

City of Excelsior
Planning Commission Meeting
MINUTES
Tuesday, June 7, 2011
Council Chamber, City Hall, 339 Third Street
7:00 P.M.

1. CALL TO ORDER

Chair Gaylord called the meeting to order at 7:00 p.m.

2. ROLL CALL

Commissioners Present: Duyvejonck, Wright, Wallace, Jensen, Craig, and Chair Gaylord

Commissioners Absent: Busch

Also Present: City Attorney Staunton, City Planner Richards, and City Planner Fuchs

3. APPROVAL OF MINUTES

(a) Planning Commission Work Session Meeting of April 28, 2011

Gaylord asked if anyone had any additions or corrections to the Minutes.

Commissioner Busch moved, Commissioner Jensen seconded, to approve the Minutes of the Planning Commission Work Session Meeting of April 28, 2011 as presented. Motion carried 6/0.

(b) Planning Commission Meeting of May 3, 2011

Gaylord asked if anyone had any additions or corrections to the Minutes.

Commissioner Busch moved, Commissioner Jensen seconded, to approve the Minutes of the Planning Commission Meeting of May 3, 2011 as amended. Motion carried 6/0.

4. PENDING ISSUES/PROJECTS

(a) Appoint Liaison to City Council (June 20, 2011)

Craig will serve as the Planning Commission liaison to the June 20, 2011 Council meeting.

5. PUBLIC HEARINGS - (Continued)

(a) Variance from Setbacks for Principal Structure and Accessory Structure for 153 West Lake Street – Charles P. Kampen and Pamela J. Rajala

Fuchs provided background on the proposal. Fuchs explained that on March 8, 2011 the Planning Commission met and discussed the variance application from Article 43, Section 43-7 from the 15-foot side yard setback requirement abutting a street right-of-way and Article 18, Accessory Buildings, Structures, Uses, and Equipment for a rear yard setback for an accessory structure. He noted that the applicants, Charles P. Kampen and Pamela J. Rajala, forwarded documentation to the City formally requesting that the City place on pause their application in order for them to evaluate alternative designs.

5. PUBLIC HEARINGS - (Continued)

- (a) Variance from Setbacks for Principal Structure and Accessory Structure for 153 West Lake Street – Charles P. Kampen and Pamela J. Rajala - (Continued)

Fuchs elaborated that the applicants submitted additional documentation on May 27, 2011 in response to recent changes to Minnesota State Statutes amending Section 394.27 regulating Variances; thereby, allowing a City's ability to review and grant variances if there are practical difficulties in complying with zoning regulations.

Fuchs re-informed the Planning Commission of the applicants' proposal for both interior and exterior modifications to the existing building, as well as adding onto the detached one-stall garage. The improvements still include constructing a new roof and adding an addition with a small bathroom on the main floor onto the existing structure, which is located approximately .3 feet from the Linwood Avenue right-of-way.

Fuchs highlighted some of the changes that the applicant has completed to the structure, such as the 11 new windows in the sunroom with the current proposal and some changes made from the original March 8, 2011 review materials. He noted that the proposed addition onto the house is one foot wider and the garage addition is one foot longer in length. He highlighted the proposed accessory garage addition, which complies with City Code as it is setback 3' from the property line and impervious coverage requirements.

Pamela Rajala, applicant, provided a brief overview of the practicable difficulties posed with the site and existing improvements.

Gaylord asked the applicant why they are not maximizing the hardcover with this proposal. Rajala explained that the proposal meets their needs at this time and they feel more development would be too much encroachment.

Gaylord responded that this would be the time to maximize the proposal based on City Code provisions. Charles Kampen, applicant, stressed that they would like to keep the improvements much the same as proposed.

Wallace inquired about the March 8th Planning Commission meeting and why they are proposing a 3 foot accessory structure setback. He asked why they would not consider a 1.3 foot setback.

Gaylord asked City Attorney Staunton to brief the Planning Commission on the recent changes to State Statutes. Staunton explained the practical difficulties variance language in more detail and the problems that existed with the previous language. He highlighted that conditions placed on a variance must meet the rough proportionality test of case law.

Craig stated that she agrees with Wallace.

Gaylord opened the public hearing at 7:25 p.m. Hearing no comments, Chair Gaylord closed the public comment portion.

Staunton informed the Planning Commission that the State Supreme Court ruling of June 2010 and changes recently made to State Statutes signed into

5. PUBLIC HEARINGS - (Continued)

- (a) Variance from Setbacks for Principal Structure and Accessory Structure for 153 West Lake Street – Charles P. Kampen and Pamela J. Rajala – (Continued)

law by the Governor allows the Commission permission to proceed with discussing the practical difficulties of the current proposal. He noted that the current language restores the old test of reasonable use commonly imposed from 1989 through 2010. He asked the Planning Commission to consider all the facts of the current proposal and the applicant's reasoning of why not to abide by the City's current ordinances. He highlighted that any conditions imposed must be directly related to and meet the rough proportionality test, the variance must be reasonable and not self-imposed, and the proposed improvements cannot be out of character with the surrounding neighborhood.

Wallace asked if variances could ever be administratively issued. Staunton explained that some jurisdictions have a formal Zoning Board of Adjustment and with changes to the City Code and policy variances could potentially be placed on a consent agenda.

Gaylord asked the Commission if they felt the request is reasonable.

Kampen asked why a revised survey is needed. Fuchs explained the reasoning for requiring a revised survey and the need for an as-built survey documenting placement of said improvements. The Planning Commission discussed and confirmed the reasoning for requiring a revised survey and the need for an as-built survey.

Rajala stated that it would be nice not to have a jog in the garage. Jensen stated that he would be in favor of a rectangular shaped garage. Wallace said that he would prefer that the build addition stay at 4 feet as was originally proposed. Gaylord commented that he is comfortable with a 5 foot addition with no jog.

Jensen stated that a revised survey would be needed to document the proposed improvements.

The Planning Commission and Staff discussed the findings-of-facts and proposed conditions of approval for granting the variance.

Commissioner Jensen moved, Commissioner Wright seconded, to continue the public hearing to the City Council's June 20, 2011 meeting and forward a recommend to the City Council that it give approval to the variance for 153 West Lake Street based on the following:

Findings-of-Fact

1. Applicants have proposed modifications to their single-family residential structure and detached garage structure. The structure was originally constructed in 1900. Cosmetic changes that did not alter the footprint of the structure were made in the 1970's. The changes proposed by the Applicants are consistent with the City's impervious surface limits and, in fact, do not maximize the amount of "hardcover" that is permitted on the lot.

5. PUBLIC HEARINGS - (Continued)

- (a) Variance from Setbacks for Principal Structure and Accessory Structure for 153 West Lake Street – Charles P. Kampen and Pamela J. Rajala – (Continued)

2. The City's Zoning Code requires the principle structure to be set back 15 feet from the side lot line. The existing structure is located 0.3 feet from the side lot line and has been since before the 15-foot side yard setback requirement was adopted. The proposed modifications increase the height of the principle structure to replace existing rotted and obsolete trusses. With the exception of filling a small gap (less than one foot) between the existing structure and the side setback line, the proposed modifications do not increase the footprint of the structure's encroachment into the side yard setback.

The City's Zoning Code requires an accessory structure to be set back 15 feet from the side lot line and 3 feet from the rear lot line. The existing accessory structure is set 0.0 feet from the side lot line and 1.6 feet from the rear lot line. The proposed modifications increase the height of the structure slightly to replace rotted and obsolete trusses. The modifications do not increase the footprint of the structure within the setback area. As proposed, the accessory structure would be located 1.3 feet from the side lot line and 1.6 feet from the rear lot line.

3. The details of the Applicants' proposed modifications are contained in the application and the March 4, 2011 staff report. The application, staff report, and other documents in the file are hereby incorporated by reference into these Findings.

Conditions

1. All applicable permits are applied for by the Applicants with all supporting documentation and issued prior to the start of construction.
2. The structure shall be built in accordance with the plans approved by the City Council on June 20, 2011.
3. Prior to the issuance of a Building Permit, revised building elevations and revised certificate of survey in conformance to plans approved by the City Council shall be submitted for review and approval as outlined per Article 9 of Excelsior Code of Ordinances – Appendix E. Said plans, shall comply with all City Ordinances, City Codes and approving Resolution and be submitted in both electronic (dwg & pdf) and paper copy (said plan shall be signed by Surveyor with revision dates).
4. Prior to the issuance of a building permit by the City of Excelsior, the Applicants/owner shall provide to the City of Excelsior documentation from the Minnehaha Creek Watershed District authorizing and approving the site plan.

5. PUBLIC HEARINGS - (Continued)

- (a) Variance from Setbacks for Principal Structure and Accessory Structure for 153 West Lake Street – Charles P. Kampen and Pamela J. Rajala – (Continued)
6. Final grading, drainage, and erosion control plans shall be approved by the City's Engineer prior to the commencement of any grading and/or construction on the site. An erosion control plan during and immediately after construction is actively in place and this shall be shown on the certified site plan.
7. Any damage to West Lake Street or Linwood Avenue that occur as a result of construction shall be repaired at the Applicants' expense.
8. The Applicants shall record this resolution in the chain of title for the property with Hennepin County and shall provide the City with verification of its recording.
9. The variance shall expire one year from the date of adoption of the resolution if not acted upon; City approval will be required for any subsequent extension.
10. Prior to the issuance of a Building Certificate of Occupancy, a Plan of Final Site Conditions (as-built) shall be submitted for review and approval per Articles 10 and 36 of Excelsior Zoning Ordinance. Said plan, shall comply with all City Ordinances, City Codes and approving Resolution, including documentation of recordation of Resolution, and said information and plans shall be submitted for review a minimum ten (days) prior to said application for Certificate of Occupancy in both electronic (dwg & pdf) and paper copy (said plan shall be signed by Surveyor with revision dates).
11. Should any issues and costs arise with existing and proposed improvements, a certified land survey (signed by surveyor) shall be submitted by the Applicants.
12. All indirect costs with the building permit, review, final plans and the certificate of occupancy associated with engineering and administrative costs shall be paid by Applicants.

Motion carried 6/0.

6. PUBLIC HEARINGS

None

7. UNFINISHED BUSINESS

- (a) Discuss Article 15, Non-Conforming Buildings, Structures, and Uses Amendment

Richards provided a brief overview of the language and discussions on May 3, 2011 by the Planning Commission relating to Article 15, Nonconforming Buildings, Structures and Uses. He explained that the Planning Commission provided direction to City Staff on amendments to clarify the language and address how nonconforming building expansions can be effectively reviewed through administrative or conditional use permit processes.

Staunton explained changes to the non-conforming statutes as they relate to shoreland protection areas. He emphasized that regulations tend to be geared for rural areas that utilize septic systems. At this time, he is still researching regulations that will impact Excelsior as most all of the City lies within 1,000 feet of either Lake Minnetonka or Galpin Lake.

Gaylord asked for a clarification of building height as it relates to 1.c. Staunton elaborated on building height and how the proposed language would impact a proposal similar to 153 West Lake Street which was discussed earlier in the meeting.

Craig stated that she is not comfortable with an increase.

Staunton said there are two questions, could setback continue as they exist and increase the height with the proposed policy perspective.

Craig said that she would like to keep the variance process and burden of proof requirements.

The Planning Commission and staff discussed how language should be drafted allowing an administrative review for the increase in building height for that portion of the building within the setback area provided that the maximum building height is complied with. Commissioners discussed building expansion in size as long as the encroachment does not increase within the setback area.

The Planning Commission asked Staff to draft language to address how nonconforming building expansions can be effectively reviewed through an administrative, conditional use permit, or variance process. Staff was asked to focus on Section 15-4(c)(2) relating to the need for a variance for any building expansion that is not covered by an administrative permit process as this provision often comes into play when proposals come forward for an expansion of single family structures, especially in the older portions of the City.

Commissioners agreed to move Item 8(a) up on the agenda to follow Item 7(a).

8. NEW BUSINESS

(a) Demolition by Neglect Ordinance Provision

Tim Caron, Heritage Preservation Commission Advisor, and Becca Sanders, Heritage Preservation Commission Chair, introduced the proposed draft Demolition by Neglect Ordinance to the Planning Commission on behalf of the Heritage Preservation Commission. They noted that the Heritage Preservation Commission (HPC) has been working on the ordinance for a number of years.

Caron and Sanders stated that the intent of ordinance is to address historic buildings from falling into disrepair and to mitigate and circumvent the total loss of buildings and structures within the historic district or sites. The ordinance could have prevented or least assisted with the preservation of the Fruit Growers Building, Pizza Hut, and now the Galpin Lake properties.

Gaylord asked if there are State Statutes that back the proposed ordinance. Caron responded that the language was drafted with the assistance of City Attorney Staunton and other communities have adopted similar language. The intent is to have tools available to assist with curtailing the loss of historically designated structures with structural observable neglect.

Staunton noted that 471.193 of the State Statutes outlines measures that allow communities the ability to protect properties. The language allows an express process to impose an obligation to maintain an exterior of a structure. He stressed that the intent is to balance the need to preserve a structure; the difficulty is to go onto another person's property to perform maintenance.

Jensen asked if this language is in reaction to the Galpin Lake Road property. Sanders answered no, the discussions started before the most recent proposal brought forward by Todd Frostad.

Jensen inquired as to the number of structures historically designated and who would make the decision to proceed with enforcing the ordinance. Caron responded that there are two questions. First, how is a structure historically designated, and secondly, who decides what. He stated the the HPC determines whether a structure should be historically designated on a case-by-case basis, and the City Council decides if a structure is neglected based on an investigation by staff.

Jensen asked about the appeal process. Staunton responded that Mr. Caron is correct in that the City Council makes the decision. He explained that there are a number of options available for the City Council and property owner, such as, an abatement process, an order to make changes, and administrative penalties.

Caron stated that the property owner could also contest the order. Staunton clarified that an analysis would need to be conducted to ensure that the correct action is acted upon.

Jensen noted that the Planning Commission recently provided a favorable reception for a sketch plan of the Galpin Lake property prior to proceeding to with engineering.

8. NEW BUSINESS

(a) Demolition by Neglect Ordinance Provision – (Continued)

Gaylord asked what if the property didn't know the property was historically designated. He feels the ordinance is very heavy handed. Caron answered that the process is not uniform. He elaborated that State Statutes allow a

community to designate properties and sometimes the only way to protect them is with tools to require some improvements.

Gaylord asked if the owners of the properties that historically designated know that they are so designated. Caron responded that the State allows a community to protect resources.

Gaylord noted that some members may see the importance of protecting a building such as Jack O'Connor's downtown and some other properties may not be as important such as the Galpin Lake property.

Sanders informed the Planning Commission that there was recently a request before the HPC for the Galpin Lake property. The HPC asked the applicant to provide additional documentation on efforts for reuse of the building or financial data as to why it's not feasible to reuse the restructure. She informed them that the HPC is tasked with protecting cultural resources.

Staunton explained that there is a process to designate a property.

Jensen noted that the Galpin Lake property does not appear historical based on the Hesse Roise study. Richards clarified that the property is historically designed as number 25 on the HPC's list of designated properties.

Jensen asked who designated the property. Caron answered that the City Council would have designated it.

Jensen asked if the property was occupied at the time of the designation and if the property owners participated in the process of designation. Sanders responded that typically the property owner does participate in the designation process.

Staunton explained that the Planning Commission provides input during the designation process.

Jensen asked what happens if an elderly couple owns the property and they have limited resources to adequately maintain. Caron answered that there are economic determinants and economic assistance available.

Gaylord asked if the discussion this evening is a courtesy to provide the Planning Commission with an opportunity to provide input on the proposed language.

Jensen asked if there will be a public hearing. Staunton answered that a public hearing is not required, though there could be.

Craig said that there should be a balance. No one has shown the historic significance of the Galpin Lake properties. An ordinance, in whatever form it takes, should be safeguard.

8. NEW BUSINESS

(a) Demolition by Neglect Ordinance Provision – (Continued)

Gaylord expressed that there should be some safeguards, though the Planning Commission doesn't agree with the proposed language as drafted.

Jensen stated that he does not feel that this is the right process; there could be other avenues of financial consideration for preserving properties, such as raising grant funds.

Sanders said the Galpin Lake Road site is disconnected from other properties. Jensen noted that the property owner has offered to give the house away. Sanders responded that to date no one has wanted the house.

Gaylord expressed that the market drives development and each property is managed and reviewed on a case-by-case basis.

Jensen said that the current proposal is with an Excelsior business that has been established in the City for over 20 years. The investment will be quite sizable and the business is ready to continue contributing to the future of Excelsior.

Richards informed the Commission that staff anticipates having an application for the Galpin Lake Road properties for the July Planning Commission meeting.

Craig stated that economic considerations should be considered as part of the review.

Staunton provided an overview of the Site Alteration Permit review process. He explained that any decision rendered by the HPC is appealable to the City Council.

Wallace stated that the City should consider this change in order to prevent another potential Galpin Lake Road scenario.

Gaylord responded that when purchasing a property the information on the historical designation may not be provided.

Jensen noted that in an old downtown area it makes sense to have a mechanism to protect that area more so than it does in outlying areas.

Gaylord stated that it would sense to have a public hearing in order to get input from all the property owners.

7. UNFINISHED BUSINESS

(b) Parking Update

Richards provided a brief overview of the staff report. He informed the Planning Commission that he has not developed a map incorporating the Downtown and parking areas.

7. UNFINISHED BUSINESS

(a) Parking Update – (Continued)

Craig asked if staff was able to track down who produced the original map.

Jensen volunteered to assist with producing a base map.

Richards elaborated on a number of examples of joint and shared facilities language.

The Planning Commission and staff discussed the examples, parking percentages, and, burden of proof needed to justify the respective parking needs.

Richards noted that the City of Northfield's language could be utilized and in order to demonstrate compliance language could be added to justify the burden.

Wallace asked if the language would negatively impact the recently adopted parking impact fee. Richards elaborated on the language and focus on a 300' radius of the front door of the business or use.

The Planning Commission discussed scheduling a Public Hearing in August.

(c) Tree Management

Fuchs stated that the Tree Subcommittee last met in early 2011. He informed Commissioners that the Subcommittee is short one member. He asked if anyone would be willing to volunteer to serve on the Tree Subcommittee. Duyvejonck volunteered to serve on the Tree Subcommittee.

(d) Residential Design Guidelines

Richards stated that the Excelsior Residential Design Standards Subcommittee has been discussing meeting dates and times in order to continue the review of potential regulations for residential properties. The Subcommittee scheduled a meeting for Thursday, June 30, 2011.

8. NEW BUSINESS

(b) Brewery Standards

Richards informed the Planning Commission that several individuals are interested in opening a microbrewery in downtown Excelsior. The City Council was presented with a business plan for a microbrewery and expressed an interest in having a microbrewery in downtown Excelsior. He explained that in order for a microbrewery to move forward, amendments to the City's Liquor Ordinance and Zoning Code would be needed. The City Council has directed staff to have the Planning Commission look at language to add microbreweries as an allowable use in the B-1, Central Business District, to research ordinances, and, discuss whether this use should be added to other business districts as well. Research indicates some of the items needing discussion was the logistics of operation, potential smell due to the yeast used to make beer, and the ultimate disposal of the wastes.

8. NEW BUSINESS

(b) Brewery Standards – (Continued)

Staunton briefed the Commission on size limitations, prohibition of food preparation, liquor license requirements, limitations for on-site consumption, and tour tasting specifics.

Richards stated that a microbrewery could be in all business districts and reviewed through a Conditional Use Permit process.

The Planning Commission discussed what zoning districts may be appropriate to allow microbreweries, allowance as a conditional use with appropriate conditions, and parking standards for microbreweries. Commissioners reviewed the three examples of ordinance changes or planning reports from Everett, Washington; Warrenville, Illinois; and, Woodland, California related to microbreweries.

Craig stressed the need to push for retail in the B1 District.

Wallace stated that he is comfortable with the B1, B2, and B5 Districts.

Jensen said he is open to allowing microbreweries in all the B Districts. Duyvejonck agreed with Jensen that microbreweries be allowed in all B Districts and feels that with the appropriate conditions could be appropriate on Water Street.

Jensen stated that Stillwater allows wineries in their downtown.

The Planning Commission discussed artistic allowances on Water Street and other downtown streets in the B1 District.

Gaylord inquired on what buildings or space could accommodate a microbrewery, he noted his concerns with access, hours of operation, and disposal of yeast.

Wallace expressed what controls could be incorporated as for setbacks, disposal of yeast, exhaust, hours of operation, and, logistics.

Fuchs briefed the Commission on past microbrew developments that he has reviewed and means to address smell.

Wright stated that smell should be able to be addressed through an air filtration system.

The Planning Commission discussed potential conditions to help guide the development of microbreweries, how to best mitigate smells, setback requirements, parking needs, and hours of operation.

The Planning Commission directed staff to schedule a Public Hearing to amend Code to allow microbreweries through a Conditional Use Permit in the B1, B2, B3, B4, B5, and, B5 Business Districts for the July Planning Commission meeting.

8. NEW BUSINESS

(c) Sign Standards

Richards briefed the Planning Commission on the staff report. He said that staff has recognized some sign issues in working with businesses and the inflexibility with current sign requirements. In 2008, when the sign regulations were amended, directional and informational signage provisions were removed. By removing these provisions, it has provided difficulty for some businesses that may want to sign an entrance for customers and deliveries. He said the Design Standards limit the distance that sandwich board signs may be allowed from an entrance to a business. The current provision may be appropriate for the Downtown but is limiting to businesses along Highway 7 and County Road 19. The Planning Commission may want to clarify whether noncommercial signage can be located offsite for sponsored events.

The Planning Commission discussed non-commercial events and that they were receptive to allowing some form of noncommercial signage. The Planning Commission directed staff to schedule a public hearing for the next available Planning Commission meeting to amend Article 24, Signs, relating to informational, directional, and sandwich board signs.

(d) Amend Appendix E Related to Variance Legislation

Richards explained that due to recent changes to Minnesota State Statutes related to variances that were approved by the Legislature and signed by the Governor the City will need to amend Article 6 Variances of Appendix E.

The Planning Commission discussed the changes needed to the ordinance. The Planning Commission directed staff to schedule a public hearing on the amendments to Article 6 for a future Planning Commission meeting.

(e) Dates for Additional Work Session(s)

The Planning Commission decided to hold off on scheduling any additional Work Sessions beyond the subcommittee meetings.

9. COMMUNICATIONS & REPORTS

(a) None

10. MISCELLANEOUS

(a) Recent City Council Actions

Staunton updated the Planning Commission on recent City Council actions.

11. ADJOURNMENT

Commissioner Jensen moved, Commissioner Craig seconded, to adjourn the meeting at 9:40 p.m. Motion passed 6/0.

Respectfully submitted,

Ronald G. Fuchs
City Planner