

August 19, 2010

Mr. William J. Mueller,
Village President, and
Board of Trustees
Village of Lombard

Subject: PC 10-06: 229 W. St. Charles Road (Praga/Bon Ton)

Dear President and Trustees:

Your Plan Commission transmits for your consideration its recommendation regarding the above-referenced petition. The petitioner requests that the Village grant a conditional use amending Ordinance 3623 to allow for an expansion and changes to the existing outdoor dining area and amendments to the original conditions of approval pursuant to Section 155.103 (F) (13) of the Lombard Zoning Ordinance.

After due notice and as required by law, the Plan Commission conducted a public hearing for this petition on July 19, 2010.

Pavel Tykvart, 1600 Ohvie Court, Wheaton, presented the petition. He stated that he is the owner of the Praga Restaurant and Bon Ton Wine Bar and has been living in this country for 23 years. He reminisced about his parents as well as his childhood and family experiences prior to coming to this country. He stated that he does not value any personal or financial goals just personal freedom in his life and as a business owner. He told about a movie that he had seen as a boy that is similar to his situation today. The movie was about an old town trying to revitalize itself and the challenges that the developer and townspeople faced in doing so.

In Lombard that is what we are experiencing today. Prior to his business, there was nothing beforehand. He commented that Downtown Lombard will not continue to prosper and thrive if things don't change. In order for a restaurant business to survive, there are certain components needed. These components include what you serve, the price of what you serve, and having an atmosphere in perfect harmony, a part of which is having music. He believes that people should be walking in the streets, laughing, smiling and enjoying what the town offers for them. Progress is being made and we should not be trying to stop progress.

Chairperson Ryan asked if there were any questions of the petitioner.

Richard Pearson, 212 W. St. Charles Road, Lombard, asked Mr. Tykvart how long he has owned Praga Restaurant. Mr. Tykvart answered 8 years in December. Mr. Pearson asked if he had outdoor dining at that time. Mr. Tykvart answered that he did. Mr. Pearson asked how many tables there were. Mr. Tykvart answered that the experience is not how many tables you have but whether or not they are filled. This is the measure of success. Mr. Pearson noted that the approved ordinance states that you can have 6 tables. Currently you are not complying with the ordinance. You attempt to justify the noise that emits from your restaurant and you are not considerate of the people that live in the area. There is a condominium building across the street and two others to the east and you continue to let patrons sit outside until the wee hours of the morning. He mentioned how the business has been cited for serving underage patrons and for serving alcohol after closing time. Mr. Pearson asked for a response.

Chairperson Ryan then opened the meeting for other public comments prior to the petitioner rebutting. To speak in favor of the petition were:

Art Frerichs, 248 West Road, Lombard, noted he is a non-solicited third party. He indicated that he has some hands-on experience with Praga Restaurant. A few years ago he was the President of the Chamber of Commerce and they were located next door. At that time, Praga had outdoor dining and he realized that they were an expanding and growing business. The Chamber realized they were smothering Praga's business and decided to relocate so Praga could expand into the area they currently existed in. He mentioned that when the Chamber was located next door they were never inconvenienced by Praga and to his knowledge there were never any negative impacts as a result of Praga using the patio area. He also noted that since he considers the area dead space, there is no better use for it. Mr. Frerichs stated that, in his capacity as a member of the Chamber of Commerce and being a business member of the Lombard Town Centre, in these times when small businesses are closing rather than expanding, he encouraged the Commission to allow him to expand and use his business as a model for more businesses in the downtown instead of empty spaces.

Dan Harris, 386 Stonewood Circle, Carol Stream, stated he is the owner of the building. He commented that Mr. Tykvart has done a great job in contributing toward making the town vibrant. He is in support of the expansion and commented that if people buy a house in a residential area that is part commercial, they have to be acceptable of the fact that there has to be some noise from traffic or pedestrians. This might only be an issue 6 months out of the year. He noted they are hard working people and likes the appearance of the business. He hasn't had any other negative feedback from other tenants in the building.

Joseph Wanders noted that he is a dentist located in the suite next to Praga Restaurant, 233 W. St. Charles Road. He stated that the only concern he has is visibility. He has asked the petitioner that the tables in front of his office be cleared when he is open for business to allow patients to go in and out. This request has not been honored. He submitted photographs to the Commissioners and explained them. He noted that one picture shows how Mr. Tykvart maintains access to his restaurant so why can't he do the same for him. Other than that he does not have any other concerns. He stated he cannot address the noise issue as this happens after he is gone.

Speaking against the petition were:

Nancy Pearson, 212 W. St. Charles Road, Lombard. She explained that she lives in the condominium located across from Praga. She mentioned that they started having problems with loud music in May, 2007 which could be heard until midnight or 1 a.m. She mentioned how she has requested the assistance of Village officials and while it helps initially, the loud music is played again after a few days. She stated that Village officials also came to a meeting at the condominium in 2008 to discuss the problem and indicated that they would review the summer hours and the time the music be turned off. They also suggested that the two speakers used by the restaurant be turned in a downward position, rather than an outward position, in order to minimize the music from traveling. Ms. Pearson indicated that they now have three speakers instead of two and they are all directed in an outward position. She stated that this goes on all year except on Monday when they are not there. In reviewing Ordinance 3623 and 3622, it allows for outside dining and 6 tables along with certain hours. Currently there are 30 tables and they serve until 2 a.m. She asked how the beer garden is allowed to operate without an ordinance. She commented that the abutting residents have rights also and asked where the cooperation was as it is hard to live under these conditions. Ms. Pearson recalled on August 6, 2008 she was awakened by yelling and commotion and realized the noise was coming from Praga. It was 2:45 a.m. and she called 911. When the police arrived at the restaurant to investigate they were told it was the waitress's fault. She questioned how it could be the waitress's fault. Ms. Pearson mentioned the Texan BBQ and how they requested outdoor dining. At their public hearing, residents from the nearby condominiums were present and it was agreed to have the dining end at 10 or 11 p.m. She asked why that can't be a standard in town. She distributed pictures to the Commissioners and explained them. Lastly, Ms. Pearson commented that it's nice to have a restaurant in town but they must be considerate of the residents.

Richard Pearson, 212 W. St. Charles Road, Lombard, stated that a comment was made earlier that if you live in the downtown you have to expect noise. When we moved in, we have had the noise from the railroad and the St. Charles Road traffic, among other things, but did not have a bar across the street. As far as the Village ordinances are concerned, the petitioner has been violating them since he took over the restaurant. His opinion of the restaurant is that it is the most inconsiderate, self-centered neighbor he has ever had to put with. He shared his experiences on how he has had to call 911 three times after 10 p.m. to complain about the noise and they complied. Then after a few days it would be the same.

Mr. Pearson then commented on the Zoning Ordinance enforcement. After all these years the petitioner has had excess tables and late hours. Other businesses in the area have had to comply with ordinances and questioned why some are enforced and others are not. Lastly, he requested that the petitioner be denied the right to expand their outside service and be required to purchase permits for all the previous years they have been violating the ordinance.

Nancy Pearson, 212 W. St. Charles Road, Lombard, added that Village officials have indicated that their only recourse is to call 911 after 10 p.m. and reference the noise ordinance. She asked what they can do as it doesn't seem to work.

Mr. Tykvart rebutted. He indicated that since they started having the outdoor patio, every year and thereafter they have paid for outdoor seating permits and renewal fees. He mentioned that the restaurant is located on property that is privately owned by Mr. Harris, therefore, that might be the reason why the Village enforced the other zoning ordinances. In answer to the hours of operation, he proposes that every business have the right in Downtown Lombard to have hours of operation to the last second allowed on their alcohol permit because that is the only reason to stay in the business. He mentioned how they received a grant from the Village in the amount of \$100,000 to build a bar and used \$150,000 of his own money to add a state-of-the art, most modern bar he wants people to enjoy. He suggested that times have changed and the zoning ordinances also need to be changed to allow life, dancing and entertainment. If I knew before what I know now, I never would have built the business. Now is the time to make changes that are up to par with the times as that is the only way to move forward. He thanked the Pearsons for coming tonight to express their views but just as they are here, there are a thousand more people who feel the same way as Praga and want to help them out. Lastly, he stated that he is an employee who works hard 7 days a week and gives people jobs. As they are the only restaurant/bar open later, the spotlight is on them and only them. If there were 5 more restaurants and 5 more bars, this lifestyle would become part of normal everyday life.

Chairperson Ryan then requested the staff report.

Christopher Stilling, Assistant Director of Community Development, presented the staff report. The subject property, Praga/Bon Ton Restaurant, is located at the southeast corner of Elizabeth Street and St. Charles Road. The petitioner requests that the Village grant a conditional use amending Ordinance 3623 to allow for an expansion and changes to the existing outdoor dining area and amendments to the original conditions of approval in the B5 Central Business District. The original outdoor dining area was approved in 1992 by Ordinance 3623 for the former Lorica Restorante. In 2002, the current restaurant operator for Praga took over the space and has increased the total area of the existing outdoor dining space from what was originally approved. Since they are seeking to maintain its current layout, an amendment to Ordinance 3623 is required.

Inter-Departmental comments were noted from the Building Division. The outdoor seating as shown requires the removal of any open flame lighting (tiki torches) and/or any temporary lighting such as strings of lights run overhead from the building. Permanent lighting shall be installed to provide minimum code light levels. This shall include emergency lights to provide an illuminated pathway to the public way.

The Fire Department commented that the petitioner shall provide/maintain unimpeded egress out of the structure and out of the patio to a public way (sidewalk). Table and seating layouts shall not block egress paths.

In 1992, the Village Board approved Ordinance 3623 granting a conditional use for outdoor seating for the former Lorica Restorante. A copy of Ordinance 3623 and the approved layout are attached as Exhibit A. The Village Board also approved Ordinance 3622 granting a variation to not require the petitioner to pay into the Lombard B5 Public Parking Fund. As this provision no longer exists in the Zoning Ordinance, an amendment to Ordinance 3622 is not required.

Ordinance 3623 granted the outdoor seating subject to 6 conditions. In addition, the ordinance was tied to a specific site plan showing no more than 6 tables. Over the years the outdoor seating area had been expanded beyond what was originally approved. In 2002, the current restaurant operator for Praga took over the space and in 2007 expanded its use to include the Bon Ton Wine Bar. With the addition of Bon Ton, the petitioner increased the total area of the existing outdoor dining space from 6 tables to 12-14 tables. To allow for the expansion, staff determined that the 6 additional tables could be allowed as part of an "Outdoor Café" for Bon Ton, which is permitted in the B5 Central Business District. An "Outdoor Café" is defined *as an accessory use to a restaurant when no more than six tables, with a maximum of twenty-four chairs, are located between the restaurant building and the public right-of-way, provided said area is either a front yard or a corner side yard as defined in this Section.*

Staff recently became aware that the outdoor dining area had been expanded to its current layout of 25 tables with a total of 64 seats. Since this expansion is greater than what is allowed by the Zoning Ordinance and by conditional use Ordinance 3623, an amendment is required. Furthermore, the petitioner has been operating the outdoor seating area to match their current hours of operation (Sunday through Thursday - 4:30 PM to 1 AM and Friday & Saturday- 4:30 PM to 2 AM). These hours are also consistent with their current liquor license. While doing our initial research, staff found that not only did Ordinance 3623 restrict their total number of seats, it also restricted the hours to no later than 11:30 p.m. In an effort to memorialize how they have been operating, an amendment to Ordinance 3623 related to the hours for the outdoor seating area is also required

The petitioner wishes to operate the outdoor seating area in accordance to what currently exists today. As Illustration 1 shows, the outdoor seating area is located completely outside of the public right-of-way and extends along the entire north elevation of the building (approximately 100 feet) along St. Charles Road. The outdoor area has 25 tables with a total of 64 seats and is approximately 1,700 square feet in area. Typically staff requires some type of fencing separating the outdoor seating area from the public right-of-way. In lieu of the fencing, the petitioner has provided several wooden planter boxes along the perimeter of the area. The planter boxes are approximately 3 feet in height. Furthermore, as Illustration 2 shows, the petitioner also provides black colored boards in between each planter box with the name and website of the establishment. Staff has determined that this type of signage is incidental to the outdoor seating and can be considered as part of the conditional use request, similar to how drive-thru signage is considered as part of that process. Should the Plan Commission and/or the Village Board decide not to approve the signage on the boards, they could be turned around. It should be noted that the petitioner does have an existing A-frame sign located in front of the establishment. Staff has noticed that the sign is not removed when the business is closed. Pursuant to the existing Sign Ordinance, the sign shall be brought inside once the business has closed, however no later than 9:00 PM. The pending text amendments, if approved by the Village Board, will allow the sign to be placed outside until 2:00 AM.

The existing Praga/Bon Ton and the outdoor dining area require 36 parking spaces based on the parking requirements of the B5 district. The existing site has 64 spaces along with on street parking along St. Charles. Staff finds that sufficient parking is being provided.

The petitioner is requesting that the hours of the outdoor seating area be memorialized to match the restaurant's current hours of operation. The hours are Sunday through Thursday - 4:30 PM to 1 AM (They are typically closed on Mondays) and Friday and Saturday- 4:30 PM to 2 AM

Mr. Stilling noted the amendments being requested by the petitioner

1. The petitioner is seeking approval to have the outdoor seating area extend along the entire north elevation of the building (approximately 100 feet) along St. Charles Road. Staff has been in contact with the tenant located directly east at 233 W. St. Charles (Dentist Office). He has expressed a concern that his customers cannot see his establishment with the expanded outdoor seating area. Since their area is on private property, staff has let the landlord know about the concerns of the tenant.
2. The petitioner is seeking approval to have the outdoor seating area to include 25 tables with a total of 64 seats, as shown on the attached site plan showing the existing conditions.
3. The petitioner is seeking to maintain their current layout showing several 2-person and 4-6 person tables as shown in illustration #1.
4. The petitioner is seeking to maintain their outdoor seating hours as follows:
 - o Monday through Thursday and Sunday- 4:30 PM to 1 AM
 - o Friday and Saturday- 4:30 PM to 2 AM
5. A condition will remain that the outside service area shall be kept free from all litter and debris.
6. The tables and chairs provided by the petitioner are not permanently attached. Historically, the petitioner has removed the tables and chairs during cold weather months.

The Comprehensive Plan denotes this area as Central Business District Mixed Use Area. The outdoor dining concept is appropriate to a Central Business District and is considered an enhancement to downtown development, provided that it operates in compliance with Village Code.

The subject property is bounded by mostly commercial uses on all sides, with the exception of Lincoln Terrace Condominiums located across the street (approximately 90' to the north). Staff has received a letter signed by 18 residents located in the Lincoln Terrace Condominiums concerned about the hours of operation for the outdoor seating area. Specifically, they would like to see the original hours that were set in Ordinance 3623 maintained. Furthermore, they are concerned about the existing music that is played on the speakers located outside. Staff has also received 2 letters in support of the project from residents located in the Lincoln Terrace Condominiums.

Given the unique nature of Downtown Lombard as a mixed use business district, staff can support the petitioners request to have the hours for the outdoor seating area memorialized to match how they have been operating for the last several years. Although other outdoor dining areas have been restricted to 11:30 PM, those areas were within mixed use buildings that have residential units directly above. Staff does recommend that a condition be added that limits any outdoor music and entertainment (TVs, etc) to the hours outlined in Ordinance 3623. Staff also suggests a condition that all customers must be leave the outdoor dining area no later than thirty

minutes after the outdoor dining area is scheduled to close. Therefore staff will be recommending that the outdoor seating area officially close 30 minutes earlier (12:30 PM for Sunday through Thursday and 1:30 AM for Friday & Saturday). This will allow patrons time to finish their food and beverages.

The petitioner has represented that they meet the standards for the conditional use. Staff offers the following response to the standards:

- a. *That the establishment, maintenance, or operation of the conditional use will not be detrimental to, or endanger the public health, safety, morals, comfort, or general welfare;*

Staff believes that the outdoor dining area is an enhancement for the downtown area. In addition the business helps improve commerce for the surrounding downtown businesses. The petitioner will still be required to maintain the use so as not to be a nuisance to the surrounding area.

- b. *That the conditional use will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood in which it is to be located.*

Staff finds that the outdoor seating area is an overall benefit to the downtown area. Throughout all of the recent downtown planning and visioning events, residents have expressed a strong desire for a place to gather. The Praga/Bon Ton restaurant plays an important role for the downtown by drawing people from all areas.

- c. *That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;*

Staff finds that the outdoor seating area will not impact overall redevelopment activity along St. Charles Road. In fact, the use could be considered an asset to the corridor.

- d. *That adequate public utilities, access roads, drainage and/or necessary facilities have been or will be provided;*

The use will not require permanent connections to municipal utilities.

- e. *That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;*

Staff finds that the proposal is a suitable location for the market. The site has ample parking with good access to St. Charles Road.

- f. *That the proposed conditional use is not contrary to the objectives of the current Comprehensive Plan for the Village of Lombard; and*

The use serves as an enhancement to the downtown area as it is an attraction for visitors to the area. Staff finds that the use is consistent with the retail objectives in the Comprehensive Plan.

- g. *That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified pursuant to the recommendations of the Plan Commission.*

Staff finds that the use will be consistent with Village Codes. Should the use become a nuisance or create noise levels greater than allowed by Code, the Village will have the opportunity to enforce those Ordinances to ensure minimal impact.

Lastly, Mr. Stilling noted that staff recommended approval of the petition subject to the conditions in the staff report with conditions #3 and #4 being amended to read:

3. *The outdoor dining activity shall not be open past 12:30 AM on Sunday through Thursday and 1:30 AM on Friday and Saturday.*
4. *All patrons shall leave the outdoor dining area no later than thirty minutes after the time in which the outdoor seating area is scheduled to close.*

Chairperson Ryan then opened the meeting for comments among the Commissioners.

Commissioner Burke referred to the Standards for Conditional Use, specifically item b. He asked if staff's answer was incomplete as it doesn't address the enjoyment of other properties in the vicinity as the testimony presented indicates otherwise. Mr. Stilling answered that staff cannot respond to the values of the property but from staff's prospective, this is a mixed use district and the use is appropriate.

Commissioner Sweetser stated that she likes what staff has done and with certain stipulations the Commission could speak to Commissioner Burke's concern, which she agreed with, about enjoyment of other property in the vicinity. She felt that the Commissioners can come close to meeting the needs of both parties as to the hours and the new regulations that allow things by right. Everyone has to realize that the Village is changing and growing and things do not stay the same, so we have to get along. If there is a way to mitigate sound especially music then that needs to be taken into consideration. Commissioner Sweetser stated she lives near the area but hasn't experienced anything that she finds objectionable. If it meets code, the speakers are turned down, the hours are met and activity is regulated by law, she is amenable to that. She recommended that a condition be added that clear access be maintained to the dentist office at all times.

Mr. Tykvart commented on the access to the dentist office. He indicated that he changed the entrance due to the amount of dust which resulted from the construction on St. Charles Road. He believed that prior to the construction clear access was maintained.

Commissioner Olbrysh stated that he agreed with the staff report and Commissioner Sweetser. For years we have heard comments on how boring Downtown Lombard is compared to other communities. Praga has now brought excitement and growth to the downtown area but needs

August 19, 2010

PC 10-06

Page 9

some restrictions and the enforcement of the sound problem. Lastly, he commented it was good to have Praga in the downtown.

Commissioner Flint addressed the petitioner and asked if he had reviewed the staff report and was in agreement with it. Mr. Tykvart answered yes.

Commissioner Nelson stated that the petitioner should keep his neighbors in mind with the noise late at night.

Commissioner Burke stated he was reluctant to approve a petition asking for expansion when the petitioner is currently not operating under approved conditions and is being less than cooperative with his neighbors and enforcement officials. What makes us think he will avoid future conflict if the petition is approved? Also, how can the Commissioners ensure that these new conditions are enforced - would it require the residents to keep calling the police? Mr. Stilling answered that we have a nuisance ordinance and the residents need to call the Police Department as that is what they are there for. The Police Department can enforce the ordinance and can do random checks during their shifts.

Commissioner Burke asked what can be done if these conditions are continuously violated. Mr. Stilling answered that staff could ask for a hearing to review the meaning of the standards and repeal the conditional use.

Attorney Wagner stated that the immediate answer is that the business would be cited each and every day for violating those conditions and would have to appear in the Circuit Court. That is the strongest enforcement method we have.

Mr. Stilling clarified his earlier statement by stating that there is a repeal provision in the ordinance which would be considered by the Village Board. Chairperson Ryan added that even before it gets to that point of revocation, the business would be cited and there would a court order for charges brought up against them.

Attorney Wagner answered that there is a provision for revocation in the Zoning Ordinance which states that a conditional use permit may be revoked if the conditional use as established or constructed on the site does not conform to the established conditions for approval. The Village Board would be advised and authorize the Plan Commission to schedule a public hearing to consider revoking the conditional use permit. It would go from the Plan Commission to the Board of Trustees for revocation. The most immediate method would be enforcement through citation.

Referring to the music that is being directed toward surrounding properties, Commissioner Sweetser asked if there is a certain decibel level allowed by code and if we know what decibel level the music is being played at. Until we have that information how do we know if anything is actually being violated or if it is just a perception. She suggested that a standard be determined so that when enforcement needs to occur, it can be enforced and a citation can be issued. Mr. Stilling answered that a police officer can also determine if there is music playing past the stipulated hours and that would result in a citation being written. He also referred to the nuisance

ordinance that all residents are subject to regardless of the hours. We encourage people to call the Police Department if they feel it is not being adhered to. Commissioner Sweetser stated that while the nuisance ordinance can be enforced, it is not as specific as providing a certain decibel level.

Chairperson Ryan noted that a decibel level can be violated not only at night but also during the day. Mr. Stilling stated that our nuisance ordinance doesn't have a decibel level attached to it. Commissioner Sweetser stated she thought this standard should be something different and separate from the nuisance ordinance. Chairperson Ryan added that in the past the Commissioners have put a condition on decibel levels for other restaurants along Roosevelt Road when the neighbors were complaining. Part of Code Enforcement was that it was randomly checked.

Commissioner Burke asked what noise requirement level should be used tonight and questioned how the Commission could move forward with the petition. Commissioner Sweetser answered that we don't know what those noise requirements are yet.

Attorney Wagner stated that the provision in Village code refers to violation of noise emission standards adopted by the Illinois Control Board to implement the Environmental Protection Act. He added that he does not know what those numbers might be.

Commissioner Burke added that whoever was going to conduct the noise reading would have to know where to read it, how to read it and how high to read it. The person would have to be well versed in doing so.

Chairperson Ryan stated that there are standards that inspectors should know or be trained in but those are codes we have enforced in other parts of the town.

Attorney Wagner stated that the easiest way to enforce a noise nuisance is to make it subject to certain hours.

On a motion by Commissioner Burke and a second by Commissioner Sweetser, the Plan Commission voted 5 to 0 that the Village Board **approve** the conditional use based on the finding that the petitioner had met the required Standards as set forth in the Zoning Ordinance.

Based on the submitted petition and the testimony presented, the proposed conditional use complies with the standards required by the Lombard Zoning Ordinance; and, therefore, I move that the Plan Commission adopt the findings included within the Inter-department Group Report, as the findings of the Lombard Plan Commission, and recommend **approval** of PC 10-06 to the Corporate Authorities subject to the following amended conditions:

1. The subject property shall be developed and maintained in substantial compliance with the site plan prepared by Village staff depicting the existing conditions on July 1, 2010, except as they may be changed to meet Village Codes and the following conditions below.

2. The petitioner shall satisfactorily address all IDRC comments.
3. The outdoor dining activity shall not be open past 12:30 AM on Sunday through Thursday and 1:30 AM on Friday and Saturday.
4. All patrons shall leave the outdoor dining area no later than thirty minutes after the time in which the outdoor seating area is scheduled to close.
5. The outside service area shall be kept free from all litter and debris.
6. All tables, chairs and umbrellas shall be removed from the outdoor seating area during the cold weather months (generally the end of October to March).
7. All outside music and/or entertainment shall cease at 10:30 PM on Sundays through Thursday and 11:30 PM on Friday and Saturday.
8. To provide clear access to the dentist's office located at 233 W. St. Charles Road at all times when the dentist's office is open for business.

Respectfully,

VILLAGE OF LOMBARD

Donald Ryan, Chairperson
Lombard Plan Commission

c. Petitioner
Lombard Plan Commission