

**GREENWOOD PLANNING COMMISSION**  
**WEDNESDAY, June 19, 2013**  
**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, Kristi Conrad (7:05) and David Paeper

Absent: Commissioner Douglas Reeder

Others Present: Council Liaison Bill Cook, City Attorney Kelly and Zoning Administrator Gus Karpas.

**2. APPROVE AGENDA**

Commissioner Paeper moved to accept the agenda for tonight's meeting. Commissioner Beal seconded the motion. Motion carried 3-0.

**3. MINUTES – May 15, 2013**

Commissioner Beal moved to approve the minutes of May 15, 2013 as presented. Commissioner Paeper seconded the motion. Motion carried 3-0.

**JOINT MEETING MINUTES – May 15, 2013**

Commissioner Beal moved to approve the joint meeting minutes of May 15, 2013 as presented. Commissioner Paeper seconded the motion. Motion carried 3-0.

**4. PUBLIC HEARING**

**Chip and Kathy Fischer, 5185 Greenwood Circle** - variance and conditional use permit requests to exceed the maximum permitted impervious surface area and maximum permitted grade alteration to construct a new driveway to access the garage at their new single family structure. The applicants are also seeking a city permit to construct retaining walls within the city right of way.

Section 1176.04(3)(3) permits a maximum permitted impervious surface area of 30%. The applicant is seeking a variance to exceed the maximum permitted impervious surface area by 8.92%.

Section 1140.19(5) limits the alteration of pre-grading permit topography to one vertical foot in a one hundred foot area. An exception to this standard may be granted by conditional use permit. The applicant is seeking a conditional use permit to exceed the maximum grade alteration by three (3') feet.

Section 630.05 requires a permit granted by the city for any use of the public right-of-way outside of the primary purpose of public travel. The proposed retaining walls located within the city right-of-way require a city permit and the payment of a permit fee.

Zoning Administrator Karpas summarized the request. Chip and Katie Fisher are requesting a variance and conditional use permit to exceed the maximum permitted impervious surface and maximum permitted grade alteration to construct a new driveway to access the garage at their new single family structure at 5185 Greenwood Circle. The applicants are also seeking a city permit to construct retaining walls within the city right of way.

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Chip Fisher said they didn't initially realize there was an issue with the grade of the driveway. They first noticed it in February when the garage floor was poured and at that time was told by the contractor that everything would be ok once the final grading was completed. He said it became clear this was not going to be the case and he contacted the city engineer because of his safety concerns. He said together they developed a plan that would allow access to the garage through alteration of the grade, but it would require retaining walls and additional paved area on city property.

Chairman Lucking asked if there was anyone from the public who would like to comment on the request. Hearing no comments, Chairman Lucking closed the public hearing.

Commissioner Paeper asked if the applicant has considered any other alternatives. Mr. Fisher there aren't many available, but they did look at accessing the garage from the east, but there wasn't enough land. Paeper asked if they considered raising the garage. Mr. Fisher said that was cost prohibitive since there was a room under the garage that would also have to be demolished.

Chairman Lucking asked if there was a reason why Mr. Fisher didn't seek legal action against his contractor. Mr. Fisher said that wouldn't be practical. He said he still has access to his garage, it's just not safe access. Mr. Fisher said if he'd known about this issue from the beginning he would have included it in his original variance request. Lucking said some of the issue was caused when the house was pushed further from the lake. Mr. Fisher said that and when the house was shrunk.

Commissioner Beal confirmed the slope is being reduced by traveling diagonally. Mr. Fisher confirmed that and the addition of retaining walls.

Commissioner Conrad asked what the additional cost would be to reconstruct the garage and room below. Mr. Fisher said the proposal is only about ten to fifteen percent of that cost. Conrad asked if this proposal would fix the problem. Mr. Fisher said it would.

Chairman Lucking asked if there were any reason why the applicant would have to stop the turn-around portion of his driveway at the property line. City Attorney Kelly said the city permit driveway access to public right-of-way, but the request is not a onetime event. The request is multi-faceted, including the driveway, retaining walls and a heating element for the driveway. All of these will need to be included in an easement agreement with the city.

Commissioner Paeper said the city engineer should determine if lateral load of the retaining wall is sufficient.

Chairman Lucking commented he didn't like the idea of having a guardrail along the road. Zoning Coordinator Karpas pointed out the plan indicates the guardrail has been replaced with boulders on top of the retaining wall.

Commissioner Paeper said this request is difficult since it is a circumstance the city had little to do with and he has trouble with approving a variance for an circumstance caused by the property owner's consultant's, which he believes is contrary to the variance criteria. Commissioner Beal agrees, noting those who made the error aren't even here to defend it.

Commissioner Conrad feels the proposal is a good fix, but it doesn't seem to be a final fix since it's still a tight area. She's worried about the impact on the road in terms of parking. She doesn't believe the city is setting a precedent since the issue was not caused by the city. Conrad is still concerned there could be unforeseen issues.

Motion by Commissioner Conrad to recommend the city council approve the application of Chip and Katie Fisher for a conditional use permit to exceed the maximum permitted grade alteration

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of one vertical foot as presented. The proposal complies with the criteria outlined in Section 1150.20. Beal seconded the motion. Motion carried 4-0.

Motion by Commissioner Paeper to recommend that the city council approve the application of Chip and Katie Fisher for a variance of Greenwood Ordinance Code section 1176.04(3)(3) to permit the construction of a new driveway with retaining walls as presented. The proposed impervious surface area is in keeping with the spirit and intent of the zoning ordinance, would permit the property to be used in a reasonable manner and would not alter the essential character of neighborhood. Beal seconded the motion. Motion carried 4-0.

**Dr. Mark Hope, 21450 State Highway 7 and Bridgewater Bank, 21500 State Highway 7** - conditional use permit for a permitted impervious surface area of 66.72% on their combined property to reconfigure the existing parking area through the removal of a driveway that connects their two parking lots

Section 1176.04 outlines the zoning provisions in the Shoreland Management District.

Section 1176.04(b) states "Impervious surface coverage in all commercial districts, expressed as a percentage of the lot area, shall not exceed 30%, provided that because of the additional hardcover required for typical commercial developments, the maximum impervious surface in commercial districts may be increased to a maximum of 75% with a conditional use permit first obtained under sections 1150 and 1176.07 of this code, supported by an applicant prepared stormwater management plan meeting the approval of the city engineer. The city engineer, planning commission, and/or city council may require an applicant to implement stormwater management practices deemed necessary to control and minimize or control stormwater and off site runoff, including by not limited to, rain gardens, holding pond, reductions in proposed impervious surfaces, and other accepted stormwater management techniques and methods."

Zoning Administrator Karpas summarized the request. He said the applicants are requesting a conditional use permit for a permitted impervious surface area of 66.72% on their combined property at 21450 and 21500 State Highway 7.

The applicants propose to reconfigure the existing parking area by removing a driveway that connects their two parking lots. Doing so will increase the overall number of parking stalls on the properties by four. A private easement agreement determines the number of parking spaces for each business and the reconfigurations adds at parking to each site. The proposal reduces the overall impervious surface area on the property by 156 square feet.

Chairman Lucking asked if there was anyone from the public who would like to comment on the request. Hearing no comments, Chairman Lucking closed the public hearing.

Jeff Wrede, Momentum Design Group, discussed the proposal noting it will reduce the overall impervious surface area and increase the number of parking stalls for each business. He said the proposal has been reviewed by the city engineer and is currently being reviewed by the Minnehaha Creek Watershed District for the issuance of a storm water management permit.

Commissioner Paeper asked if the parking area would have surmountable curbing. Mr. Wrede said it would.

Zoning Coordinator Karpas noted the properties have a parking easement agreement which has been reviewed by the city attorney. City Attorney Kelly confirmed he has reviewed the document and commented the plan makes sense.

Motion by Commissioner Beal to recommend the city council approve the application of Dr. Mark Hope and Bridgewater Bank for a conditional use permit for a combined impervious surface area of 66.72% as presented. The proposal would reduce the overall impervious surface area on the

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property, the drainage plan has been approved by the city engineer and MCWD and the parking will be brought into compliance with the city ordinances. Commissioner Paeper seconded the motion. Motion carried 4-0.

**Bridgewater Bank, 21500 State Highway 7** - variance requests to install awnings above the windows along the east and west sides of their building which would encroach into the minimum required side yard setbacks.

Section 1120:15 of the Zoning Ordinance requires a minimum west side yard setback of fifteen (15) feet. The applicant proposes a west side yard setback of four feet, nine inches (4'-9") for the closest proposed awning encroachment. The proposal requires a ten foot, three inch (10'-3") variance of the west side yard setback.

Section 1120:15 of the Zoning Ordinance requires a minimum east side yard setback of fifteen (15) feet. The applicant proposes an east side yard setback of zero (0) feet for the proposed awnings. The proposal requires a fifteen (15) foot variance of the east side yard setback.

Zoning Administrator Karpas summarized the request.

Chairman Lucking noted the planning commission discussed essentially this same request a number of years ago. He said the proposed awnings would serve no purpose other than aesthetics.

Jeff Wrede, Momentum Design Group, said the structure has ten foot tall windows and, due to the sun, the blinds are drawn all the time. He said the proposed awnings are smaller than those previously requested, decreasing the proposed encroachment into the west side yard setback. He said the city could not approve the east awnings the last time since they crossed the property line. The bank now has an easement with the adjacent property owner permitting an encroachment for the awnings.

Chairman Lucking doesn't believe the proposed awnings will reduce the sun infiltration into the building. Commissioner Conrad agreed the proposed level, given the height of the windows would do little to help. Mr. Wrede said the design could be changed to cover more of the window at a steeper pitch, which would also decrease the encroachment.

City Attorney Kelly said it appears they are looking to match the front of the building. He said the city could not find a basis to approve the previous request for a variance on the west side encroachment and didn't have the authority to grant approval to cross the property line on the east side. Chairman Lucking commented that even though the criteria is no longer "hardship", he can't find a "practical difficulty" for the proposal.

Mr. Wrede said he will remove the west awnings from the variance request and asks the planning commission to continue the public hearing to the July 17<sup>th</sup> meeting to allow him time to work with the bank to develop a plan on the east side of the building.

Motion by Commissioner Beal to accept the applicant's withdrawal of the ten foot, three inch (10'-3") variance of the west side yard setback minimum west side yard setback for the proposed awnings and to continue the public hearing on the variance request to encroach into the minimum required east side yard setback for proposed awnings. Commissioner Paeper seconded the motion. Motion carried 4-0.

## **5. OLD BUSINESS**

**Discuss – Creation of R-1C District** – Amendment of Greenwood Zoning Ordinance Code, Chapter 11, Creating an R-1C District which would encompass the current Old Log property,

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allowing the current permitted principal, accessory and conditional uses and reestablish the current uses of the property (Theatre, Restaurant, Event Center) as conditional uses.

Zoning Administrator presented his staff memo to the Commission. He said the adoption of Ordinance 216 removed Theaters as a conditional use within the R-1A District. By doing so, Theater uses, the most notable being the Old Log Theater, have now become a legal nonconforming use which are regulated by Section 1145 of the city code. Due to the unique and varied use of the Old Log property, the Council felt it would be appropriate to investigate the creation of a new zoning district that would address the specific uses currently employed on the property. The result was a draft ordinance creating the R-1C district which would allow all the current permitted and conditional uses in the R-1A district, but more closely defined "Theater." The proposed district would include only that property currently owned by the Old Log Theater.

The Planning Commission and Council discussed the first draft of the new ordinance at their May meeting and the joint meeting with the Council which immediately followed that meeting. Minutes from both meetings are included in the packet.

A second draft of the proposed ordinance has been included in the packet for the Commission's review. The only change to the ordinance was the creation of a definition for "Theater Entertainment Center" which encompasses a theater, restaurant and event center and permits the use as a conditional use. It replaces the term "Theater" from the previous draft.

The commission discussed the potential use of the property and if there has been any clarification on what may happen. Zoning Coordinator Karpas said the removal of the property as a conditional use permits it to operate as an existing non-conforming use. Basically, it can operate as it currently does and may not expand in any way and the city cannot legally authorize any expansion of use, unless it is placed back in the ordinance as a permitted or conditional use.

Commissioner Conrad said she's concerned about the property's future use as an event center. She understands there are events currently held on the site, but she wouldn't want to see a noticeable expansion of that use.

Council Liaison Cook said he helped develop the current definition for Theater Entertainment District, but would still like to work on it. City Attorney Kelly said the term "Entertainment" may also have to be defined.

Zoning Coordinator Karpas questioned the need to create a separate ordinance if the uses are the same in the R-1C as they are in the R-1B, unless the intent was to create additional conditions that would be placed on the proposed Theater Entertainment Center. Karpas asked if the current conditions in Section 1150 of the city code were comprehensive enough to cover the proposed theater use.

City Attorney Kelly discussed the process used in redrafting the C-2 district. He said the city worked with the developer to draft an ordinance that worked with, not conformed to, his business plan. The ordinance created a set of performance standards that were required. Commissioner Beal said one of the problems of what the city wants is we know what we don't want and we find ourselves trying to draft an ordinance to protect ourselves by listing our wants.

Commissioner Beal said, given the notoriety of the Old Log Theater, this may be the most important piece of legislation this body will ever work on.

The planning commission discussed the process. They agreed they would like to look at some performance standards as they were included in the C-2 district and directed staff to bring the ordinance back with those standards included for the commission's review.

**LIAISON REPORT**

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Council Liaison Cook informed the commission that the council approved a special events permit to include a property on Meadville Street in the Luxury Home Tour, that the council unanimously approved the variance requests of Jim Pastor which included the removal of the detached south garage and a two stall attached garage on the north side of the home, he said the council approved their portion of funding for the 4<sup>th</sup> of July fireworks and have been reviewing a uniform animal control ordinance that would be enforced in south lake cities.

**6. ADJOURN**

Motion by Commissioner Paeper to adjourn the meeting. Commissioner Beal seconded the motion. The meeting was adjourned at 8:55 pm.

Respectively Submitted  
Gus Karpas - Zoning Administrator