

**BELLE PLAINE PLANNING & ZONING COMMISSION
REGULAR SESSION
MAY 10, 2010**

1. CALL TO ORDER. 1.1. Roll Call.

The Planning and Zoning Commission met in Regular Session on Monday, May 10, 2010 in the Government Center at 218 North Meridian Street, Belle Plaine, MN. Chair Henry Pressley called the meeting to order at 7:00 p.m. with Commissioners Bob Chaussee, Scott Schneider and Alternate Kelly Norton present. Also present were Community Development Director Trisha Rosenfeld and Council Liaison Gary Trost. Commissioners Daniel Tix and Chris Potter were not present. Alternate Norton was upgraded as a voting member.

2. APPROVAL OF AGENDA.

MOTION by Commissioner Schneider, second by Commissioner Chaussee, to approve the agenda as presented. ALL VOTED AYE. MOTION CARRIED.

3. APPROVAL OF MINUTES. 3.1. Regular Session Minutes of April 12, 2010.

MOTION by Commissioner Chaussee, second by Commissioner Norton, to approve the Regular Session Minutes of April 12, 2010 as presented. ALL VOTED AYE. MOTION CARRIED.

4. PUBLIC HEARINGS.

4.1. Conditional Use Permit. The Planning Commission will receive and consider public comment on a request for a conditional use permit as required in the Industrial/Commercial District, by Oppidan, Inc. and CLC Development, LLC, to allow the construction of a retail development and restaurant on Lot 1, Block 1, of proposed Diversified Business Park Third Addition, in the Industrial/Commercial District.

Chair Pressley referenced a memo dated May 10, 2010 from Community Development Director Rosenfeld regarding a request by Oppidan for approval of a conditional use permit, final plat and site plan.

Community Development Director Rosenfeld explained that Oppidan Inc. is requesting the review of a conditional use permit, final plat and site plan for the retail center of Outlot A of Diversified Business Park Second Addition. The applicant is proposing a 6,500 square foot multi-tenant retail building, with McDonald's in 3,000 square feet, and the balance for individual tenant(s). The zoning classification for this site is I-C, Industrial Commercial. The proposed Coborn's Superstore is to the west and south of this development, with vacant land to the east, guided as Highway-Commercial. Oppidan has indicated the shared access aisle with the property owner to the east will remain private and have no public participation or maintenance. As a condition of the approvals for the Diversified Business Park Second Addition (Coborn's), a temporary construction easement will be necessary for construction grading. A permanent access easement will be necessary for access to the adjacent properties.

The traffic impact study was completed for the Coborn's development. The traffic study completed for that development assumed the second phase of this development, the retail center, was only retail/office. The traffic study was revised to include the fast-food restaurant. The City did receive a copy of the revised study prior to the City Council meeting on April 19, 2010. The traffic study does not indicate additional public improvements may be warranted for traffic congestion on public roadways. MnDOT has indicated that comments from the Diversified Business Park Second Addition plat are applicable to this application as well. They have nothing new to add to their comments. Scott County has verbally indicated to staff they do not have additional comments regarding this application, with the exception they would like to review and comment on the revised traffic study. Staff has passed along the revised traffic study for their review.

The applicant has reconfigured the site and is proposing the current layout. Engineering has reviewed the revised layout and offers his comments in the memorandum provided to the City on May 3, 2010. Off-street parking requirements and proposed parking spaces for this development were summarized. The site currently represents a total of 53 standard spaces plus 2 handicapped spaces for this entire development. Based on what is currently represented, and what is required according to the indicated square footage of the structure, the applicant has requested a reduction to the required amount of off-street parking for this development in the conditional use permit application. The reduction is to allow for 16 less standard parking spaces from the requirements. Four of the 53 parking spaces are located on the adjacent Coborn's development.

It appears the building elevations meet the requirements of the zoning ordinance. Sign permits have not yet been applied for, but are separate from the site plan review. It appears the landscaping plan meets the requirements of the zoning ordinance. The proposed acreage is approximately one acre, therefore the park dedication fees for this development is \$2,395/acre. The City Engineer comments dated May 3, 2010 need to be adhered to as part of all approvals. The developer's agreement will be a condition of final plat approval and will be presented to the City Council for final approval at a future meeting.

Chair Pressley opened the public hearing at 7:08 p.m. and asked for public comment. There was no response.

MOTION by Commissioner Chaussee, second by Commissioner Schneider, to close the public hearing at 7:09 p.m. ALL VOTED AYE. MOTION CARRIED.

Paul Tucci, Oppidan, Inc., and LeRoy Chard, property owner, were present.

Chair Pressley noted that the pedestrian traffic and internal traffic flow have been reconfigured since review at the last Planning Commission meeting. Commissioner Chaussee asked Paul Tucci if there are any conditions that Oppidan is unable to meet. Mr. Tucci replied that he would prefer that the condition stating that the Diversified Business Park Second Addition plat is filed "prior to the filing of the Diversified Business Park Third Addition plat", rather than "prior to Council approval." Community Development Director Rosenfeld explained that the City's legal counsel has recommended the language as stated in the resolution. Chair Pressley recommended the Planning Commission abide by legal counsel's recommendation.

1. Resolution PZ-10-009 Recommending Approval of the Final Plat for Diversified Business Park Third Addition.

MOTION by Commissioner Chaussee, second by Commissioner Schneider, approve Resolution PZ-10-009 Recommending Approval of the Final Plat for Diversified Business Park Third Addition. ALL VOTED AYE. MOTION CARRIED.

2. Resolution PZ-10-010 Recommending Approval of a Conditional Use Permit for Retail Development for Diversified Business Park Third Addition.

MOTION by Commissioner Chaussee, second by Commissioner Schneider, to approve Resolution PZ-10-010 Recommending Approval of a Conditional Use Permit for Retail Development for Diversified Business Park Third Addition. ALL VOTED AYE. MOTION CARRIED.

3. Resolution PZ-10-011 Recommending Approval of a Site Plan for Oppidan Retail Development for Diversified Business Park Third Addition.

MOTION by Commissioner Schneider, second by Commissioner Chaussee, to approve Resolution PZ-10-011 Recommending Approval of a Site Plan for Oppidan Retail Development for Diversified Business Park Third Addition. ALL VOTED AYE. MOTION CARRIED.

4.2. Variance. Request. The Planning Commission will consider public comment on a request by Jason Ladd, 314 North Linden Street, Belle Plaine, MN, for a five (5) foot variance from Section 1105.07 Subd. 6 (1) (b) to allow the construction of a twenty (20) foot high accessory structure in the R-3, Single and Two Family District.

Chair Pressley referenced a memo dated May 10, 2010 from Community Development Director Rosenfeld regarding a variance request from Jason Ladd.

Community Development Director Rosenfeld explained that the property owner at 314 North Linden Street, Jason Ladd, has submitted an application for a variance to construct an accessory structure with a 20 foot height, measured from the finished floor elevation to the peak of the roof, regardless of the roof type (City Code definition of Building Height). The zoning ordinance states under maximum height for building standards: *Accessory Building: Fifteen (15) feet*. The zoning classification indicated for this site is R-3 Single and Two-Family Residential District. There are currently no accessory structures on this property. There is a dog kennel and patio with a pergola adjacent to the proposed garage location. The City granted a variance in 2003 to allow the property owner to extend the width of the driveway, providing only a 1' setback (5' minimum required) from the south property line. The proposed detached garage will not allow for vehicular access due to the alley vacation on the west side of the property, the location of house on the east side of the property, and the property being adjacent to Chatfield Park to the south. The findings of fact for the granting the variance in 2003 were found due to the lack of vehicular access to the rear side of the property.

Chair Pressley opened the public hearing at 7:17 p.m. and asked for public comment.

Jason Ladd, 314 North Linden Street, applicant and property owner, requested approval of the variance. He explained that the topography of the lot has created a hardship. He distributed photos of his property as it relates to elevation.

Chair Pressley acknowledged receipt of a letter from Donald and Marilyn Zabel, 501 East State Street, who were opposed to the variance request due to lack of public access to the Ladd property.

MOTION by Commissioner Schneider, second by Commissioner Norton, to close the public hearing at 7:25 p.m. ALL VOTED AYE. MOTION CARRIED.

Commissioner Norton suggested the color of the accessory structure match the existing structures. Mr. Ladd explained that the materials will match the house. Council Liaison Trost explained that the Planning Commission does not get involved in aesthetic issues. Council Liaison asked how the materials for the proposed accessory structure will be transported to the site. Mr. Ladd replied that he will place the building materials on a wheelbarrow and transport from the front yard.

1. Resolution PZ 10-013 Recommending Approval of a Five-Foot Variance to Allow the Construction of a 20 foot high Accessory Structure.

MOTION by Commissioner Chaussee, second by Commissioner Norton, to approve Resolution PZ 10-013 Recommending Approval of a Five-Foot Variance to Allow the Construction of a 20 foot high Accessory Structure due to the finding of fact that special conditions may include exceptional topographic or water conditions, narrowness, shallowness or shape of the property. ALL VOTED AYE. MOTION CARRIED.

4.3. Variance Request. The Planning Commission will consider public comment on a request by John Walsh, 226 South Cedar Street, Belle Plaine, MN, for a variance from Section 1107.05 Subd. 2, to allow the construction of a swimming pool above the underground utility line in the R-3, Single and Two Family District.

Chair Pressley referenced a memo dated May 10, 2010 from Community Development Director Rosenfeld regarding a variance request by John Walsh.

Community Development Director Rosenfeld explained that the property owner at 226 South Cedar Street, John Walsh, has submitted an application for a variance to construct an above ground swimming pool over underground power lines. The zoning ordinance states the following: *SECTION 1107.05 SWIMMING POOLS. 2. No swimming pool may be constructed beneath overhead utility lines of any type or above underground utility lines of any type.* The location of the proposed pool has been excavated and a sand base has been installed for preparation of the pool. Prior to this, the yard was covered with grass turf. The existing underground power cable runs from the rear alley right-of-way to the house and services only the applicant's property. There is a detached garage and two utility sheds (under 120 square feet) in the rear yard. The rear and side boundaries of the property are currently fenced in. The applicant is also proposing an attached deck with the pool. Both City staff and the property owner have had contact with Xcel Energy regarding this situation. Xcel Energy has provided the property owner with correspondence indicating they are comfortable with the service line lying directly underneath the proposed location of the swimming pool, with the understanding the property owner is responsible in the event Xcel Energy needs to access the services lines. City staff has also communicated with Xcel Energy regarding this situation. Xcel has indicated to City staff they are comfortable with the electrical lines being placed directly underneath the pool and have indicated they do not believe there is a direct safety concern with constructing the pool in this location.

Chair Pressley opened the public hearing at 7:31 p.m. and asked for public comment.

John Walsh, 226 South Cedar Street, applicant and property owner, requested approval of the variance to allow him to construct an above-ground swimming pool.

Community Development Director Rosenfeld read a letter from Barbara Nasby, 238 South Cedar Street, in support of the variance request. She also acknowledged receipt of a second letter, however, it was unsigned.

MOTION by Commissioner Schneider, second by Commissioner Norton, to close the public hearing at 7:35 p.m. ALL VOTED AYE. MOTION CARRIED.

Commissioner Chaussee commented that it appears there is no place on the Walsh property to place the swimming pool without conflicting with a utility line. He asked the purpose of the ordinance regulation. Council Liaison Trost explained that the regulation protects the City from future liability.

1. Resolution PZ 10-015 Recommending Approval of a Variance to Allow the Construction of a Swimming Pool Above the Underground Utility Line.

MOTION by Commissioner Chaussee, second by Commissioner Pressley, to approve Resolution PZ 10-015 Recommending Approval of a Variance to Allow the Construction of a Swimming Pool Above the Underground Utility Line, with the finding of facts as follows: 1. The special conditions and circumstances causing the undue hardship do not result from the actions of the applicant, 2. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district, 3. The request is not a use variance, and 4. Variance requested is the minimum variance necessary to accomplish the intended purpose of the applicant. Furthermore, the City shall not be liable for any costs associated with the future conditions or movement of the swimming pool. ALL VOTED AYE. MOTION CARRIED.

4.4. Variance Request. The Planning Commission will receive public comment on a request by Aaron Leonard, 1016 South Chestnut Street, Belle Plaine, MN, for a five (5) foot variance from Section 1105.07 Subd. 5 (7) (a) to allow the construction of an accessory structure to be located five (5) foot from the principal structure in the R-3, Single and Two Family District.

Chair Pressley referenced a memo dated May 10, 2010 from Community Development Director Rosenfeld regarding a variance request by Aaron Leonard.

Community Development Director Rosenfeld explained that the property owner at 1016 South Chestnut Street, Aaron Leonard, has submitted an application for an after-the-fact variance to construct an accessory structure (under 120 square feet) less than 10 feet from a primary structure. The utility shed has already been partially constructed. The property owner was unaware that a zoning permit was needed for the project. The house and partially constructed utility shed both meet the required setbacks from the property lines. However, the utility shed is located less than the required 10 feet from the house. The proposed utility shed will not require vehicular access.

Chair Pressley opened the public hearing at 7:49 p.m. and asked for public comment.

Aaron Leonard, 1016 South Chestnut Street, applicant and property owner, explained that there is a slope in the backyard of his property. A water swale also cuts through his back yard and he indicated that he did not want to place the utility shed in the flood area.

Chair Pressley acknowledged receipt of a letter of support from Melissa Brueske, 1012 South Chestnut Street.

MOTION by Commissioner Chaussee, second by Commissioner Norton, to close the public hearing at 7:51 p.m. ALL VOTED AYE. MOTION CARRIED.

Commissioners Schneider and Norton commented that they supported the variance request due to the hardship of the water swale and slope of the lot.

1. Resolution PZ-10-008 Recommending Approval of a Variance to Allow the Construction of an Accessory Structure to be located Five Feet from Principal Structure at 1016 South Chestnut Street.

MOTION by Commissioner Norton, second by Commissioner Schneider, to approve Resolution PZ-10-008 Recommending Approval of a Variance to Allow the Construction of an Accessory Structure to be located Five Feet from Principal Structure at 1016 South Chestnut Street, with the finding of facts: 1. Special conditions may include exceptional topographic or water conditions, narrowness, shallowness or shape of the property, 2. Literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance, or deny the applicant the ability to put the property in question to a reasonable use, and 3. The special conditions and circumstances causing the undue hardship do not result from the actions of the applicant. ALL VOTED AYE. MOTION CARRIED.

Community Development Director Rosenfeld explained that at the next Planning Commission, the commissioners will review a history of the variances that have been granted.

4.5. Ordinance 10-02, Election Signs. The Planning Commission will accept public comment on proposed Ordinance 10-02, amending Chapter 11, Section 1107.20, Subd. 5, Temporary Signage, of the Zoning Ordinance by changing the starting posting date of election signs from August 1 to June 25.

Chair Pressley referenced a memo dated May 10, 2010 from Community Development Director Rosenfeld regarding proposed Ordinance 10-02 pertaining to election signs.

Community Development Director Rosenfeld explained that currently the City's zoning ordinance, Chapter 11, Section 1107.20 Subd. 5, Temporary Signage Provisions. All Districts, states:

All non-commercial signs of any size may be posted ~~from forty-five (45) days before the state primary~~ August 1 in a state general election year until ten (10) days following the state general election. Signs must be erected at least two (2) feet back from the curb line of any street and shall not be located in the sight triangle and should not in any way obstruct traffic. Signs placed on private property or on the road right-of-way in front of any private property need the approval of the property owner. Non-commercial signs may not be placed on any publicly owned property other than City-owned street right-of-way. The City, at the expense of the owner or property owner, shall remove signs located in conflict with this Section.

With the primary election taking place on August 10 this year, State Statute allows for campaign signs to be put up as early as June 25, 45 days before the state primary election. Staff recommends the ordinance to read the language underlined above.

Chair Pressley opened the public hearing at 8:05 p.m. and asked for public comment. There was no response.

MOTION by Commissioner Schneider, second by Commissioner Chaussee, to close the public hearing at 8:06 p.m. ALL VOTED AYE. MOTION CARRIED.

1. Resolution PZ-10-012 Recommending Approval of Ordinance 10-02, Amending Chapter 11, Section 1107.20, Subd. 5, Pertaining to Election Signs.

MOTION by Commissioner Chaussee, second by Commissioner Norton, to approve 1. Resolution PZ-10-012 Recommending Approval of Ordinance 10-02, Amending Chapter 11, Section 1107.20, Subd. 5, Pertaining to Election Signs. ALL VOTED AYE. MOTION CARRIED.

5. BUSINESS.

5.1. Resolution PZ-10-014 Recommending Approval of a Minor Subdivision for PID 209080030.

Chair Pressley referenced a memo dated May 10, 2010 from Community Development Director Rosenfeld regarding a request for a minor subdivision.

Community Development Director Rosenfeld explained that Randy Kubes, TDR, LLC, has submitted an application for a minor subdivision to allow for the splitting of one parcel into two separate parcels. The property is currently zoned R-1, Single Family (Low Density) Residential District. The property was changed in January 2010 from A-2 Rural Residential. The Comprehensive Plan indicates this property is to remain zoned as is. The Plan also references the future connection of Century Street to come through this property and connect into CSAH 7. Nothing is necessary at this time from the applicant, however, staff has made them aware of this future roadway connection that will be necessary upon future development. Parcel A currently has a homestead with outside agricultural buildings on site. Parcel B is currently vacant land used for agricultural purposes. All properties adjacent to this property are vacant, agricultural land, located within the Township, with the exception of the property to the south. This property is also vacant, but is located within the Belle Plaine city limits.

The applicant is proposing to split the current parcel into two separate parcels, creating separate PINs. Both proposed parcels will be greater than ten (10) acres in size and will meet the lot area and lot width requirements. Building setbacks are yet to be determined. The property with the homestead (Parcel A) is

currently accessible via CSAH 7. The vacant parcel (Parcel B) has frontage on CSAH 7 as well. The City's Subdivision ordinance indicates every lot must have the minimum frontage on a City approved street.

Randy Kubes, applicant, was present.

Community Development Director Rosenfeld noted the barn is located in front of the house on the subject property and asked if there are plans to remove the barn. Mr. Kubes replied that he is unaware of any such plans. Chair Pressley noted non-compliance with the property due to the barn being located in front of the house. Commissioner Schneider commented that the barn is a larger structure than the house and inquired as to whether the barn should be considered the principal structure. Community Development Director Rosenfeld explained that the principal use relates to the principal structure. If zoned Agricultural, the buildings would be in compliance. The residential zoning creates non-compliance of the barn placement.

MOTION by Commissioner Pressley, second by Commissioner Schneider, to approve Resolution PZ-10-014 Recommending Approval of a Minor Subdivision for PID 209080030. Furthermore, the Planning Commission acknowledges that the recent change is zoning from A-2 to R-1 has caused the farming and agricultural buildings to be legal non-conforming. ALL VOTED AYE. MOTION CARRIED.

6. ADMINISTRATIVE REPORTS.

6.1. Upcoming Meetings.

1. Next Regular Session, 7:00 p.m., Monday, June 14, 2010.

The Commissioners were reminded of the next meeting as listed.

7. ADJOURNMENT.

MOTION by Commissioner Schneider, second by Commissioner Norton, to adjourn at 8:18 p.m. ALL VOTED AYE. MOTION CARRIED.

Respectfully submitted,

Patricia Krings
Recording Secretary