

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, Todd Palmberg and Mark Spiers

Absent: None

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

2. APPROVE AGENDA

The Commission agreed to amend the agenda to move the Liaison Report behind the Public Hearing portion of the meeting and to add a discussion on the Construction Management Ordinance and Tree Ordinance to the Other Business portion of the agenda.

Commissioner Beal moved to accept the amended agenda for tonight's meeting. Commissioner Paeper seconded the motion. Motion carried 5-0.

3. MINUTES OF May 20, 2009.

Commissioner Beal moved to approve the minutes of May 20, 2009. Commissioner Spiers seconded the motion. Motion carried 4-0-1. Commissioner Palmberg abstained.

4. PUBLIC HEARINGS

VARIANCE – Sean and Kristi Conrad, 21780 Fairview Street, (R-1A, 15,000) request for a variance to encroach into the required exterior side yard setback along the west property line for the construction of a new single family home.

The proposal is to encroach fifteen feet into the required thirty foot exterior side yard setback.

Chairman Lucking opened the public hearing.

Sean Conrad said the lot is being considered a corner lot, when based on the use of the right-of-ways, it isn't. He said they tried to develop a home the neighborhood would like, keeping low profile. He said the plan reduces the amount of impervious surface and by using the right-of-way for the driveway, they would be cleaning up that area.

Hearing no further comment, the public hearing was closed.

Chairman Lucking asked about the legality of using the right-of-way for a private driveway. He doesn't feel there's a clear answer to that question and that it may depend on how the city views the future use of the property.

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Commissioner Beal agreed with the applicant that the lot might be treated unfairly by requiring it to have a corner lot setback based solely on a plat from the 1800's. The "street" doesn't look like a street and never will. He feels requiring a corner lot setback for a non-existing street seems a bit extreme. Commissioner Spiers agreed.

Chairman Lucking asked about provisions for vacating the right-of-way. City Attorney Kelly said the Council could be petitioned to vacate the right-of-way if two-thirds of the abutting property owners supported it. The Council would be under no obligation to grant the vacation. He said it was his understanding that the applicants couldn't get the abutting properties to support the vacation. He said even without the support of the neighbors, the city could initiate action to vacate the right-of-way.

City Attorney Kelly said cities typically control what happens in right-of-ways. He said the city could grant a license for the applicants to use the right-of-way. The license would just outline the conditions and clarify the fact that the city can develop the property any way they see fit in the future.

Commissioner Beal asked if the Planning Commission should recommend the city enter into such an agreement as it relates to this request. City Attorney Kelly said they should.

Commissioner Paeper asked the likelihood of the Council approve a vacation request without the neighbor's support. City Attorney Kelly said it would be unlikely. Paeper commented that the width of the right-of-way didn't lend itself to the development of a street.

Commissioner Palmberg was in support of the request. He feels the lot is a corner lot in definition only. He supports the idea of a license agreement with the applicants.

Commissioner Paeper noted the house could be placed on the property within the required setbacks, but it would have to be long and narrow. He feels the house has been designed to greet the street.

Commissioner Spiers liked the plan and the intentional design to save the trees on the lot. He asked why the adjacent neighbor wasn't in support of the vacation. Zoning Coordinator Karpas noted the adjacent property is rather large and would most likely be subdivided sometime in the future and the property owner wanted to keep his options open in terms of access. Spiers questioned the need for the city to hold onto this property in perpetuity.

ACTION: Motion by Commissioner Beal to recommend that the City Council approve the variance request to encroach fifteen feet into the required thirty foot exterior side yard setback for the construction of a new single family home, as presented at 21780 Fairview Street. The motion is conditioned that the applicant's enter into a license agreement with the city to place their driveway within the platted right-of-way. Commissioner Palmberg seconded. Motion carried 5-0.

CONSTRUCTION SITE STORMWATER MANAGEMENT ORDINANCE –

Recommendation to City Council on an ordinance regulating stormwater runoff from construction sites.

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Chairman Lucking presented the ordinance, stating it is in line with those adopted by the neighboring communities regulating construction site runoff.

Chairman Lucking opened the public hearing. Hearing no comment, the public hearing was closed.

Commissioner Beal said he didn't like provision "B" under the exemptions which exempted all but two lots in existence when the ordinance was adopted. City Attorney Kelly said the exemptions could be scaled back.

Commissioner Paeper asked if the exemption would trump the authority of the Zoning Coordinator to require a plan. City Attorney Kelly said it would. Paeper would support the removal of provision "B".

ACTION: Motion by Commissioner Spiers to recommend that the City Council approve the proposed ordinance amendment creating provisions regulating Construction Site Stormwater Runoff. The motion includes the removal of the exemption limiting the ordinance to newly platted properties. Commissioner Beal seconded. Motion carried 5-0.

5. LIAISON REPORT

Council Liaison Fletcher summarized the issues the City Council has been discussing. He said the Mayor has met with Police Chief Litsey to discuss the possibility of enlisting the help of the Community Service Officer in enforcing zoning violations. It is his understanding those discussions has met an initial positive response.

Councilmember Fletcher asked the Zoning Coordinator to summarize the enforcement measures being taken against the Lakeshore Market. Zoning Coordinator Karpas said that he, Mayor Kind and Councilmember Page met with the business owner to discuss a number of concerns the city had about the condition of the property. He said there was an agreement to remove the coolers, the horse trailer and can collection container from the property. Karpas explained this has been a slow process and even though there was a deadline established, the property has still not been brought into total compliance. Karpas informed the Commission that it was discovered that a large part of what was believed to be private property is actually city right of way. It is his understanding that the Council is discussing the possibility of placing sod in that area to clean it up.

Commissioner Palmberg asked what action could be taken since the deadline has passed for compliance. City Attorney Kelly said the city could begin issuing citations to the property.

Council Liaison Fletcher discussed an issue related to garbage at Georgetown Manor. He has asked the Zoning Coordinator to discuss the issue with the building owner.

Commissioner Spiers commented on how he, serving as the Planning Commission Liaison, was permitted to sit at the table with the Council. He said he liked it, because he felt included in the meeting.

6. OTHER BUSINESS

MAXIMUM STRUCTURE HEIGHT - Discuss the permitted height for residential properties.

Chairman Lucking said he wanted some clarification on the difference between building height and structure height. He was concerned that a permitted overall structure height of forty-two feet may not be enough to allow for a two story walk out home. City Attorney Kelly said structure height sought to limit the overall height of a structure including belfries and chimneys.

Chairman Lucking drew a diagram indicating his concern and used the example of the roof pitch on a wider home as being prohibited. Commissioner Beal noted such a home would most likely be over the allowable cubic feet in the Massing ordinance.

Commissioner Paeper understood the concerns of Lucking and agreed the established height should have a couple of feet in leniency.

The Commission discussed the height limitations. Council Liaison Fletcher feels it good to keep the separate limits as they are set.

Commissioner Beal said his concern is that the separate height requirements are in different parts of the ordinance, making it difficult to realize there are two separate measurements. City Attorney Kelly suggested the establishment of an appendix that includes all the dimensional requirements.

Commissioner Spiers asked how different roof types are impacted by the height requirements. Chairman Lucking said lower roofs are controlled by the 28 foot requirement.

Commissioner Spiers commented that he attended a conference on energy efficiency where they discussed the use of residential windmills. He asked how those would be handled under the current height restrictions. City Attorney Kelly said those are not a permitted use at this time, but the State could supersede the city sometime in the future. Commissioner Beal felt they would be subject to the forty-two foot limit. Kelly said the issue would need to be reviewed if it ever arises. Spiers felt the city may want to consider the issues related to alternate sources of energy rather than addressing them after the fact.

The Planning Commission agreed that no change was necessary to the ordinance language as it pertains to building and structure height.

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

City Attorney Kelly said he worked on the ordinance to make it more coherent.

Commissioner Beal said he did not like the language regarding wattage for holiday lights, noting that many are being changed to LCD while the wattage limit is meant for incandescent light. City Attorney Kelly asked what an acceptable cap would be. Beal said he wasn't sure and said the most important restriction on holiday lighting is the limitation on their placement. Chairman Lucking agreed.

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Commissioner Palmberg questioned why the ordinance was being amended and whether it would solve the problem we're trying to solve. Chairman Lucking said this process was begun due to some concerns raised by a group of people on Meadville Street, regardless it's the Commission's job to shape how the city should be.

Commissioner Paeper feels the proposed ordinance is an improvement over what regulations currently exist. Chairman Lucking noted it's essentially the same ordinance with additional restrictions of holiday light, a lower foot candle measurement and a requirement that fixture be full cut-off.

Commissioner Spiers feels the concept that someone's lights are impacting their neighbors is relevant and feels the city has to have an ordinance with teeth to regulate those instances.

The Commission discussed the wattage requirement for holiday lighting. Commissioner Paeper suggested that language be added to the ordinance that lighting be equivalent to seven watt incandescent.

Chairman Lucking asked about the proposed time limit. Council Liaison Fletcher suggested it be kept simple. Commissioner Spiers noted the impact of holiday lighting is greatest felt in the winter and is unsure 11 p.m. is an acceptable restriction. Lucking said noted there would at least be a time limit. Commissioner Beal said the point is there is a set time when the lights need to be turned off.

Commissioner Spiers asked if there were a way to establish a maximum wattage for a property. Chairman Lucking felt that would be difficult. Zoning Coordinator Karpas said regardless of the wattage on the property, the maximum foot candle measurement at the property line would be the same.

ACTION: Motion by Commissioner Spiers to direct staff to schedule a public hearing on the proposed Lighting Ordinance amendments. Commissioner Beal seconded the motion.

Council Liaison Fletcher expressed some concern about the provisions in subdivision four grandfathering lights in place at the time the ordinance was adopted. He feels this gives people a free ride to keep non-conforming lights. He said it would be impossible to determine when a light fixture was installed to verify compliance. Commissioner Paeper said the intent was to bring fixtures into compliance as they were changed out. City Attorney Kelly said the ordinance is seeking to direct people to use full cutoff fixtures as they are replaced.

Commissioner Palmberg asked if the ordinance was silent on a specific date would that mean fixtures would need to be changed if there were complaints. Council Liaison Fletcher said it would.

Commissioner Spiers feels that motion sensor lights should qualify as disruptive since the nature of the light is to cast illumination outward. Chairman Lucking said the light would still have to dead end at the property line.

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The Commissioners agreed that the motion should be amended to reflect the removal of the grandfather clause. Commissioners Spiers and Beal accepted the amendment to their motion.

Chairman Lucking call the question. Motion carried 4-0.

CONSTRUCTION MANAGEMENT ORDINANCE – Discuss re-recommending the ordinance to the City Council.

Chairman Lucking said this is exactly what he's been looking for from the Council, actual feedback with recommendations. He discussed the concept of establishing a minimum value in which properties are exempt. He feels this may be difficult since it would be no problem investing upwards of \$50,000 on a kitchen remodel.

Commissioner Spiers noted that even though a job may be done entirely within a structure, there are still components, such as a dumpster which impact the exterior of the structure.

Zoning Coordinator Karpas is concerned that by establishing a value amount, you create a loophole. He would like to see consistency with the cities of Deephaven and Woodland.

Council Liaison Fletcher feels it would be better to have an ordinance on the books and if there is found to be an issue with the exemption, the value could be changed or removed.

The Commission discussed value limitations and determined that a \$10,000 limit would be appropriate for both exterior and interior jobs.

Chairman Lucking asked about the concerns related to the neighbor notification requirement. Commissioner Spiers believes the Council thought it required homeowners to physically knock on doors. Zoning Coordinator Karpas said all he requires is a copy of a letter sent to the neighbors and the addresses they were sent to. City Attorney Kelly said a mailing is sufficient.

Chairman Lucking commented on the long process involved in adopting this ordinance, stating the Commission has never been given any direction on why it was not acceptable. Council Liaison Fletcher said the Council is now seeking the Commission's input.

The Planning Commission discussed and agreed upon the proposed changes to establish a value amount for exemption, to clarify the notification requirement and to separate the Zoning Coordinator's exemption powers into a separate provision.

TREE PRESERVATION ORDINANCE – Public hearing on the amendment of the existing Tree Preservation Ordinance.

Commissioner Beal said he measured a number of trees and came to the conclusion that the dimension chosen for heritage designation is correct. He believes if the number was reduced, even slightly, there would be hundreds upon hundreds of additional trees

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under the designation. He thinks the problems related to removal can be attributed to outside developers who don't have stake in the community.

Commissioner Spiers also measured a number of trees. Both Beal and Spiers distributed a table showing their results.

Commissioner Beal said there may be instances where the removal of a heritage tree may not be avoidable and described situation he found on Maple Heights Road where a heritage tree is located where a new home would be placed. Commissioner Spiers sees a value in allowing heritage trees to be removed, but that it should be very limited.

Commissioner Spiers asked about trees with multiple trunks. Chairman Lucking feels each trunk should be viewed as individual trees. Spiers described an instance on Fairview Street where the trunk of the tree was very large two feet from the ground, but then split into about seven separate trunks.

Commissioner Spiers discussed the past issues related to Elm trees and expressed concern there may be future issues with Ash trees. He feels the ordinance should address this issue by designating what type of replacement trees could be planted to avoid planting those susceptible to disease. Chairman Lucking said by doing so you could create an abundance of one or two types of trees and when you do that, something will eventually prey on them. Spiers doesn't like to think how this area will look after the majority of Ash and Elm trees are gone which is why he sees value in planting alternative species.

Council Liaison Fletches said he provided the information to the Commission as an FYI and no action needed to be taken at this time.

Chairman Lucking asked about the Council's concern about requiring a licensed arborist in determining the health of a tree. Council Liaison Fletcher said the Council's concern was more about requiring a city license since the state already has a licensing requirement.

Commissioner Spiers noted that the Council was supportive of a measurement of the stump for trees removed without a permit to determine compliance with the ordinance.

Chairman Lucking expressed his disdain for Cottonwood trees and wished they had been included under the noxious tree provision.

7. ADJOURN

Motion by Commissioner Palmberg to adjourn the meeting. Commissioner Beal seconded the motion. The meeting was adjourned at 8:15 p.m.

Respectively Submitted
Gus Karpas - Zoning Coordinator