

GREENWOOD PLANNING COMMISSION
WEDNESDAY, JULY 15, 2009
7:00 P.M.

1. CALL TO ORDER/ROLL CALL

Chairman Lucking called the meeting to order at 7:00 p.m.

Members Present: Chairman Lucking and Commission members John Beal,
Todd Palmberg and Mark Spiers

Absent: Commissioner David Paeper

Others Present: Council Liaison Tom Fletcher, City Attorney Mark Kelly and
Zoning Coordinator Gus Karpas.

2. APPROVE AGENDA

Commissioner Beal moved to accept the agenda for tonight's meeting.
Commissioner Palmberg seconded the motion. Motion carried 4-0.

3. MINUTES OF June 17, 2009.

Commissioner Beal moved to approve the minutes of June 17, 2009.
Commissioner Spiers seconded the motion. Motion carried 4-0.

4. LIAISON REPORT

Council Liaison Fletcher said the Council discussed a number of issues.

He said they will be reviewing the application of Bill Cook to serve as an alternate on the Planning Commission at their August meeting. He said the Council passed the first reading of the Construction Management Ordinance with minor changes and the first reading of the Construction Site Run-off ordinance.

Councilmember Fletcher said the Council tabled the proposed amendments to the Tree Preservation Ordinance. There was concern that the proposed changes exceeded what the original intent was which was to review the fee structure and the method for measuring the stumps of trees illegally removed. There was a feeling that the ordinance relied too much on the need for licensed arborists and questions about the Heritage Tree designation. He said he would provide the specific concerns of the Council in writing for the Commission.

Fletcher said the Council has been in discussion with South Lake regarding the establishment of an administrative hearing process to deal with ordinance violations. The city will approach the City of Minnetonka regarding the use of their administrative hearing apparatus.

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He said the variance request of the Conrad's to encroach into the required corner lot side yard setback was approved on a 3-2 vote. He said the condition of the garages at Georgetown Manor and the installation of sod and trees at the Lakeshore Market were also discussed.

5. PUBLIC HEARINGS

VARIANCE - William Brands, 21290 Excelsior Boulevard, request to demolish an existing attached garage and construct a new attached garage and entryway which would exceed the maximum permitted impervious surface area.

Section 1176:04(3) of the Shoreland Management Ordinance permits a maximum impervious surface area of 30%. The applicants propose an impervious surface area of 39.46%. The proposal requires a variance to exceed the permitted impervious surface area by 9.46%.

Chairman Lucking summarized the request and opened the public hearing.

Rick Storlien, ADS Architects, presented the request. He said the existing garage is a safety hazard because it is placed in a way that requires the homeowner to back down their driveway into Excelsior Boulevard. The proposal is to remove the existing garage and construct a new garage in its place at a different angle. By rotating the garage, they can also create a new front entryway. The request is to exceed the allowable impervious surface, but noted the impervious surface area is being reduced with the project through the removal of a concrete pad at the street and a deck near the lake.

Commissioner Palmberg disclosed that he is the applicant's neighbor and questioned the need for him to abstain from the vote. City Attorney Kelly said there would be no need to recuse himself, but Mr. Palmberg could if he would like to. Commissioner Spiers felt there wasn't a need for Mr. Palmberg to abstain.

Rob Roy, 21270 Excelsior Boulevard spoke in favor of the request. He said a row of trees he has along the property line are often damaged due to black ice during the winter, causing the neighbors to slide into them. He feels the existing garage creates a safety issue.

Chairman Lucking asked how much of the impervious surface area is driveway. Mr. Storlien said approximately 11% and that it would remain about the same with the new configuration.

Commissioner Beal said he visited the site and that the steepness is deceiving until you're on top of the hill. Commissioner Spiers commented he wouldn't want to back down the applicant's driveway.

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Jeff Sagal, 21420 Excelsior Boulevard, said he was in favor of the request and often wondered why the existing garage was constructed in the manner it was. He feels the proposal is very attractive and would be a positive addition to the neighborhood. He likes the proposal of reducing the impervious surface area in the removal of the concrete pad and lakeside deck.

Hearing no further comment, the public hearing was closed.

Commissioner Beal feels the proposal, in terms of setback and hardcover, is not really changing the existing conditions on the property. He is in favor of the request. He would like to clarify the removal of the concrete pad at the road by making it a condition of any motion.

Commissioner Palmberg had no issues with the request.

Chairman Lucking asked about the garage located near the road, if it were currently being used and how it was accessed. Mr. Storlien said it is used for lake storage and is access by a short bituminous driveway that would remain.

Commissioner Spiers had no objection to the request.

Chairman Lucking feels a hardship is caused by the configuration of the lot, which requires a long driveway.

Commissioner Spiers asked if there were other configurations available that would reduce the number of trees that had to be removed for construction. Mr. Storlien said they tried a number of options to do just that, but ended up encroaching into required setback. The major tree that would be removed is a large Oak that hangs over the proposed garage.

Commissioner Palmberg asked if drainage on the property would be changed. Mr. Storlien said there would not be any major alterations to the grade and there should be no drainage impact on the adjacent properties.

ACTION: Motion by Commissioner Beal to recommend that the City Council approve the variance request to exceed the maximum permitted impervious surface area by 9.46% for the demolition and reconstruction construction of a new attached garage and entryway, as presented at 21290 Excelsior Boulevard. A hardship exists in that the placement of the existing garage creates a safety issue by requiring the applicants to back down the driveway onto Excelsior Boulevard and that the configuration of the lot requires an extensive driveway, preventing compliance with the impervious surface standards. The motion is conditioned that the concrete pad located on Excelsior Boulevard be removed as proposed. Commissioner Spiers seconded. Motion carried 3-0-1. Commissioner Palmberg abstained.

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ORDINANCE AMENDMENT – Discuss request from Lakeshore Market for an amendment to Section 1130 to permit the on-site preparation and sale of hot food.

Chairman Lucking summarized the request and opened the public hearing.

Mohamed Kwara of the Lakeshore Market presented the request. He said there is a need to increase his business due to a drop in traffic on Highway 7. He said the request to sell hot food would improve his business. He indicated he had signatures from fifty households in Greenwood and a total of 600 signatures from his customers supporting the request. The intent is not to create a sit down restaurant, rather to provide a limited number of items for his customers to take with them. The proposed kitchen area is 6'x9' and only a small portion of his overall business. He said he has invested a lot of time and money into the station and needs to diversify to continue to operate.

Rob Roy, 21270 Excelsior Boulevard, said he did not attend the previous meeting on this request, but said it sounded like a more intense use than what's being proposed now. He said he doesn't find the idea offensive. He said he has a number of friends who own C-Stores and they're all having to adjust their business plans to address the slowdown in the economy. He's concerned that if Mr. Kwara's business is not successful, it will fail which would be a loss to the neighborhood.

Mike Farraher, 21230 Excelsior Boulevard, doesn't see a big problem with the request as long as it isn't a sit down establishment. He feels it provides an opportunity for a unique business for the neighborhood. He would like to see the business succeed since it is a convenience for the neighborhood.

Jeff Sagal, 21420 Excelsior Boulevard, said he was not opposed to a deli style food service but is opposed to anything that required venting due the potential for noise and objectionable smells. He said it would not be fair to the neighborhood to subjugate them to such issues. He used Adele's as an example of a food business that does not use exterior venting.

Cheryl Janousek, 21210 Excelsior Boulevard, feels it is a great idea and that Mr. Kwara has been a great neighbor. She supports the proposal.

Bill Brands, 21290 Excelsior Boulevard, supports the request as described by Mr. Sagal, without exterior venting. He feels the applicant should be permitted to offer hot food.

Mr. Kwara described the neighborhood and said only four homes were located directly adjacent to his business. He said he desires to have venting and could limit the hours in which he would provide hot food. He said offering hot food would permit him to use a portion of the building which isn't producing anything

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right now. He wants to be part of the city and feels his proposal would improve his business.

Commissioner Palmberg asked if he would consider serving food which did not require venting. Mr. Kwara said he needs the ventilation and that he's trying to bring something different to the neighborhood by offering ethnic food. He reiterated the area used for cooking would be small.

Chairman Lucking asked the applicant if he would like a use such as a Burger King next to his home. Mr. Kwara said the difference is that food service is 100% of Burger King's business whereas it would be 10 to 15 percent of his business.

Hearing no further public comment, the public hearing was closed.

Chairman Lucking explained the problem facing the city is that by changing the ordinance, it would open the entire C-1 District to food service. The city, through its existing ordinances has tried to eliminate those uses associated with chain business from the city because they are not in the best interest of the city. He said decisions on amending the ordinance are done for the City of Greenwood and not just for specific properties or businesses. He said the city needs to think of the future.

City Attorney Kelly said an ordinance could be designed to limit the opportunities for the placement of fast food establishments.

Commissioner Palmberg sought clarification on what could be sold at the store and asked if there was a prohibition on selling hot dogs and coffee. City Attorney Kelly said the ordinance limits sales to dry goods only, but that the business has been around for years and enjoys some grandfathering in terms of coffee and the like.

Commissioner Beal said it is clear the applicant would like to sell more than dry goods. He said he does not feel good about a change in the ordinance that would apply to the whole zoning district.

Commissioner Palmberg questioned the ability of fast food restaurants challenging a limited food service ordinance. City Attorney Kelly said the properties in the district are rather small, but it would not be impossible for a chain to locate on one of the sites. He said the city would have to establish the level of food service it would be willing to accept. He explained that Hennepin County licenses food businesses on a scale and the city could structure an ordinance to follow that scale, thus limiting the type of food service permitted in the district.

Commissioner Spiers feels an ordinance could be developed that limits the scale of food service, including a limitation on hours.

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Commissioner Palmberg would like to see the business succeed, but is not in favor of exterior ventilation.

Chairman Lucking fears opening Pandora's Box and the potential for unintended consequences. Commissioner Spiers feels the ordinance can anticipate and limit unintended uses through a limitation of scale for food service.

Council Liaison Fletcher asked if the ordinance could be drafted to limit the duration the venting could be on. City Attorney Kelly said it could and it could have narrow constraints such as the type of filter used and a limited time for selling hot food. He said food service in the district could be defined as a use incidental to a principal use of a gas station or convenience store.

Commissioner Beal said the term incidental could be defined as ten percent or less.

Chairman Lucking asked if such a limitation could be challenged by a chain establishment. City Attorney Kelly said the city is given the broad authority to regulate uses within the city and believes such a challenge would not get far in the courts.

Commissioner Spiers commented there were neighbors in the area that were not opposed to the smell issue and felt it was fair to note that not all neighbors shared that concern.

Chairman Lucking said he doesn't want to get into a situation where the city makes a change and there are concerns raised by neighbors after the fact. He feels any change must have a rational basis.

City Attorney Kelly said any modification to the code would allow the use as a Conditional Use and within that ordinance the city could require an annual license for cooking, allowing for annual review and could limit the use in terms of scale and a requirement that it be an incidental use. He said the Planning Commission could develop an ordinance on their own initiative or ask for direction from the Council.

Commissioner Beal feels the Council needs to face the issue and provide guidance to the Planning Commission before it puts in a lot of work on the issue.

Council Liaison Fletcher noted the request has previously been brought before the Council and was denied on a 4-1 vote. He said the Council had many of the same concerns in terms of venting as the Commission does. He will bring the issue back to the Council for further discussion.

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The Commission discussed the concerns such as traffic and odors related to potential other uses the ordinance could invite and the concept of drafting an ordinance with a licensing requirement and language related to incidental use. The Commission felt if a change were to be made, it should be directed from the Council to do so.

ACTION: Motion by Commissioner Palmberg to recommend that the City Council deny the request from Lakeshore Market for an amendment to Section 1130 to permit the on-site preparation and sale of hot food.

The motion died for lack of a second.

Council Liaison Fletcher explained to the applicant, even if his request met with a positive response from the Council, it would take a minimum of six months before an ordinance would be in place.

OUTDOOR LIGHTING ORDINANCE – Discuss amendment of the city ordinance to create comprehensive regulations for outdoor lighting.

Chairman Lucking summarized the proposed ordinance and opened the public hearing. Hearing no public comment the hearing was closed.

Commission Spiers said he heard a concern from one of his neighbors about lighting on top of a fence and whether it would be regulated under the ordinance. Commissioner Beal asked if the neighbor spoke to their neighbor. Spiers said she had not.

After some discussion, it was determined that the provision in the ordinance would regulate such lighting through the candle foot requirement and hour limitation.

Commissioner Beal commented the proposed ordinance is better than the previous ordinance.

ACTION: Motion by Commissioner Beal to recommend that the City Council approve the proposed ordinance amendments regulating outdoor lighting. Commissioner Palmberg seconded. Motion carried 4-0.

6. OTHER BUSINESS

Commissioner Spiers introduced Brian Malo, who has submitted an application for a seat on the Commission. He explained to Mr. Malo that alternates have full engagement in the discussions of the Commission, they just don't have full voting rights until needed.

7. ADJOURN

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Motion by Commissioner Beal to adjourn the meeting. Chairman Lucking seconded the motion. The meeting was adjourned at 8:25 p.m.

Respectively Submitted
Gus Karpas - Zoning Coordinator