

CITY OF NORTHVILLE
Planning Commission
May 19, 2015
Northville City Hall – Council Chambers

1. CALL TO ORDER:

Chair Wendt called the meeting to order at 7:30 p.m.

2. ROLL CALL:

Present: Steve Kirk
Dave Mielock
Christopher Miller
Matthew Mowers
Mark Russell
Anne Smith
Jeff Snyder
Jay Wendt

Absent: Carol Maise (excused)

Also present: James Allen, Mayor Pro Tem
Patrick Sullivan, City Manager
Sally Elmiger, Planning Consultant

3. APPROVAL OF AGENDA: by consensus

4. MINUTES OF PREVIOUS MEETING: May 5, 2015

Motion Kirk support by Smith, to approve the May 5, 2015 minutes as published. Motion carried unanimously.

5. AUDIENCE COMMENTS: None

6. REPORTS:

A. CITY ADMINISTRATION:

City Manager Sullivan said that at last night's City Council meeting there was a first reading of a new ordinance that would restrict fireworks to the day before, the day of, and the day after national holidays, from 8:00 a.m. to 12:00 midnight except on New Years, when fireworks could be used until 1:00 a.m.

B. CITY COUNCIL:

Mayor Pro Tem Allen said the ordinance had been updated to allow children under 12 years old to enter Northville Downs in the company of their parent or guardian. This allowed families to visit, along with 4-H clubs, etc.

C. PLANNING COMMISSION:

In response to a question from Commissioner Mowers, Planning Consultant Elmiger said that the previous information about other cities’ ordinances regarding accessory structures/garden ornaments had been provided to the Commission. Commissioner Mowers said he thought that Planning Consultant Elmiger was going to do an additional, updated review. Planning Consultant Elmiger said that she would report back concerning how the proposed modifications to the ordinance were researched and made.

Commissioner Mowers asked if residents were notified when their properties were rezoned. Planning Consultant Elmiger and City Manager Sullivan explained that the zoning in the Master Plan was not an actual rezoning, but rather a plan by which the City would like to move forward, if possible and appropriate. The only rezoning being currently accomplished was Cady Street, in terms of the Cady Street Overlay District.

A general discussion regarding rezoning followed, especially in the area of Grace and Rayson Streets, currently zoned R-1 but master planned for R-1B. ~~Typically a landowner would request the zoning change to that shown in the Master Plan.~~ Typically, the way a property was rezoned was that a property owner would request that the property be rezoned to match the zoning shown in the Master Plan. However, it was also possible for the City to initiate a zoning change, as in the Cady Street Overlay District.

City Manager Sullivan asked how the Planning Commission would like to proceed regarding the change in the Grace and Rayson Street area along with some other R-2 areas along Center Street. After discussion, it was decided that City Manager Sullivan would provide Planning Consultant Elmiger with information regarding properties that were two or more units in the area under discussion, and whether or not to move forward with rezoning could then be discussed at a future meeting.

In response to a question from Commissioner Mowers, Mayor Pro Tem Allen said that he thought work on Rayson Street should begin sometime in August.

D. OTHER COMMUNITY/GOVERNMENTAL LIAISONS: None.

7. PUBLIC HEARING:

Chair Wendt opened the public hearing. He noted that no public was present except for a high school student who was present as part of a school assignment. Chair Wendt then closed the public hearing.

DIMENSIONAL VARIANCE CRITERIA

Planning Consultant Elmiger gave the background for this agenda item. After training in early 2014, the Board of Zoning Appeals felt that it would be more practical to have fewer than the current seven criteria. There were only four criteria that were required by the State; these were developed through case law.

Planning Consultant Elmiger continued that the proposed ordinance change actually included five criteria, with the fifth one having to do with public safety. In the original language, public safety was mentioned in two criteria. This idea had been consolidated into a single criterion.

The “relationship to adjacent land uses” criterion was eliminated, as it had not been the subject of case law and was not considered a mandatory criterion for BZA consideration.

Lastly, examples of “self-created” had been added to the ordinance to assist BZA members in determining what was and was not a self-created situation.

Commissioner Mowers said that as a result of the BZA training already mentioned, the requirement was changed so that all criteria had to be met in order to grant a variance. In the past, only one criterion had to be met. Planning Consultant Elmiger agreed.

Commissioner Mowers initiated a discussion regarding the definition of “self-created,” and noted that this was still open to interpretation.

Planning Consultant Elmiger explained that extreme topography would be considered a not self-created problem.

Commissioner Mowers asked about such things as deciding a minimum variance, substantial justice, and whether BZA decisions should set precedents or if each case should be decided on its own merits.

Planning Consultant Elmiger explained that the BZA did not consider any one case to set a precedent for another. The BZA used the criteria per ordinance and tried to glean what was unusual or unique about the property that would merit relief from ordinance standards.

Commissioner Mowers pointed out that the proposed language for garden ornaments limited structures to 32 square feet. Yet the smallest structure available in the marketplace (Home Depot, Lowes, etc) of the type discussed in the proposed accessory structure/garden ornaments ordinance was 64 square feet and most were larger than that. Was the fact that smaller structures were not commercially available a practical difficulty?

Planning Consultant Elmiger explained that such a structure could be placed in a back yard. The proposed garden ornament ordinance was for front and side yards only.

In response to a question from Chair Wendt, Commissioner Mowers said this issue was not just specific to his own case, previously heard by the ZBA, but one that was experienced by other residents as well.

In response to a further question from Chair Wendt, Commissioner Mowers said that when he appeared before the BZA, four BZA members felt he had met every criterion, and three thought he had met none of them. He was sharing an experience in which BZA criteria seemed to be applied subjectively.

Commissioner Mowers continued that now was the time to address the criteria by which the BZA granted variance requests. A review of variances granted over the last 2-3 years showed cases where variances were granted and yet there was nothing exceptional about the property at all.

Commissioner Mowers specifically addressed proposed paragraph 3.iii.: *Making improvements in violation of the ordinance*. If this wording were followed precisely, no variances would ever be granted because all improvements that came before the BZA were improvements in violation of the ordinance.

In response to comments from the Commission, Commissioner Mowers said that his point was whether someone made improvements before or after asking for relief from the BZA, according to this language all improvements in violation of the ordinance resulted in a self-created situation and should be denied. At the least, this paragraph should be removed, since all applications before the BZA were a result of desired

improvements that were in violation of the ordinance. If the BZA had the ability to grant variances, that paragraph should be removed.

Commissioner Mielock said that he thought the intent of the paragraph was to address people who made improvements and then asked for a variance after the fact.

Discussion included suggestions as to how to reword this paragraph, i.e.,: *improvements made in violation of the ordinance prior to requesting a variance.*

Discussion continued. 3.iii. was probably not necessary as an example and could be deleted entirely.

In response to a question from Commissioner Mielock regarding process, Planning Consultant Elmiger advised, and City Manager Sullivan agreed, that this language change should not go to City Council before the BZA had a chance to review it.

City Manager Sullivan said that if the Planning Commission wanted to approve the proposed ordinance language with the change just discussed, the item could be held until the July City Council meeting to give the BZA a chance to react.

In response to a further question from Commissioner Mielock, Planning Consultant Elmiger said that in the event of a negative response from the BZA, she could request a reason for that response.

Discussion followed as to whether the Commission should take action on the proposed change before the BZA could once again review it.

Commissioner Mielock addressed paragraph 3.: *The problem and resulting need for the variance did not result from the actions of the applicant and/or the applicant's immediate predecessor....*
~~Commissioner Mielock addressed the issue of a third owner being able to ask for a variance, and ways of gaming the system using a third owner to obtain a variance.~~ Commissioner Mielock said that this language allowed a third owner to request a variance. For example, in the instance of a lot split, a lot could be sold by the original owner/immediate predecessor to a second owner, who could end up selling again and the third owner could then ask for a variance. Yet all along the situation would be a self-created one.

Planning Consultant Elmiger said that language was in the previous draft. This had something to do with “buyer beware,” that if someone purchased a home or lot in a certain situation, they would have to live with that.

Discussion followed. Especially regarding lot splits, the information needed to be clear as to what a buyer could or could not do, or at least what the standards were for that zoning district.

After further discussion, Chair Wendt asked for a motion from the Commission.

Commissioner Mowers offered the following motion:

MOTION by Mowers to not send the changes to Zoning Ordinance 25.04 to City Council so that the Board of Zoning Appeals can consider recommended changes to 25.04.B.3., modified paragraph 3 to remove sub-item iii. and the removal of the word *immediate* before predecessor from B.3..

City Manager Sullivan asked the Commission that if the BZA approved these changes, did the Commission want the ordinance to come back to the Planning Commission or should it go right to City Council? The Commission could approve the proposed ordinance, subject to approval of the changes by the BZA. If the BZA disagreed, it would return to the Planning Commission.

Commissioner Mowers said he would **withdraw the previous motion** and offer the following:

MOTION by Mowers, support Russell, that the Planning Commission conditionally approve modifications to Zoning Ordinance 25.04 as presented this evening, subject to approval by the BZA for the following two changes to those modifications:

- 1. Removal of the word *immediate* before predecessor from the first paragraph of 25.04.B.3**
- 2. Removal of sub-item iii from 25.04.B.3.**

Also, should the BZA not accept the modifications this will be returned to the Planning Commission for further evaluation. Otherwise it can be submitted to the City Council.

Chair Wendt asked for a roll call vote:

Russell	yes
Snyder	yes
Smith	yes
Miller	yes
Kirk	yes
Mielock	yes
Mowers	yes
Wendt	yes

Motion carried 8-0 (Maise absent).

~~Chair Wendt closed the public hearing.~~

8. DISCUSSION:

FRONT YARD AVERAGING

Planning Consultant Elmiger explained that Building Official Strong had pointed out that because of the .9 multiplier in the calculation for front yard averaging, new homes in the R-1B District were allowed to be closer to the street than existing homes. The multiplier allowed new homes to be 90% of the average. The Planning Commission might want to consider just having an average and deleting the multiplier. This would ensure that homes were a consistent setback along the street.

In response to a question from Commissioner Russell, Planning Consultant Elmiger said that using a multiplier of .9 would also result in a shallower setback. Because some new owners were maxing out their coverage, the front walls of new homes were being constructed closer to the street than neighboring homes.

City Manager Sullivan said that the original intent of the ordinance was to bring homes more in line with each other, or having new homes set a little back from the others.

Discussion followed:

- Could front yard averaging be weighted more on the adjacent homes, rather than all homes on the street?
- Some older homes were set considerably back from the street. Asking new construction to be set so far back might not be realistic.
- One way to treat the average would be: the average minus one-foot setback.
- Right now the .9 multiplier for front yard averaging was encouraging a steady migration toward the street.
- If a home within the 200-foot boundary area was significantly different in setback than the other homes, it could be treated as an outlier and not included in the averaging.
- Also, traditionally homes across the street were never included in the averaging calculations.
- The averaging included homes within 200 feet in both directions, unless the parcel was a corner lot. Again, homes across the street could not be counted.
- The ordinance was unclear as to whether homes across the street could be counted; not counting them had been a traditional application.
- If the .9 calculator was removed, a 1.1 calculator could be substituted. Or setbacks could be required to be 1 foot behind the average.

Commissioner Mielock thought the 1 foot behind the average would be a good solution.

In response to a question from Commissioner Mowers, Planning Consultant Elmiger said the line of the front porch – if there was one – started the setback calculations.

Planning Consultant Elmiger explained this issue existed in the R-1B District.

Planning Consultant Elmiger asked for clarification regarding moving forward with ordinance changes. The consensus of the Commission was:

- Averaging would include homes within 200 feet in both directions, but would not cross a street.
- When averaging was used, a home would have to be one foot behind the average.

Commissioner Mielock thought these modifications were simple and clear; he indicated he was ready to make a motion.

MOTION by Mielock, support by Mowers, to set a public hearing for front yard averaging modifications to article 15.02.16, as stated this evening, for the next available meeting.

Chair Wendt asked for a roll call vote:

Russell	yes
Snyder	yes
Smith	yes
Miller	yes
Kirk	yes
Mielock	yes
Mowers	yes
Wendt	yes

Motion carried 8-0 (Maise absent).

OTHER DISCUSSION

Commissioner Kirk asked for an update regarding the tree ordinance. Planning Consultant Elmiger said she had not yet prepared changes for the ordinance. City Manager Sullivan noted that the tree ordinance would come into play as lots were sold on Hill Street. The requirements of the tree ordinance for new construction were reviewed in terms of mitigation for any trees over 6 inches DBH, with more significant mitigation for landmark trees.

Commissioner Snyder asked about the large black walnut that had been removed from the right-of-way.

Commissioner Russell asked about a house on Center Street with a temporary fabric structure.

9. ADJOURN

As there was no further discussion, Chair Wendt asked for a motion to adjourn.

MOTION Mielock support by Russell, to adjourn the Planning Commission meeting at 8:37 p.m. Motion carried unanimously.

Respectfully submitted,
Cheryl McGuire
Recording Secretary

Approved as amended 06-02-2015