

MINUTES OF THE PLAN COMMISSION
October 24, 2011

The regular meeting of the Plan Commission was called to order by Chairman Mark Moore at 7:48 p.m. at the Village Hall.

Members present: Chairman Mark Moore, Scott Adams, William Cotey, Dan Donahue, Walter Oakley, Kurt Schultz, and David Semmelman.

Members absent: None.

A quorum was established.

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

Commissioner Cotey moved, seconded by Commissioner Schultz, to approve the September 12, 2011, Plan Commission meeting minutes.

Motion carried 7 - 0.

Commissioner Cotey moved, seconded by Commissioner Schultz, to approve the September 26, 2011, Plan Commission meeting minutes.

Motion carried 7 - 0.

NEW BUSINESS:

**PC 11-10 StreetScape Development, LLC, Applicant
 130-179 School Street**

Request is for an Amendment to the Special Use Permit for a Planned Development to amend Ordinance 10-O-91 in order to allow landings, stairs, and fences to encroach in the building separation and maintenance easement located between the single family detached homes in an R-8, Multiple Family Residential District.

Mr. David Smith, Senior Planner, introduced the request for an Amendment to the Special Use Permit for a Planned Development of the School Street Development. Mr. Smith stated that when Ordinance 10-O-91 was adopted, it included a list of conditions intended to regulate the development of the 26 single family homes along School Street. Mr. Smith stated that due to the design of the homes relative to their close proximity to each other there was established, as part of the approval of the amended final plat, a maintenance and building separation easement. Mr. Smith stated that once the homes are constructed they will have a physical separation of approximately 4 feet from each other. Mr. Smith stated that ordinance condition states that no structures of any kind including eaves, gutters, and other appurtenances of the homes shall be permitted to encroach into the building

Minutes of the October 24, 2011, Plan Commission Meeting
Page 2 of 10

separation and maintenance easement. He stated that it also serves to allow the adjacent homeowner to gain access to the exterior side of his home to do maintenance to the home.

Mr. Smith stated that the petitioner is seeking to amend the condition that restricts the encroachment into the building separation and maintenance easement to allow stoops and fences.

Mr. John McLinden, StreetScape Development, LLC, 158 East Cook Avenue, petitioner, stated that they are requesting that stoops be permitted within the easement, but to not exceed three risers and two treads in terms of height. He stated that all of the homeowners will have the 4 four foot separation condition.

Mr. McLinden stated that many of the homeowners will have pets or small children. He stated that he would like for the homeowners to be able to enclose their side yard located between the homes which would be the encroachment with a fence into the building separation and maintenance easement area. He stated that the fences would be limited to either white or bronze. He stated that he concurs with the Appearance Review Commission recommendation to limit the fence to not protrude beyond the building line. He stated that Village Staff's position is that the fence would create an obstruction for ladders when accessing the easement area. He stated that the only obstruction is directly where the fence would be located and should not prohibit the movement of the ladder anywhere else within the easement area.

Mr. Barry McMahon, 151 School Street, stated that he purchased a thirty-seven (37) foot wide lot within the subject development and wants to be able to use the side yard. He assumed that small fences could be used when he purchased the property. He stated that he supports the proposed amendment.

Commissioner Oakley asked what height is proposed for the fences. Mr. McLinden stated that the proposed maximum height is 4 feet.

Commissioner Cotey stated that he is concerned about how to address the fence crossing property lines and he stated that the fence color choice should be limited to one color. He stated that a gap between the fence and the neighboring house will be created without crossing the property line to completely enclose the side yard.

Commissioner Semmelman stated that he is concerned about the gap as well and stated that without complete enclosure it would be impractical.

Mr. McLinden stated that a co-application between two property owners could be considered in order cross the property line.

Mr. David Pardys, Village Attorney, stated that if the side yard property line is crossed with a fence then both property owners should apply for a fence permit or if an easement were put in place then one applicant may suffice.

Minutes of the October 24, 2011, Plan Commission Meeting
Page 3 of 10

Commissioner Semmelman asked if all of the lots can have easements for the fence encroachment and the approval to cross property lines.

Mr. Pardys stated that the incorporation of easement language could be put into the ordinance amendment. He stated that all of the current owners have to consent to the establishment of an easement on their property. He stated that he is not certain if such an amendment would affect the covenants.

Commissioner Oakley stated that he is concerned about safely accessing the side yard once a fence is installed.

Chairman Moore stated that requiring that the fences be gated should be considered.

Mr. McLinden stated that gates on both the front end fence and the rear end fence could be considered.

Commissioner Adams stated that consideration be given to a requirement that the gates not be permitted to lock.

Commissioner Oakley stated that he is concerned about the ability of rescue service being obstructed from accessing the home with a fence in the proposed location.

Commissioner Donahue asked if the fence post could be installed on the owner's property while allowing the remaining portion of the fence to overhang across the property line without requiring a dual application or easement. Mr. Pardys stated that there will still be an air rights issue and permission from the neighboring property owner is still needed.

Commissioner Donahue stated that he is concerned about future antagonism between neighbors.

Mr. McLinden stated that the legal right for the fence can be established with the proposed amendment to the ordinance.

Commissioner Schultz stated that if an easement can be established for the fence and the 8" gap can be eliminated between the end of the fence line and the adjacent house, he would support the proposal to all the fences. He stated that if the stoop is at a height that does not require hand rails, he also supports allowing the encroachment into the building separation and maintenance easement.

Mr. John Spoden, Director of Community Development, stated that at the proposed maximum dimensions, hand rails will not be required for the stoops.

Commissioner Schultz stated that if the stoop was more than a single step that it could be problematic.

Minutes of the October 24, 2011, Plan Commission Meeting
Page 4 of 10

Chairman Moore stated that Staff and the Village Attorney will need an opportunity to craft the language for the amendment to the ordinance in light of the discussion that has taken place so far. He stated that it now appears language should include the requirement for latching non-locking gates, cross access easements, etc.

Mr. Fred Chung, Senior Project Engineer for the Village of Libertyville, stated that access for Public Works Staff will be necessary to read water meters.

Chairman Moore stated that the stipulations shall include fences that are gated and not locked so the properties should be accessible.

Mr. Smith stated that Staff stands by their recommendation to not support the fences as they may encumber access.

Mr. McLinden stated that ladders may go on either side of the fence so accessing the side yard area should be no issue.

Chairman Moore stated rescue service personnel should be able to walk from one end of the property to the other end so gates on both ends should be considered.

Mr. McLinden stated that gates on both ends can be stipulated in the ordinance amendment.

Commissioner Semmelman stated that he is concerned about the ability to open the gates after a heavy snow.

Mr. McLinden stated that it would be treated like any other fence gate in someone's back yard.

Commissioner Adams stated that consideration should be given to adding a stipulation to the homeowner's association covenants regarding the snow removal.

Mr. McLinden stated that it would be the responsibility of the homeowner for the snow removal on their property.

Chairman Moore stated that there appears to be two components to the proposed amendment. He stated that they include the allowance of stoops into the side yard, easement area and the allowance of fences into the side yard, easement area and to cross the side yard property line to connect to the adjacent house with the neighboring property owner's consent. He asked for the opinion of the Plan Commission members regarding the discussion and proposal thus far.

Commissioner Oakley stated that he supports the proposal provided that the amendment conditions address both safety and snow removal issues.

Commissioner Adams stated that he supports the proposed amendment provided that it is enforceable.

Minutes of the October 24, 2011, Plan Commission Meeting
Page 5 of 10

Commissioner Cotey stated that he is not in favor of the proposed amendment as written.

Commissioner Semmelman stated that he supports the proposed amendment provided that the fence is effective and safe.

Commissioner Donahue stated that he echoes Commissioner Semmelman's statement.

Commissioner Schultz stated that he echoes Commissioner Donahue and Commissioner Semmelman's statement.

Chairman Moore requested that the drafted language to the amendment should be written in such a way as to obligate the homeowner to take responsibility for the care and maintenance of the fence including, but not limited to maintaining clearance around the gate, i.e. snow removal as needed.

Commissioner Donahue stated that it appears that the fences will span across two properties and that they will be gated, unlocked, and operable during periods of snow.

Commissioner Semmelman stated that consideration should be given to obligating the homeowner to keeping snow clear around the gated area and not obligate them to keeping snow removed within the whole easement area.

Chairman Moore stated that the gates should be latchable, but be prohibited from locking.

Commissioner Cotey stated that the fence color should be limited as well.

Commissioner Schultz stated that he is concerned about the ensuing increase of lot coverage if gates are required for both ends of the property, there might be additional walkway surface created.

Mr. Smith stated that all lots are subject to lot coverage limits which are reviewed at time of building permit submittal.

Commissioner Oakley stated that he is concerned about the potential increase of clutter collected between the houses.

Mr. McLinden stated that the homeowner's association covenants may address outdoor storage issues, but he stated that he is not certain if that issue is currently addressed or not.

Chairman Moore stated for confirmation that the maximum proposed fence height is 4 feet.

Mr. McLinden stated that the proposed fence height is 4 feet.

Mr. Pardys stated that he will draft the changes as discussed.

Minutes of the October 24, 2011, Plan Commission Meeting
Page 6 of 10

In the matter of PC 11-10, Commissioner Cotey moved, seconded by Commissioner Semmelman, to continue this item to the November 14, 2011, Plan Commission meeting.

Motion carried 7 - 0.

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

PC 11-11 Ken Thompson, Applicant

Request for a Text Amendment to Section 7-3.2 of the Libertyville Zoning Code relating to Permitted Uses in the I-2, East Downtown Industrial District.

Mr. David Smith, Senior Planner, introduced the petitioner's request. He stated that the petitioner, Ken Thompson, is requesting a text amendment to the Village of Libertyville Zoning Code to allow Legal Services and Real Estate Services as Permitted Uses in the I-2, East Downtown Industrial District.

Mr. Smith stated that the proposal by the petitioner offers a change to the I-2 District that reflects the intent of the Comprehensive Plan's East Side Subarea Plan, more specific to the "Transitional Office Mixed-Use" area intended to encourage development of small office buildings that would complement the existing industrial concentrations. Mr. Smith stated that the abutting and adjacent roadways and alleys would function, wherever possible, as a buffer between the East Side Residential area and the East Side I-3 Industrial area.

Mr. Noah Thompson, petitioner, stated that this amendment will allow him to operate an attorney's office located in the T & T printing service building on Second Street.

Commissioner Oakley asked why this text amendment is coming forward at this time and not with the entire Zoning Code update.

Mr. John Spoden, Director of Community Development, stated that the proposal is in line with the Comprehensive Plan's implementation strategy for the Transitional Office Mixed Use area currently known as the I-2 District. He stated that by approving this component of the Zoning Code update, it will help to facilitate the petitioner's efforts to occupy the space at the T & T building on Second Street as this is within the Comprehensive Plan Transitional Office area.

In the matter of PC 11-11, Commissioner Semmelman moved, seconded by Commissioner Adams, to recommend the Village Board of Trustees approve a Text Amendment to Section 7-3.2 of the Libertyville Zoning Code relating to Permitted Uses in the I-2, East Downtown Industrial District.

Motion carried 7 - 0.

Minutes of the October 24, 2011, Plan Commission Meeting
Page 7 of 10

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

OLD BUSINESS:

PC 10-46 118 West Cook Avenue
Village of Libertyville, Applicant

Request is for an amendment to Chapter 26 of the Libertyville Municipal Code in order to revise and adopt the Libertyville Zoning Code.

Mr. John Spoden, Director of Community Development, stated the remaining sections in the Zoning Code that have not yet been addressed by the Plan Commission for revisions include the Performance Standards, sign regulations, and residential F.A.R. regulations. He stated that the Village Board has requested that all of the other revisions done by Staff and the Plan Commission be forwarded to them for review and approval. He stated that the Performance Standards section of the Zoning Code can be reviewed by the Plan Commission on November 14, 2011. Mr. Spoden stated that it is his intent to get a recommendation from the Plan Commission for the Zoning Code updates, except for sign regulations and residential F.A.R. regulations, at their November 28, 2011 meeting. He stated that the proposed Adult Use ordinance needed to be re-visited for Plan Commission review as there have been new Plan Commission members appointed to the Plan Commission since they last reviewed it. He stated that the proposed Zoning Code update includes in its definition section Licensed Sexually Oriented Business and this use would be a Special Permitted Use in the I-1 District. He stated that the Village is legally obligated to find a district for Adult Uses. He stated that it would not be appropriate for Adult Uses in any commercial district or abutting any residential district. He stated that the I-2 and I-3 Districts abut residentially zoned property. He stated that the O-2 District is large district causing Staff to consider limiting the Adult Uses to the I-1 District only. He stated that there are additional regulations for Adult Uses including the number, separation from other certain types of land uses, and they would also require a Special Use Permit. He stated that this is not only a change to the Zoning Code, but a recommendation to change the Municipal Code as well.

Mr. David Pardys, Village Attorney, stated Adult Uses must be allowed and regulated. He stated that currently there aren't any regulations that specifically apply to Adult Uses or Sexually Oriented Uses. He stated that Adult Uses cannot be zoned out of the Village as they are a protected form of speech. He stated that there have been studies that have verified that Adult Uses can have secondary negative impacts upon communities so it makes sense to identify appropriate zoning districts to allow them and have the least impact on other more sensitive land uses. He stated that the Adult Uses should be defined specifically and regulated to certain zoning districts otherwise anyone can seek approval to locate them in districts that may not be appropriate to have them. He stated that the courts do recognize the fact that the Village has the right to put certain limitations on Adult Uses. He stated that the courts have stated that Adult Uses can be prohibited from commercially viable

Minutes of the October 24, 2011, Plan Commission Meeting
Page 8 of 10

areas. Staff has suggested that the I-1 District in Libertyville is the most reasonable district to allow Adult Uses and subject to a Special Use Permit.

Chairman Moore stated that he remembers that the Plan Commission already covering these proposed changes relative to Adult Uses.

Mr. Spoden stated that the Plan Commission has covered this issue, but it was at a time when most of the Plan Commission members were different. He stated that he determined it appropriate to bring it back to the Plan Commission as there are now new members on the Commission.

Commissioner Schultz asked for clarification as to the area and location of the I-1 District. Mr. Spoden described the I-1 District areas and locations. He stated that the main I-1 District area is near Rt. 45 and Peterson Road.

Commissioner Schultz stated that is near the Libertyville Sports Complex.

Mr. Spoden stated that after consulting with the Village Attorney and Staff review, the I-1 District was determined to be the best district suited for Adult Uses.

Mr. Pardys stated that Adult Uses area required to have a separation of not less than 750 feet from a church, synagogue, mosque, public or private education facility, boundary of a residential district, public park, property line of a lot devoted to a residential use, and any entertainment venue directed towards children. He stated that there is a minimum separation requirement of 1,000 feet between another Adult Use.

Mr. Spoden stated that the Libertyville Sports Complex is also an entertainment facility that provides services to children as then would qualify as a facility which Adult Uses must maintain the stipulated separation from.

Mr. Pardys stated that the separation requirements are intended to recognize the Constitutional rights of Adult Use businesses.

Commissioner Schultz stated that consideration should be given to increasing the minimum separation requirements.

Mr. Pardys stated that the Village may consider increasing the minimum separation requirement provided that the regulation does not become so restrictive that it effectively bans Adult Uses completely out of the Village.

Commissioner Schultz stated that it is not his intent to be arbitrary, but would like to see the 750 feet separation increase to 1,000 feet.

Commissioner Donahue asked for clarification regarding the Sports Complex as an entertainment facility which would require the Adult Use separation.

Minutes of the October 24, 2011, Plan Commission Meeting
Page 9 of 10

Mr. Pardys stated that he has not seen this graphically illustrated.

Commissioner Donahue asked for an exhibit that would illustrate the exclusion zone and what it would bump into.

Mr. Smith stated that the proposed ordinance is not clear as to where the separation is measured from, whether it is from the facility or the property line.

Chairman Moore stated that it should be made clear that the separation is from the property lines.

Commissioner Donahue stated that further clarification or a distinction should be made regarding the use of the term companion and employee.

Commissioner Semmelman stated that consideration should be given to increasing the separation between uses, but otherwise agrees with the proposed Adult Use ordinance as proposed.

Commissioner Cotey stated that consideration should be given to increasing the separation between uses, but otherwise agrees with the proposed Adult Use ordinance as proposed.

Commissioner Oakley stated that he prefers that Adult Uses be completely prohibited from the Village.

Chairman Moore stated that the Plan Commission has requested that Staff review the minimum separation requirements to see if they can be increased.

Mr. Pardys asked if the Plan Commission accepted the 1,000 foot separation between each Adult Use. Chairman Moore responded that he can accept the 1,000 foot separation between each Adult Use.

Mr. Spoden stated that Staff will present changes to the Performance Standards section on November 14, 2011, and then back to the Plan Commission on November 28, 2011, so that the Plan Commission can make a recommendation on the Zoning Code revisions that have been made thus far. He asked if the Plan Commission would prefer to make their recommendation on each Article separately or make a recommendation on the whole Zoning Code.

Chairman Moore stated that each Article should be subject to its own separate motion by the Plan Commission.

Commissioner Donahue stated that consideration should be given to a consent agenda item format with one vote for the entire Code, but allow any Plan Commission member to pull an individual item for separate consideration if necessary.

Commissioner Schultz stated that he concurs with Commissioner Donahue.

Minutes of the October 24, 2011, Plan Commission Meeting
Page 10 of 10

Chairman Moore stated that he concurs with Commissioner Donahue as well.

In the matter of PC 10-46, Commissioner Schultz moved, seconded by Commissioner Semmelman, to continue this item to the November 14, 2011, Plan Commission meeting.

Motion carried 7 - 0.

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

Nays: None

Absent: None

COMMUNICATIONS AND DISCUSSION:

Commissioner Adams moved and Commissioner Semmelman seconded a motion to adjourn.

Motion carried 7 - 0.

Meeting adjourned at 9:10 p.m.