

MINUTES OF THE PLAN COMMISSION
September 24, 2012

The regular meeting of the Plan Commission was called to order by Acting Chairman William Cotey at 7:00 p.m. at the Village Hall.

Members present: Acting Chairman William Cotey, Scott Adams, Dan Donahue, David Semmelman, and Kurt Schultz.

Members absent: Chairman Mark Moore and Walter Oakley.

A quorum was established.

Village Staff present: John Spoden, Director of Community Development; David Smith, Senior Planner; and Fred Chung, Senior Project Engineer.

Commissioner Schultz moved, seconded by Commissioner Semmelman, to approve the July 9, 2012, Plan Commission meeting minutes.

Motion carried 5 - 0.

Commissioner Schultz moved, seconded by Commissioner Semmelman, to approve the August 27, 2012, Plan Commission meeting minutes.

Motion carried 5 - 0.

OLD BUSINESS:

**PC 12-13 Peter Tosto, Heritage Court Libertyville, LLC, Applicant
339 N. Milwaukee Avenue**

Request is for a Map Amendment in order to rezone property located at 339 N. Milwaukee Avenue from C-1, Downtown Core Commercial District to C-2, Downtown Community Commercial District.

Mr. David Pardys, Village Attorney, stated that the Zoning Code allows non-conforming structures to continue so long as they were in existence at the time the Zoning Code was adopted. He stated that the latest version was adopted in 1995 with additional amendments thereafter. He stated that Mr. Tosto's building was in existence well before the current adopted Zoning Code. He stated that once the Map Amendment is approved, then Mr. Tosto's building at 339 N. Milwaukee would then become a non-conforming structure. He stated that in other words, it would not meet the setbacks established for the C-2 District. He stated that the Zoning Code allows non-conforming structures to continue so long as they were legal at the time the Code was adopted. He stated that the Village Administrator is in agreement with the petitioner's presentation with respect to what would happen to the building once the re-zoning was to occur.

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Mr. Pardys stated that the Village Administrator's Zoning Code interpretation is a separate issue from what the Plan Commission is asked to take action on tonight which is the request for the Map Amendment. He stated that there are Standards set forth in the Zoning Code with respect to a Map Amendment. He stated that the Plan Commission should make their recommendation regarding the Map Amendment based upon the Standards found in the Zoning Code. He stated that one of the issues that the Plan Commission should consider when taking action on the request for the Map Amendment is the fact that a non-conformity will be created if the subject property is rezoned to C-2. He stated that the non-conformity will be legal under this interpretation.

Acting Chairman Cotey asked how the legal non-conformity will affect the title of the property. Mr. Pardys stated that he is not aware of any impact upon the title of the property. He stated that the Zoning Code doesn't use the term legal nonconforming. He stated that the term nonconforming is used and that these structures can continue so long as they are otherwise lawful. He stated that in accordance to the Village Administrator's interpretation, the building will be allowed to continue as a nonconforming structure after the rezoning from C-1 to C-2. He stated that one of the factors that the Plan Commission should consider is whether they should rezone the property knowing that a nonconforming structure will be created.

Acting Chairman Cotey asked the other Plan Commission member if they have any questions regarding the Village Administrator's interpretation of the Zoning Code. The other Plan Commission members replied that they do not have additional questions regarding the Zoning Code interpretation provided by the Village Administrator.

Acting Chairman Cotey asked if there has been a change in attorney for the petitioner Mr. Tosto. Mr. Louis Pissios, attorney, stated that there has not been a change in attorney for Mr. Tosto that he was there to work together with Mr. Ray Gerard, the attorney currently representing Mr. Tosto.

Mr. John Spoden, Director of Community Development, stated that the petitioner was before the Plan Commission at their meeting of last month requesting a Map Amendment for the property located at 339 N. Milwaukee Avenue from C-1 Downtown Core Commercial District to C-2 Downtown Community Commercial District. He stated that this property is on the southern edge of the C-1 District. He stated that the issue at hand is the petitioner's office occupancy at the subject site. He stated that the front 35 feet of the ground floor tenant space would not permit an office use in the C-1 but would be allowed in the C-2 district.

Mr. Ray Gerard, attorney for petitioner Mr. Tosto, stated that he would like to thank Mr. Pardys for presenting the letter from the Village Administrator that conveys his Zoning Code interpretation. He stated that they had requested the interpretation of the Zoning Code as to the nonconforming status that would permit the building to continue after becoming nonconforming. He stated that the sole issue before the Plan Commission now is the request for the Map Amendment. He stated that they have responded to the Standards for Amendment which is included in the application. He stated that the Plan Commission must weigh as to whether or not the Map Amendment is in the best interest of the Village. He stated that Mr. Tosto has been in the building for over 30 years and has a business in Libertyville for over 40 years. He stated that

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for 26 out of the last 31 years the subject site has been an office use. He stated that they believe that the office use now is in keeping with what would be a proper business for the Village. He stated that Mr. Tosto has over 7,000 customers. He stated that people come to visit his business. He stated that they bring a lot of business to downtown Libertyville and has been an asset to the Village for a great number of years.

Mr. Gerard stated that the prominent issue discuss at the last meeting is the idea of what the downtown is comprised of. He stated that the subject property is located at the southern end of the downtown commercial district on the west side of the street. He stated that there is a large bank to the immediate south of the subject site. He stated that the bank property is large sprawling property with a parking lot that surrounds the building. He stated that the bank property interrupts any kind of downtown district where people would walk to. He stated that he shops in downtown Libertyville all the time. He stated that it is a pleasurable place to go from shop to shop, but that is not the case for the subject site. He stated that the bank building creates a large buffer.

Mr. Gerard stated that the subject site has had a long history of usage for the same use that they are asking for today. He stated that a previous comment was made that the bank may not be there forever. He stated that if the Plan Commission bases their recommendation on the possibility that the bank may not be there someday, then the Plan Commission would not be doing their job properly. He stated that if the Plan Commission denies the petitioner relief it will impose a burden on him based upon a remote possibility that the bank may go away someday.

Acting Chairman Cotey stated that he would now like to open the hearing up to allow public comment from the audience. He stated that he would like to limit the public comments to the case at hand and not commentary that would include accolades for Mr. Tosto. He stated that the Plan Commission already understands that Mr. Tosto is a man of integrity and that sort of testimony is not necessary at this point and time. He stated that questions or comments regarding the nonconforming structure are welcome.

Mr. Jim Moran, 1264 Deer Trail, Libertyville, stated that he has been a resident of Libertyville for 34 years. He stated that he is attending tonight's meeting as concerned resident. He stated that he is concerned that Mr. Tosto can't remain in his office that he has owned for over 30 years. He stated that he has been a resident long enough to see the city fathers do well and make mistakes. He stated that Mr. Tosto has done well with his business and he would question the judgment of the Plan Commission if they do not let him continue in his office. He stated that he had questioned the judgment of the city fathers for not annexing the land in the Hawthorn area at the south end of town when they had the opportunity.

Ms. Jennifer Horst, 206 West Maple, stated that she works for Mr. Tosto. She stated that she has seen retail uses have continued to flip in the immediate area. She stated that she has not seen pedestrians patronize the west side of the street in the subject site's area.

Commissioner Schultz asked for clarification of the letter from the Village Administrator. Mr. Spoden stated that the letter from the Village Administrator is a Zoning Code interpretation that basically confirms that the subject site will become a legal nonconforming structure that would

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not require variations. He stated that he does not agree with the interpretation, but forwarded the letter to the Plan Commission for their review and consideration. He stated that it does not matter who requests the Map Amendment, but the action would still create a legal nonconforming structure.

Commissioner Schultz stated that the Map Amendment would basically solve Mr. Tosto's problem.

Mr. Spoden stated that Commissioner Schultz is correct because the C-2 District does not have the same limitations on office uses as the C-1 District does.

Commissioner Schultz stated that the proposed Map Amendment would not be consistent with the Village's master plan is not comfortable with what the prior Plan Commission and Village Board members have determined to be the proper zoning districts years ago.

Commissioner Donahue stated that the decision that the Plan Commission is asked to make is to either support the Map Amendment request or not.

Mr. Pardys stated that Commissioner Donahue is correct. He stated that he request is to change the zoning from C-1 to C-2. He stated that the C-2 would remove the office restriction on the ground floor area, the 35 foot rule. He stated that the request is to change the Zoning Map and that the Plan Commission should look to the Zoning Code to guide them during their consideration of the request. He stated that the Map Amendment will not only affect Mr. Tosto, but it will have an impact on every one that will own that property in the future. He stated that one of the factors to be considered is the creation of a non-conformity even though it would be a legal nonconformity. He stated that consideration should be given by the Plan Commission as to whether or not the change in zoning makes sense.

Mr. Pardys reviewed the Zoning Code Standards for Amendments found in 16-14.5. He stated that it will be up to the Plan Commission and Village Board of Trustees as to whether or not Mr. Tosto has complied with the Standards for Amendments.

Acting Chairman Cotey asked if this decision to be made that is before the Plan Commission would create a precedent.

Mr. Pardys stated that precedence would be set by making a recommendation on the Map Amendment based upon the Standards found in the Zoning Code.

Acting Chairman Cotey stated that the Plan Commission has been cautious in the past regarding the setting of precedence.

Commissioner Donahue asked for clarification as to whether a Map Amendment is reversible by the petitioner or not. Mr. Pardys stated that it can be reversed by the Village Board. He stated that Map Amendments are typically applied for by the property owner and subsequent action is then taken by the Village Board.

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Commissioner Donahue asked what the legal status of the property would be if the Map Amendment is not granted. Mr. Pardys stated if the Map Amendment were not granted, then Mr. Tosto's office occupancy would be in violation of the C-1 zoning district regulations.

Commissioner Donahue asked for clarification of the nonconformity created if the Map Amendment were to be granted. Mr. Pardys stated that the nonconformity would then only apply to the structure for its setbacks but the office use would be a permitted use.

Commissioner Donahue asked if there is an option of allowing Mr. Tosto to continue his occupancy as a legal nonconforming use, but when the building changes ownership to then revert without action by the Village Board. Mr. Pardys stated that he has seen only one other case in the Village where Conditional Zoning was granted that pertained to a religious organization. Mr. Pardys stated that he has not looked into the issue of incorporating a sunset clause and cannot speak to its lawfulness or if it should be considered at this point and time.

Mr. Pardys stated that if the Map Amendment were not granted, then the Village would then have to decide what enforcement action it should take against Mr. Tosto. He stated that the only middle ground that could be considered is a "conditional re-zoning", but he has not researched this issue to know presently if it is a lawful option or not.

Mr. Spoden stated that the other conditional zoning case was one where a temporary special use permit was granted to a place of worship.

Mr. Pardys stated that it would be up to the Village Board to grant the Map Amendment and whether or not it wanted to add any conditions to the approval. He stated that he would want the opportunity to research the issue before the Village Board considers making the Map Amendment conditional.

Commissioner Semmelman stated the he is concerned about the nonconformity that would be created by the proposed Map Amendment.

Commissioner Adams stated once Mickey Finn's moves into the neighboring building, it will change the block in which Mr. Tosto's office is currently located. He stated that he cannot see a hardship to support the request.

Mr. Gerard stated that in terms of the Standards for the Map Amendment, not all of the Standards have to be complied with. He stated that if more, rather than less, the number of Standards are met, then the balance tips in favor of granting the request. He stated that regarding the value to which the property is diminished, he stated that would be the case. He stated there was a real estate broker that supported the assertion regarding the diminishment of the property's value if not allowed to amend the Zoning Map. He stated that there would be no negative impact if the Zoning Map were amended. He stated that the Plan Commission should weigh the burden placed upon Mr. Tosto versus the impact upon the Village.

Mr. Gerard stated that hardship standard does not apply to a request for a Map Amendment, but applies for a variation. He stated that tonight's request is not for a variation.

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Acting Chairman Cotey stated that consideration for the request to amend the Zoning Map should be done with the best interest for the Village in mind. He asked Mr. Gerard if he would like for the Plan Commission to render their recommendation tonight. Mr. Gerard stated that he would like for the Plan Commission to render their recommendation tonight.

In the matter of PC 12-13, Commissioner Semmelman moved, seconded by Commissioner Schultz, to recommend the Village Board of Trustees approve a Map Amendment in order to rezone property located at 339 N. Milwaukee Avenue from C-1, Downtown Core Commercial District to C-2, Downtown Community Commercial District, in accordance with the plans submitted.

Motion failed 1 - 4.

Ayes: Cotey
Nays: Adams, Donahue, Semmelman, Schultz
Absent: Moore, Oakley

NEW BUSINESS:

PC 12-15 Paragon Real Estate, LLC, Applicant
1600 S. Milwaukee Avenue

Request is for a Map Amendment in order to rezone approximately 3.15 acres of land from C-4, Shopping Center Commercial District to C-3, General Commercial District.

PC 12-16 Paragon Real Estate, LLC, Applicant
1600 S. Milwaukee Avenue

Request is for a Preliminary Plat of Subdivision for approximately 3.15 acres of land in a C-3, General Commercial District.

Mr. David Smith, Senior Planner, introduce the petitioner's request. He stated that the applicant, Paragon Real Estate, LLC, is requesting approval for a Map Amendment in order to rezone approximately 3.15 acres of land from C-4, Shopping Center Commercial District to C-3, General Commercial District; a Preliminary Plat of Subdivision in order to subdivide approximately 3.15 acres of land into two lots; a variation to reduce the minimum required Perimeter Landscaped Open Space; and sign variations for property located at 1600 S. Milwaukee Avenue which is at the southeast corner of Milwaukee Avenue and Artaius Parkway.

Mr. Smith stated that the Plan Commission and the Zoning Board of Appeals may recall that the site was subject to a prior petition in 2006-2007 for a proposal to develop the Fresh Foods grocery store, but the developer was not able to complete construction before going into arrears. He stated that the property was been vacant since that time.

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Mr. Smith stated if the requests are granted, the petitioner is proposing to develop a two building retail center at the southeast corner of Milwaukee Avenue and Artaius Parkway.

Mr. Scott Day, attorney representing the petitioner, introduced the petitioner, their architect, landscape architect, and civil engineer. Mr. Day stated that the proposal is in line with the Village's Comprehensive Plan by the rezoning to C-3 General Commercial District. He stated that cross access easements shall be created and the minimum required perimeter landscaped opens space reduced between the two lots so that the two retail buildings can share parking and permit access across the two lots.

Mr. Peter Zelenko, architect for the petitioner, presented the architectural drawings to the Plan Commission. He stated the site plan includes a shared parking design between the two proposed buildings, that each building will have its own freestanding business sign. He stated that the north building will be a single tenant grocer with three wall signs and the south building will have up to five commercial tenants thereby necessitating the proposed freestanding multi-tenant sign.

Mr. Gary Weber, landscape architect for the petitioner, described the proposed landscape plan for the site. He stated that the landscape plan includes the addition of canopy trees along the south property line and several landscaped parking lot islands.

Mr. Day addressed standards for the sign and perimeter landscaped open space variations. He stated that the proposed Map Amendment to rezone the subject property from C-4 to C-3 is in keeping with the plan and purposes of the Zoning Code. He stated that the plan is consistent with the proposed uses. He stated that he proposed development will increase retail traffic and needed economic synergy. He stated that Milwaukee Avenue is an I.D.O.T. Strategic Regional Arterial with aggressive traffic thereby necessitating the sign variations requested. He stated that the prior petitioner, Fresh Foods, was granted a sign variation for more wall signs than they are seeking.

Ms. Barb Erickson stated that she owns the property to the east of the subject site. She stated that she is concerned about the drainage as it currently has a negative impact upon her property.

Mr. Jim Caneff, civil engineer for the petitioner, stated that the current drainage issue is temporary and was created when Fresh Foods began grading the property previously. He stated that a barrier curb and filter system will resolve the drainage impact issue. He stated that when this proposal is complete, there will be an eleven (11%) percent increase in pervious surface from the Fresh Food's plan.

Commissioner Schultz asked if there is a storm water issue. Mr. Caneff stated that there will be a decrease in impervious surface which will help to mitigate the storm water impact.

Commissioner Schultz stated that the aisle behind the southern retail building appears to be substantially wide on the site plan.

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Mr. Caneff stated that the wider aisle will help to provide a more conducive turning radius for delivery trucks.

Ms. Erickson stated that she is concerned about the delivery hours and the truck sizes.

Mr. Caneff stated that the delivery trucks are anticipated to be the standard semi-tractor truck with trailer size.

Mr. Greg Van Landingham, petitioner, stated that the deliveries for the grocery store are anticipated to take place before and after standard business hours and the truck trailers are typically 75 feet in length.

Commissioner Donahue asked what the grade difference is between the subject site and the neighboring lot. Mr. Caneff stated that the difference is approximately five (5) feet.

Commissioner Donahue asked if the petitioner can reveal who the proposed grocer is. Mr. Day stated that they are obligated to not reveal who the proposed grocer is as they are still negotiating an agreement.

Commissioner Adams asked for clarification regarding the requested zoning change and the surrounding zoning. Mr. Spoden stated as a C-4 district zoning, the property is too small for development without the need for variations. He stated that there is office zoning to the north of the property, and an auto dealer to the south. He stated that the proposal for 1600 S. Milwaukee Avenue is in line with the Comprehensive Plan.

Chairman Cotey asked the petitioner what action he would like for the Plan Commission to take regarding the requested proposal. Mr. Day stated that he would like for the Plan Commission to render their recommendation to the Village Board.

In the matter of PC 12-15, Commissioner Donahue moved, seconded by Commissioner Schultz, to recommend the Village Board of Trustees approve a Map Amendment in order to rezone approximately 3.15 acres of land from C-4, Shopping Center Commercial District to C-3, General Commercial District, in accordance with the plans submitted.

Motion carried 5 - 0.

Ayes: Cotey, Adams, Donahue, Semmelman, Schultz
Nays: None
Absent: Moore, Oakley

In the matter of PC 12-16, Commissioner Semmelman moved, seconded by Commissioner Schultz, to recommend the Village Board of Trustees approve a Preliminary Plat of Subdivision for approximately 3.15 acres of land in a C-3, General Commercial District, in accordance with the plans submitted.

Motion carried 5 - 0.

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Ayes: Cotey, Adams, Donahue, Semmelman, Schultz

Nays: None

Absent: Moore, Oakley

COMMUNICATIONS AND DISCUSSION:

Commissioner Donahue moved, seconded by Commissioner Schultz, to adjourn the Plan Commission meeting.

Motion carried 5 - 0.

Meeting adjourned at 8:56 p.m.