rezone the property located at 1651 S. Front Street, which is zoned currently General Commercial with Conditional Rezoning (GC CR) to be zoned General Commercial (GC). She stated that attached to the agenda was the Staff Report, which she will show on the screen. She stated that this first page shows the items that were struck out both by what was proposed by the applicant and what was approved by the City Commission and the proposed zoning of GC-CR, which shows permitted principal uses and the special land uses, and we included the case information for the previous rezoning request, and then the attachments for this rezoning application - and their attachments, the area map, the block map, the existing zoning map, the excerpt of the Master Community master plan with the Future Land Use Map and the zoning map showing the area of the requested rezoning. She stated that in that Future Land Use Map it was proposed to be mixed-use. She stated that in the Proposed Zoning Map Mixed-use was proposed. Shown on the screen were the following agenda attachments: photos of the site, the public notice in the Mining Journal, excerpts of the Planning Commission meeting minutes and the City Commission meeting minutes of the previous [conditional rezoning] request, rezoning considerations for planning commissions, spot zoning considerations, and attached in the agenda was correspondence that

was received prior to the agenda being posted.

She also stated that they received additional correspondence that was sent after the agenda was posted, and she and D. Stensaas read correspondence for the Planning Commission as follows. Correspondence from Colleen Pascoe of 102 E. Furnace Street in opposition to the request, was read, and a visual that was attached to the correspondence was shown on the screen. Correspondence from Shirley Michelson of 106 E. Furnace Street, in opposition to the request, was read. Correspondence from Linda Byers Blacksmith of 2810 Granite Pointe Drive, in opposition to the request, was read. Correspondence from Jerome LaRue of 104 Furnace Street, in opposition to the request, was read. Correspondence from Carrie Roy of 104 E. Furnace Street, in opposition to the request, was read. Correspondence from Amelia and Weston Sramek of 1 Marquette Drive, stating their concerns regarding the proposal, was read.

D. Stensaas stated the letters indicated that the hearing tonight is about a marijuana business, and he wants to clarify that is not the case, that the decision tonight is about rezoning the property to General Commercial, which would allow for every use stated in the Land Development Code for General Commercial, and open the door to all of the Special Land uses listed under General Commercial. He also stated that if the rezoning were successful the property owner could come forward with a Special Land Use Permit to seek to have a cannabis consumption facility at the location. He stated that is a whole different process that would require another public hearing with the Planning Commission, and that would only happen if the City Commission decides in favor of this rezoning request. He also stated that regarding the rezoning, in the packet for this case, there are two key rezoning considerations, and he discussed the portion of the agenda materials that addressed the first issue of *consistency with the Community Master Plan (CMP)*, and he spoke about the Future Land Use map and the Proposed Zoning Map from the CMP and explained how the subject parcel was designated for Mixed-Use zoning in the 2015 major amendment to the CMP and how it was implemented with the adoption of the Land Development Code in 2019. He also stated that section 54.1405 lists several factors, standards to consider regarding if the zoning map should be amended due to a proposed LDC amendment or a rezoning request, for whatever reason, and he stated the two that stand out to him are considering if conditions have changed so that the CMP should be updated or were there shortcomings that have resulted in a new zoning district being appropriate, and then the potential land use and impacts of the requested, proposed new zoning district, and those are the two things that stick out to me as ones the Planning Commission has a chore to wrestle with. He also stated that the other thing is spot zoning – and it's stated in your packets, it lists four conditions or criteria, and for a spot zone to exist, you have to find that all four of the criteria are met, and he stated that he suggests the Planning Commission look at those four criteria one at a time to determine if a spot zone would be created.

Mr. Scott Dianda, of 25607 Wedge St. in Calumet, stated thank you to Madame Chair and the rest of the Commissioners, City staff. He stated that they appreciate everything they do. He stated that he just wanted to say that he represents AgronoMod, which is 710 Woods, and they are working with the landowner, which would be Terry Doyle in the application, and they just want to let folks know that this is a local business that will be operated as a franchise with a local owner that will employ people locally, full-time positions, and he is going to let the rest of their team introduce themselves tonight, and they just wanted to let them know that the planned use for the property will be cannabis sales with on-site consumption lounges, and they want to make sure that they go through and make sure that everything is done according to all the City's specifications, whether it is the site preparations with the hours of operation. He stated that this was originally a business that they all remember as the Pizza Hut that ran for many decades in that area of that piece of Marquette, so with that, he is going to ask their team to introduce themselves.

Mr. Dax Richer, 333 W. Washington St., the design consultant for the applicant, stated that they are representing Terry Doyle, the current owner, and also hopefully the future owners, in getting their interests for the cannabis retail and consumption side of things. He stated that he wants to thank everybody for being here so late, for revisiting this. He stated that it has been like one year since they talked about it. He stated that some of them were on the Commission last year, so thanks for listening to it again. He also stated that a lot has happened in one year. He stated that last year at this time when they were revisiting this, they were dealing with COVID and then also cannabis in Michigan as being a new thing, and both of those things, they have had a year had to deal with them. He stated that on the cannabis side of things, they have had super successful projects. He stated that there are a lot of them that opened in Marquette. He also stated that it brought employment, it brought taxation, renovation of buildings, and he thinks they have also

brought a sense that they are really not impacting in a negative way to the community. He stated that he means they have not seen anything. He stated that they work with multiple entities in the cannabis industry, and they have not seen anything negative yet. He stated that Marquette has seen a lot of cannabis retail shops. He also stated that they have a site that they feel is appropriate for a consumption lounge. He stated that it was currently a liquor consumption lounge and a restaurant consumption lounge, so it kind of fits in that same use. He also stated that they do not feel like cannabis is any more harmful, if not less harmful than liquor bars, and so they want to answer any questions about that. He stated that he is going to dive into the site. He stated that they are all familiar with the old Pizza Hut site, Terry Doyle's site. He stated that it has been there for decades. He stated that the entire north side of the site is buffered by a building. He stated that the proposed building they do not need to get into, but...

D. Stensaas stated, to the Chair – a point of order – this is a Rezoning hearing and not a Special Land Use review.

J. Cardillo stated that we need to contain the statements basically to the global idea of rezoning this property, not to the specific use that he intends to use for this property. She stated that, for them, they are deciding whether turning this into General Commercial and any use that could be under the canopy of general commercial would be appropriate, so if he wants to put his argument or his conversation towards that, that would be more helpful for them.

Mr. Richer stated in terms of general use in comparison to other properties, their property is two to four times larger than some of the other general uses. He stated that it does have natural buffers. He stated that it is on a U.S. 41 Highway, which is a strong argument for general commercial use versus being on a two-lane downtown road. He stated that he feels that is fair that they should be able to bring up some issues because you read the letters of the negative issues. He also stated that he thinks there were equally a number of positive support letters that were not read. He stated that their site is going to be quieter than U.S. 41. He stated that it has state-regulated control of odors. He stated that US 41 does not have that. He stated that bars do not have that. He stated that they have three residents in the 300-foot proximity range. He stated that if they look at some of the other comparable properties, there are 23 residents next to one, 8 residents next to another, 14 next to another that would have the same approved general commercial use, so in terms of size and residential proximity, odors, and noise, they can prove their site has less impact than other properties. J. Cardillo asked if he has anything else, he wants to add. Mr. Richer stated that he thinks that is it. He stated that he is here to answer any other questions. He stated that he is trying to limit himself, but they have got parking. He stated that he thinks some of the comments had to do with traffic, and obviously, they are on U.S. 41, and the site has been there for decades, so he thinks they disagree with a little bit on the traffic issues. He also stated that he does not think they could get a better size road to handle any other traffic that would be caused from the development of this site, and, again, it would be similar to a bar and restaurant, which is the current use.

J. Cardillo stated that at this point, they have already got the correspondence and asked if they have any public testimony. A. Landers stated that there are two people in the waiting room.

Mr. Doug Hamborsky, of AgronoMod Inc., stated he is with the AgronoMod 710 Woods Group. He stated that they are excited to be in Marquette. He also stated that it is conditioned upon them acquiring this land that will suit the uses that they see, so they understand that is not what this hearing is, but they also have to emphasize that if the use they need does not occur, then they are not sure how to go forward. He stated that a couple of just the key support items that he thinks they wanted to reinforce is that their understanding of their local ordinances with regard to the use that they are seeking, that all these other properties do not have the one restriction that this property currently has, and so all they are asking for is to sort of eliminate that spot zoning that occurred last year for reasons that they did not understand until just recently. He stated that they just want sort of what everyone else has. He stated that also, they need to emphasize that - again, like Dax was saying, it is hard to speak to the future, which is not before us - but when they were before this Planning Commission a year ago, the conditional rezoning that was granted then did only have one restriction, and without looking at the [meeting] minutes, but he believes it was just that for, like, high-volume manufacturing of a product, but the consumption and retail use for the business was not restricted at the Planning Commission-recommended level. He stated that the restriction came at the City Commission in step two of the rezoning process, so they are literally just asking to enjoy what was granted to us one year ago by the Planning Commission. He also stated that the site would not warrant large-scale

production so that restriction is not of concern to them, but all the other listed uses in their zoning for this district, they would want to enjoy and be able to use, and, as Dax mentioned, they do have significant items to clarify. He stated that some of the negative comments that were read by some of the residential people in the community, he stated that if as the City Attorney [Planner] said, all those issues will be re-reviewed and restated as part of a special land use presentation at a future date, then they are fine addressing those at a future date, but if they have any questions tonight, they would be glad to address any of those, but the bottom line is they just want, number one, what they had last year from the Planning Commission as far as an approval for everything except for that one use restriction and, number two, that they are allowed the zoning that all other properties similar to what they are needing to operate on presently have. J. Cardillo asked A. Landers if they have anybody else in waiting. A. Landers stated that now there is an additional new person and another person, so will admit one that says iPhone 2, and she that she does not have a name for it. Mr. Hamborsky stated that he is assuming iPhone 2 might be Terry Doyle, who has years or decades-long history with this property. He stated that he thinks it is important for the Commission to hear from Mr. Doyle.

J. Cardillo opened the public hearing.

Mr. Terry Doyle, 1001 Allouez Road, stated that they purchased this restaurant in 2003 from Pizza Hut, Inc. He stated that they ran it for 10 years as the Union Grill, and then they transferred the lease agreement over to the Steinhaus Market. He stated that they were there for two more years. He stated that they had no traffic issues that he can recall. He also stated that it has been a commercial spot since 1987. He stated that their latest tax bill reflected the Code of 201, which is commercial improved property, so all he can say is this deserves this attention. He stated that they need to get this done. He stated that it would be a great sale, and it would be a great development for this area. He also stated that people do not understand how that is going to improve that whole area, that whole property. He stated that is probably all he has to say, but it is a great property, and it is a very secure property. He stated that, in fact, the DOT when they redid 41 South, they put in a little turn lane for them, so it is much safer than it was in the past, and like he said, he does not recall any accidents in the 12 years it was operating. He stated that is all he has to say.

J. Cardillo closed the public hearing.

It was moved by M. Larson, seconded by S. Mittlefehldt, and carried 6-0 to suspend the rules for discussion.

M. Larson stated that initial thoughts are that started when they rezoned this a year ago with the conditional rezoning, they did go through this and the City Commission had the second part, so they just make a recommendation to the City Commission on whether or not to move forward with the rezoning. He stated that they used the conditional rezoning vehicle, and the City Commission went ahead and put additional conditions for that land use on that property, so when they are thinking about turning this into a rezoning, they are going to look at the plan that the City had in place originally, kind of going back to a situation in 2012 to 2015, where it looked forward at changing over to mixed-use property, and as that came to be with the Land Development Code, they indeed moved into that mixed-use category, and so when it came before them to kind of revert into a conditionally-rezoned general commercial, taking that into consideration, they went ahead and made some of those recommendations and to say what is right for that piece of property. He stated that when they are looking at rezoning it back to general commercial, they also have to think about the future that is beyond the facility that you are putting in, so whether, potentially, that property could be a gas station, that property could be a medical facility, that property could be some sort of hotel or housing, it could be anything that is on that particular list of items there, and so they have to think about whether those items are appropriate beyond the use that you are currently looking at. He stated that the Commission seems to agree that this place where a drive-through is not appropriate, a gasoline service station is not appropriate, hotel or motel is not appropriate, either is open storage or wholesale trade establishments, along with a number of these other special land uses, and so he is trying to get his head around that, so if this was not this particular consumption facility that they are talking about, would any of these other items be appropriate for that facility and for that neighborhood, because if they allow it to go back into general commercial, they are essentially saying that any of these land uses are allowed to be at that facility if this potential business decides not to work, five years from now it sells, and then at that point in time, somebody could potentially put in a gasoline service station right there as well, and so that is what

he is struggling with right here. He stated that with that general piece they did, it does look like there has been quite a bit of latitude that has been given, but those are just his initial thoughts and kind of framing for his fellow Commissioners of what he is thinking about it right now.

S. Mittlefehldt stated that she has been kind of trying to wrestle with the idea of if this is spot zoning, and, of course, one of the criteria of spot zoning forces them to ask themselves if this is consistent with what is in the Master Plan and the Future Land Use Plan, which in 2015 the Master Plan had this area designated as a mixed-use, so, more from that, it is not mixed-use, but she does recall when they were getting into the weeds of what would fall into the mixed-use when they were writing the Land Development Code. She stated that she thinks they clearly were erring on the side of mixed-use as sort of primarily potentially residential with commercial also and trying to prioritize the integration into residential areas, and they decided no marijuana consumption establishments in a mixed-use area. She stated that, again, she is trying to answer this question of if it is a spot zone, and she does not think it is because she thinks when they did the conditional rezoning, it was both us, and she thinks the City Commission also agreed, that a marijuana consumption establishment would not be appropriate land use for this particular area, and that is how they got to where they did with this conversation last year, so she is kind of scratching her head.

J. Cardillo stated that she thinks it is an interesting thing to point out, but she guesses the one thing she wants to kind of clarify for everybody from the get-go and asked D. Stensaas to correct her if she is wrong, but the reason they were able to go ahead with the conditional rezoning for general commercial last year was because that is not subject to spot zoning criteria, but what they are asking for tonight, which is to be taken fully into general commercial, is now subject to their scrutiny as a spot zoning. She asked D. Stensaas if that is correct. D. Stensaas stated that yes, that is correct. He stated that he would suggest they look at those four criteria one by one and decide as a group on them. He stated that one at a time would probably be the most efficient way to get through that part of the decision-making. J. Cardillo asked if that sort of explains why that is on the table tonight, but they really did not have to think about it when they did it last year. A. Andres stated that he thinks it should stay mixed-use, but that is just him.

A. Andres left the meeting at 10:18 p.m.

J. Cardillo stated that she is going to sort of just let everybody kind of give their first thoughts and then maybe they can go through some of these sort of more itemized things like if it is spot rezoning or if it is some of the items that D. Stensaas had mentioned from that list. She stated to M. Dunn to just give them his initial thoughts, and then they can kind of go through systematically.

M. Dunn stated that he definitely wants to go through the spot zoning for the four criteria for spot zoning. He stated that he thinks that makes a lot of sense, but his thought is that they are sort of pushing the needle further and further every time they look at this property. He stated that when the original zoning was put in place, it appears to him that, and when you go back and look at the deliberations there, it looks like it was made mixed-use rather than medium-density residential simply because it was an existing restaurant and they did not want to impede the owner who was operating a restaurant there, so they made it mixed-use to allow for that use, which makes sense, but that is what resulted in an anomaly when you are looking at the zoning map where you have got residential on three sides, actually four sides if you go across the street to the PUD, and that is residential as well. He stated that is why that mixed-use zone may have looked a little bit out of place, and so he has heard the term spot zoning thrown out there a couple of times in regard to the existing zoning and the previous zoning of mixed-use, and he does not think that is appropriate because that mixed-use zone is actually less restrictive than the surrounding properties around this parcel. He stated that at that point, it was made mixed-use. He stated that then, later on, they did the conditional rezoning and made it a little bit further, and now at this point, to him, it is way beyond what all of the adjacent properties are. He stated that the only general commercial is sort of off the corner of this property across the street, which is the bank, which is not really a high-intensity use and it is not incompatible with residential properties, so he is definitely leaning towards this not being general commercial. He stated that it just does not make sense to him to have a zone map that goes from medium-density residential to low-density residential and then has the general commercial thrown in.

J. Cardillo stated she thinks one of the things that they find with mixed-use is that its intention was always to be an acceptable commercial application to be inserted within residential to sort of provide - that was

always the idea that an island of mixed-use is preferable to an island, say, of general commercial, and it was there to sort of solve these trickier problem sites. M. Dunn stated absolutely, he agrees 100%. He stated that the thing he is questioning right now is their last action on this property, but that is for a different time. J. Cardillo asked W. Premeau if he wanted to make any comments before they sort of start to go through their item-by-item checklists.

W. Premeau stated that he thinks they have to go through the rezoning considerations. J. Cardillo stated let us start with the spot zoning. She asked A. Landers if she can pull that up just so everybody can see it. J. Cardillo stated that D. Stensaas has got it. J. Cardillo stated so the first one to review is it small in size, a relatively small parcel with respect to the sizes of the parcels in the vicinity, so she is just looking at it on the zoning map. She stated that it is obviously bigger than the small residential sites, but it is sort of equal or smaller than the other sites adjacent to it. She asked if they kind of agree with that and what their thoughts are. S. Mittlefehldt stated that she thinks it is small, but, to her, the big one that jumps out is contrary to the Master Plan. J. Cardillo stated that was right. S. Mittlefehldt stated, not to skip ahead, but it has to meet all of these to qualify. J. Cardillo stated yes, if there is one that it fails at, then it fails the whole thing. S. Mittlefehldt stated that she keeps going back to the Master Plan and the Future Land Use Map. She stated that she did not mean to speak out of turn.

J. Cardillo stated that, to her, another thing it says there is the property was large enough to accommodate buffers or transition areas, landscaping, or open space, could be used to soften the impact. She stated that she would argue that maybe on some sites it could, but given the location of the building adjacent to the border, that does make it challenging, and, again, if they are talking about some of these other uses that she thinks Commissioner Larson pointed out at the beginning, it would be quite challenging. She asked where they fall on small in size. She stated that she kind of wants to just get everybody talking about this and move through it. M. Dunn asked, in order for this action to qualify as spot zoning, if it needs to meet all four of these or only one. M. Larson and J. Cardillo stated all four. M. Dunn stated that is what he thought, too. He stated that the way he reads that, it needs to meet all of those characteristics to be considered spot zoning. He stated that regarding the small property, he does think it is small compared to the properties on three sides there. M. Larson stated large enough to have a buffer. He stated that you could argue that you have an open space there with the parking lot on this one. W. Premeau stated that he does not think it is spot zoning. He stated that the other businesses around there are the same type of business if you just go down a block, you have got two marijuana businesses. He also stated that he does not believe it is spot zoning, not based on what he was reading. M. Larson stated that he thinks the one he gets hung up on is inconsistent with uses already established or allowed in the vicinity, and so understanding what the vicinity is. He stated that he means if it is immediately adjacent, yes. He stated that, however, if the vicinity is kind of moved into the kitty-corner where you do have a general commercial kind of across the street and down, he thinks that it would potentially fail this inconsistent use and, therefore, not be a spot zoning to consider in his mind. J. Cardillo asked where he lands. M. Larson stated that to continue to consider this, he does not think it is spot zoning because it potentially does not meet the inconsistent use to meet spot, so, therefore, allowing us to consider the rezoning. He stated that he means there are other factors to consider, but he does not think it meets the spot zoning test, so he thinks, therefore, it is not spot zoning. J. Cardillo stated that okay and asked Commissioner Mittlefehldt how she feels about it. S. Mittlefehldt stated that she does not think it is spot zoning. She stated that she does not think necessarily the proposed plans do meet the Master Plan goals of the mixed-use designation that was in the Master Plan for that area, but she thinks the spot zoning is kind of not an issue.

M. Dunn stated that he thinks it does qualify as spot zoning. He stated that if they were to make this general commercial, he believes it would be spot zoning. He stated that he believes it satisfies all four of those criteria. He also stated that the one that he guesses is most subjective in his mind is the size, but you look at the uses that are allowed in General Commercial. He stated that he means you are surrounded again. He also stated to look at the zoning map, you are surrounded on all sides by residential, and the only commercial is that little corner. He stated that it seems obvious to him that the intent of the citizens and the Master Plan process intended to have this as lower intensity as they move toward the edges of the City and as you are heading south there. He stated that he means everything is getting less intense uses, and this just so happens to be kind of close to the edge there. He stated that he thinks, okay, what if that trapezoid was red and it is completely surrounded by yellow on three sides and then a residential PUD across the street. He stated that it appears to him to be spot zoning, and, again, back to those criteria, he is satisfied

that it meets all four of them, and the only one that he is questioning is the size. He stated that, also, since he is at it, he may as well get it all out here, and he can be done. He stated that when they did the conditional rezoning, the whole purpose of that was to avoid the possibility of spot zoning. He stated that is why they did it the way they did it, and the City Commission thought that it needed to be slightly more restrictive than what they had, and he supports their decision. He stated that he does not think any changes need to be made here.

J. Cardillo asked W. Premeau if it is correct that he already indicated he does not think it is spot zoning. W. Premeau stated that he does not believe it is, and if they go back to that map on the corner of First Street, it shows yellow residential, but he believes that is where there is a gas station and is now the Signs Now place or asked if he is wrong on that. He stated right on the corner of Front and US 41. J. Cardillo asked if it was on the same side of the street or the other side of the street. D. Stensaas stated that the sign business is a commercial property that is directly to the north, the general commercial on the corner of Hampton. D. Stensaas stated that they are vacant lots owned by the BLP. W. Premeau asked if there is a bar back there or a brew-pub or something, and a repair station. D. Stensaas stated yes. He stated that is right on the corner, that mixed-use parcel on the other side of Mite Street, on the east side of Mite Street. W. Premeau stated that he still does not think it is spot zoning, and they are some pretty tiny parcels. J.

Cardillo stated she will be honest that she kind of thinks it is pretty close to being spot zone. She stated that she thinks it is small in size. She stated that she means that is pretty subjective. She also stated that she thinks as much as it has had sort of commercial and restaurant uses, that is not including all of the other sort of general commercial uses that go along with it, and so she just has a hard time when she looks at this sort of idea of the red in a sea of yellow that it is not inconsistent. She stated that contrary to the Master Plan, that one is very clear to her. She also stated that as far as the special benefit, that one is kind of a hard one to pinpoint.

M. Larson stated that as far as spot zoning goes, he agrees, he does not think it is spot zoning, and so, ultimately, they just want to try to avoid spot zoning so they do not end up in a legal issue or that it can be challenged, and so even if there is disagreement amongst the Commission here, like them, whether it is spot zoning or not, he thinks they can still consider other factors as far as those other conditions for zoning or remaining the same or moving forward. J. Cardillo asked S. Mittlefehldt if she had something else she wanted to say. S. Mittlefehldt stated that she was just going to say, to her, the one thing that jumps out of those criteria is just really their fundamental goal here is deciding whether or not rezoning or other things are consistent with the Master Plan, and that is kind of what they are trying to decide, and she does not think it is, and she is ready to make a motion unless they need more discussion just to see where people are falling up, but maybe they need to discuss it more. J. Cardillo stated yes, she means they wanted to make sure they discussed the impacts, so she guesses she is just going to go back to that, the bit that D. Stensaas had sort of brought out in the email, which was the 54.1405 standards for determining a zoning map amendment, which starts with the Master Plan. She asked if this is consistent with the goals, policies, and recommendations of the Master Plan. S. Mittlefehldt stated that she does not think it is because in the Master Plan that is a mixed use area and many long conversations about what mixed use was, and they have kind of touched on here, it prioritizes or emphasizes residential with the integrated commercial uses, and they talked about your neighborhood grocery or something that would be like kind of low-intensity-type commercial development, much less intense than what is allowed in the general commercial, so she thinks it is not consistent with the Community Master Plan, and she thinks maybe she is getting the sense others on the Commission agree with that as well.

J. Cardillo stated that one of her issues is when did the conditional rezoning, the bars and restaurants were taken out, which she kind of thought was strange at the time, but that was what the applicant wanted, and she is not opposed to putting them back in, but especially as it relates to sort of bars and obviously all these other things. She stated that she does think those should be special land uses because it is in the middle of a residential area, she thinks that it would be appropriate if somebody wants to put a bar there that they would have to go through the SLUP so that residential neighbors, which they know are within a 300 foot radius, would have the opportunity to at least address the Planning Commission, and conditions could potentially be put on it as they have seen in many other cases that they have dealt with where they have commercial in the middle of residential. She also stated that one of her real hang-ups is the fact that bars essentially would not have to be a special land use if it is general commercial. S. Mittlefehldt stated that if they keep it as is, then that has been excluded. J. Cardillo stated that it would be one thing if they had come

back to us with an amendment maybe to their conditional rezoning, and she does not know if that is even possible. She asked D. Stensaas if that is a thing they could have even done is say, like, "We want to amend our conditional rezoning." D. Stensaas stated yes, that was probably an option, but that is not where they are at now. Mr. Richer stated that it was not an option. D. Stensaas and J. Cardillo stated that it does not matter.

J. Cardillo stated that as far as she is concerned, obviously, they are looking at all of these other things in addition to whatever perhaps the intended use is, and she just thinks moving into general commercial, in addition to adding all these higher-intensity uses, really takes this public hearing out of so many of these special land uses that would happen if it were a mixed-use. S. Mittlefehldt stated that they are not deciding if it is mixed-use. She stated that they are just saying whether or not it is rezoned as general commercial. J. Cardillo stated that what she is saying is it was mixed-use, which was the intent of the Master Plan, which meant that for a bar to go there, it would have to have a SLU. She stated that they then moved it into this very specific general commercial conditional rezoning, which took out all the bars and restaurants. She also stated that they are not allowed even as a special land use, she believes, so it was sort of a non-issue, but it was the owner's choice to do that, was her understanding. She stated that now they are asking to be put into general commercial, which would add all those uses that they had taken out in their effort to get the marijuana retail in as "as-of-right" uses, and there would not be special land use permits. She also stated that for her it is just a real sticking point and she thinks that if you are going to have a general commercial plopped in the middle of a residential, you should at least have that public hearing capacity. She asked if that makes any sense. S. Mittlefehldt stated that it makes sense.

W. Premeau stated that he is just curious when they Master Plan and needing this and needing that, well 40 to 45 years ago, somebody allowed that Pizza Hut to go in there, so it has been used in that type of use for a long time, so he does not understand what gives us the right to come up and say, "Yeah, you have had that for all these years, but we decided it is not right." He stated that it just does not make sense to him. He stated that he does not see it as a problem, and that he would favor to just go ahead, rezone it and give them the use they are asking for. He stated that Mr. Doyle has been a longtime resident of Marquette - give a businessman a chance to sell his property. He stated that they had no problem with the neighbors on the other two issues that came up tonight. He stated that they basically said "tough" to them. He stated that they could really have said, "Look, we'll come and sit in your back yard, and if it's too loud and it's not comfortable." He stated that he does not know, and he just thinks they should go right along and rezone it the way they want it. He stated that he does not see anything wrong with it. He stated that he gets really disgusted with taking people's rights away, that really is what we are doing. He stated the same thing with the traffic and all that, he does not know what the difference is between coming out of buying marijuana down the street, and you are higher than a kite and you come out in the road. He stated that it is no different. He stated that he did not see anything in the packet that said, "You know, we've got to stop this to save the world." He stated that he does not know. D. Stensaas stated that he just wants to point out that Commissioner Premeau was on the Planning Commission in 2015 when they adopted that mixed-use zoning district for the property. Mr. Richer asked if they are allowed to talk. W. Premeau asked if he was responsible for that. J. Cardillo asked if she can continue with their discussion, and if they have questions, they will ask him. She stated that they need to get this moving along.

S. Mittlefehldt stated that maybe Mr. Premeau should make a motion.

It was moved by W. Premeau, and not seconded, that after conducting a public hearing and review of the application and Staff Report for 03-REZ-06-21, the Planning Commission finds that the proposed rezoning is consistent with the Community Master Plan and does meet the requirements of the Land Development Code Section 54.1405, and hereby recommends that the City Commission approve 03-REZ-06-21 as presented.

It was moved by S. Mittlefehldt, seconded by M. Dunn, and carried 4-1 that after conducting a public hearing and review of the application and Staff Report for 03-REZ-06-21, the Planning Commission finds that the proposed rezoning is not consistent with the Community Master Plan and does not meet the requirements of the Land Development Code Section 54.1405, and hereby recommends that the City Commission deny 03-REZ-06-21 as presented.

Yes: M. Dunn, S. Mittlefehldt, M. Larson, J. Cardillo

No: W. Premeau

Citizens Wishing to Address the Commission on Non-Agenda Items

Terry Doyle, the property owner for 1651 S. Front Street, stated it is so sad and they are passing up a great development for that neighborhood. He stated those houses are ramshackle, and you did not even read the letters that I had submitted. A. Landers stated they were in the agenda packet and we only read correspondence that was submitted after. Mr. Doyle stated that is another tricky thing you guys have, and you reverse spot zoned me. He stated we were in General Commercial in 2018 and then we were kicked out. He also stated we were a little spot and we were reverse spot zoned, so look for that coming forward. He stated believe me you just screwed up a million and half dollar deal which would have been great for that whole area, just because of Pete LaRue and he champions everyone around in his neighborhood. J. Cardillo stated we did try to look at this from a very overview kind of look and not from a specific use. Mr. Doyle stated you reverse spot zoned me, I am telling you did that, you took that one little zoned area out of context without moral or ethical reasons in the benefits of the community. Mr. Dunn stated we already made that decision and it will be brought forward to the City Commission. J. Cardillo stated their motion was just their recommendation to the City Commission, and we have already addressed this. She stated she is sorry you could not come in when the time was appropriate. Mr. Doyle stated he knows, and he is not really good with Zoom.

Commission and Staff Comments

D. Stensaas stated there is no business for the June 15th meeting and so it will be canceled.

W. Premeau stated that the only thing he will say is he gets really confused sometimes, but that is just him. He stated that he is not quite up to par. He stated that he has just seen some horrible things done, but they have made mistakes before, and the Court reversed it.

M. Larson stated it was a long, long night, but he does think that they tried to stand by some of the planning principles that they have gone through in looking at these cases and what is allowed and not allowed, but two of these cases are going to go to the City Commission, and they certainly have an opportunity to restate their case, and the City Commission will certainly make their own decision, potentially overrule them as far as that goes, but he thinks long night, but he thinks they did okay.

S. Mittlefehldt stated it was a tough night. She stated that she wanted to tell them all the excitement she had as she attended the Michigan Planning Association "preparing for climate change" conference, but now she is too exhausted and she will tell them about it later, but Dennis Stachewicz talked about how Marquette is a great leader in finding climate solutions, so that was kind of cool to see Marquette highlighted at this statewide planning conference, but anyway, good work today, everybody, even though she is sure they are all pretty tired.

J. Cardillo stated great work. She stated that it was a long meeting. She stated that she does not really have much else to say.

ADJOURNMENT

The meeting was adjourned by Chair J. Cardillo at 10:36 p.m.

Prepared by:

David Stensaas, City Planner and Zoning Administrator
Planning Commission Secretary
nb/ Imedat