

GREENWOOD PLANNING COMMISSION
WEDNESDAY, July 17, 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, David Paeper and Douglas Reeder (7:15)

Absent: Commissioner Kristi Conrad and Council Liaison Bill Cook

Others Present: City Attorney Kelly and Zoning Administrator Gus Karpas.

2. APPROVE AGENDA

No action was taken on the agenda.

3. MINUTES – June 19, 2013

Commissioner Paeper moved to approve the minutes of June 19, 2013 as presented. Commissioner Beal seconded the motion. Motion carried 3-0.

4. PUBLIC HEARING

Bridgewater Bank, 21500 State Highway 7 - variance request to install awnings above the windows along the east side of their building which would encroach into the minimum required 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. He said the request has been modified to seek awnings that extended only thirty-two inches from the wall of the structure instead of forty-two inches as previously proposed.

Chairman Lucking asked about the structure's setback from the property line. Jeff Wrede, Momentum Design Group, said the structure sets back sixteen inches from the property line, so the proposed awning would extend sixteen inches onto the adjacent property.

Commissioner Beal asked if the bank has an agreement with the adjacent property owner for the encroachment. Mr. Wrede said there is not one at this time. He said originally the agreement was attached to the Conditional Use Permit previously before the Commission for the parking lot alteration, but was removed with the requests were separated. He will have a new agreement for the Council if the request receives a favorable recommendation and moves forward to the Council.

Commissioner Beal asked the City Attorney Kelly if the city has the authority to approve an encroachment onto an adjacent property. Mr. Kelly said the properties currently have a co-parking easement, which is a private agreement that the city blesses. Obviously, any agreement that permits a structure overhang would expire if the easement expires. He said the city is granting a variance to the specific setback in its ordinance and the easement is the tool that allows the applicant to exceed the setback in the city's ordinance.

Commissioner Beal stated the reason he would support the request is that it is in a commercial zone and he doesn't believe it would damage the aesthetics of the surrounding area and it wouldn't set precedence. His only concern is the easement situation.

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Chairman Lucking said his stipulation on a motion would be the easement agreement is in place prior to the request being before the City Council. He noted the easement would follow the property and have to be filed on the title.

Zoning Coordinator Karpas said he met with the applicants and discussed the ability to include the west awnings on the application even though they were withdrawn at the last meeting. City Attorney Kelly said that even though the public hearing had been held, a new application would need to be submitted.

Zoning Coordinator Karpas asked if the city could still condition the distance the awnings could extend from the building even though its ordinance would only technically regulate the first sixteen inches. City Attorney Kelly said it could by requiring the easement agreement to stipulate the maximum encroachment onto the adjacent property match what was presented as part of the request.

Commissioners Paeper and Reeder indicated they had no issues with the request. Commissioner Beal he had no objection to the request provided the city has a legal right to approve the encroachment onto the adjacent property.

Chairman Lucking still feels the applicant is looking to do something for aesthetics and that the request doesn't solve the stated problem. Commissioner Paeper agreed, stating the request feels like an aesthetic application to him. Commissioner Beal said he's ok with the application and he can't find a precedent that would hurt the city. Lucking doesn't believe there's a clear practical difficulty.

City Attorney Kelly said the burden of proving a practical difficulty falls on the applicant. Mr. Wrede said the main issue with the property is the placement of the building in relation to the property line. No awnings can be built on the east side to block the sun that wouldn't require a variance.

Chairman Lucking discussed options available to the applicant to address the issue of sun and heat that would not require a variance and reiterated he believes the request is purely for aesthetics. Zoning Coordinator Karpas discussed the change in standards from Hardship to Practical Difficulty. He said the Hardship standard used to state that there were design alternatives available that would not require the issuance of a variance; these did not carry over to the Practical Difficulty standard. As for aesthetics, they cannot be used as the sole grounds for the issuance of a variance, but they can be part of the consideration. He said the applicants are not using aesthetics for the basis of their request; they are using the need to shade the exterior offices. A practical difficulty exists in the size of the lot and the placement of the building which would require a variance regardless of any type of structural alteration proposed.

City Attorney Kelly added the applicant has made a case that the plight of the property owner was not cause by them, that the proposed use is a reasonable use and character of the locality would not be changed.

Motion by Commissioner Beal to recommend that the city council approve the application of Bridgewater for a variance of Greenwood Ordinance Code section 1120:15 to permit the construction of awnings within the required east side yard setback as presented. The plight of the property owner is due to the size of the non-conforming lot and placement of the lot, the proposal is a reasonable use of the property and the essential character would not be altered. 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, 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 discussed the second draft of the R-1C ordinance at their June meeting. Staff questioned the need to create a separate zoning district that would permit a Theater Entertainment Center as a conditional use if the conditions remained the same as those in the zoning district in which the use was being transferred from. He suggested the Commission consider the creation of additional conditions such as those added to the C-2 when it was developed a number of years ago.

The Commission asked staff to provide an example of conditions for the July meeting.

Karpas said he has attached the General Regulations currently employed in the C-2 which can be modified to fit the proposed use of the subject property. He has also attached Section 1150.20 of the current Conditional Use Permit regulations which is the criteria used in consideration of a CUP application. He feels Section 1150.20(2) could be modified to address specific operational aspects of a business, rather than just the use of the property to address their impact on adjacent property. The Commission could consider one, both or a combination of these options as part of the proposed ordinance.

The Planning Commission discussed the existing use of the theater and how the current code regulated it. The existing status as a legal non-conforming structure restricts the use to as it exists right now. Reestablishing it as a conditional use under the R-1C would allow expansions of the use with the issuance of a conditional use permit. The question becomes what constitutes an expansion of use. It was felt the existing use of the theater needs to be defined so there is a starting point for the use and expansions can be based on that point.

The Commission discussed concerns with the concept of "creep" with the slow expansion of certain areas of the operation over time that start having a negative impact on the residential character of the surrounding area. City Attorney Kelly said one of the issues is enforcement and making sure the ordinance is clear on its regulations so they are enforceable.

The Commission felt it would be productive to hold a joint meeting with the City Council to clarify what the goal is for the creation of the ordinance and how they would like to see it guide the development of the property.

City Attorney Kelly suggested the Commission develop a list of changes they feel could negatively impact the neighborhood and look to draft a means to regulate those aspects of the business. He reiterated there also needs to be a clear understand of the current business operations.

Commissioner Beal said it would be easier to set criteria to regulate the use when it can be defined what it was.

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City Attorney Kelly suggested sending a Liaison to the Council to explain the steps the Commission is intending to take and suggest a joint meeting.

LIAISON REPORT

Council Liaison Cook was not in attendance.

6. ADJOURN

Motion by Commissioner Beal to adjourn the meeting. Commissioner Paeper seconded the motion. The meeting was adjourned at 8:10 pm.

Respectively Submitted
Gus Karpas - Zoning Administrator