

## PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, July 19, 2016 – 7:00 p.m.  
City Hall Chambers - 8150 Barbara Avenue

Chair Maggi called the Planning Commission meeting to order at 7:00 p.m.

Commissioners Present: Elizabeth Niemioja  
Pat Simon  
Tony Scales  
Armando Lissarrague  
Joan Robertson  
Dennis Wippermann  
Luke Therrien  
Annette Maggi  
Jonathan Weber

Commissioners Absent:

Others Present: Allan Hunting, City Planner  
Tom Link, Community Development Director

### **APPROVAL OF MINUTES**

The July 5, 2016 Planning Commission minutes were approved as submitted.

### **CALATLANTIC GROUP, INC. – CASE NO. 16-24PUD**

#### **Presentation of Request**

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the applicant is requesting final plat approval for the Blackstone Ponds 2<sup>nd</sup> Addition and final development plan approval for the 2<sup>nd</sup> and 3<sup>rd</sup> phases of Blackstone Ponds. The plans are consistent with the preliminary plans and they have satisfied the conditions of approval. The Fire Marshal is comfortable with the proposed location of the fire access which will be constructed with the third phase. Staff recommends approval of the final PUD development plans for Blackstone Ponds 2<sup>nd</sup> and 3<sup>rd</sup> Addition and the final plat for the 2<sup>nd</sup> Addition, with the conditions listed in the report.

Commissioner Simon asked for clarification on whether the public notice included final plat approval for Blackstone Ponds 3<sup>rd</sup> Addition.

Mr. Hunting replied that final plats require no public notice.

Commissioner Weber noted there were no parks within a 5-6 mile radius of this neighborhood and asked if the Parks Department looked at that when reviewing the request.

Chair Maggi responded that prior to Commissioner Weber being appointed the Planning Commission had a lengthy discussion regarding their desire for a tot lot, etc. The Park and Recreation Director gave a presentation to the Planning Commission explaining their overall strategy for the City in regard to parks and their desire to focus on larger parks that are more accessible, etc. rather than neighborhood tot lots.

#### **Planning Commission Recommendation**

Motion by Commissioner Scales, second by Commissioner Lissarrague, to approve the request for

final plat approval for the Blackstone Ponds 2<sup>nd</sup> Addition and final PUD development plan approval for the 2<sup>nd</sup> and 3<sup>rd</sup> phases of Blackstone Ponds. .

Motion carried (9/0). This item goes to the City Council on August 22, 2016.

### **CALATLANTIC GROUP, INC. – CASE NO. 16-32PUD**

#### **Reading of Notice**

Commissioner Simon read the public hearing notice to consider the request for a preliminary and final PUD amendment to the Blackstone Ponds subdivision to allow one building complex with a 15 foot front yard setback whereas 20 feet is required, for the property located on the north side of 70<sup>th</sup> Street at Archer Trail. 5 notices were mailed.

#### **Presentation of Request**

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the applicant has submitted a request for an amended preliminary PUD development plan and final PUD for Blackstone Ponds 1<sup>st</sup> Addition. The amendment includes a flexibility request to reduce the front yard setback for one block of homes from 20 feet to 15 feet due to the physical construction of boulder retaining walls on the back side of the units. Because the boulder retaining wall around the infiltration basin takes up more physical space than anticipated the top of the wall ends up northerly five feet of where drawn on the plans. To make up the reduced building area behind the units, the applicant is requesting to be able to move the units five feet closer to Archer Trail than allowed by ordinance. The driveways would still be approximately 28 feet long which provides ample room for parking. Staff recommends approval of the request.

Chair Maggi asked if there was a rear yard setback requirement for these townhomes.

Mr. Hunting replied there were no internal setbacks for the townhomes; just from the perimeter property line.

Chair Maggi asked if moving the townhomes forward five feet would significantly impact the impervious surface.

Mr. Hunting replied it would actually reduce the impervious surface due to the driveway length being shortened by five feet.

Commissioner Simon stated they would also be removing five feet from the back yard.

Mr. Hunting stated typically retaining walls were not included in the impervious surface calculation.

Chair Maggi stated they would still be shortening the lot across the six units by five feet because the boulders were taking up more space.

Mr. Hunting responded that the wall was still the same size; the boulders just ended up being more northerly.

Commissioner Weber stated the five feet that was lost in the front was gained back in the rear yard.

Chair Maggi asked if the lots were technically smaller because of the boulder movement.

Commissioner Scales replied the lots would be the same size; the wall was just taking up more

space on the lot.

Chair Maggi asked if the buildable space had decreased.

Commissioner Niemioja asked what was on the other side of the wall.

Mr. Hunting replied that it drops down to a stormwater pond.

Commissioner Niemioja stated it did not seem like a workable yard.

Commissioner Scales stated the lot size would remain the same; the wall was just more on the lot than it would have been.

Chair Maggi asked if staff was saying that technically the boulder retaining wall was considered pervious surface.

Mr. Hunting replied the wall was likely calculated in as some impervious; however, the other departments did not have any concern of this creating pervious or stormwater issues.

Commissioner Therrien commented that by moving the units forward they would not be losing any land behind the units and they would actually be reducing the impervious surface because of the shortened driveways.

Chair Maggi stated it was the technicality of what is being considered lot size and what is being looked at as impervious surface.

Commissioner Wippermann asked if any consideration was given to eliminating the decks or changing the configuration of the units in order to maintain the 20 foot front yard setback.

Mr. Hunting replied there was some discussion of that; however, ultimately their proposal was to retain the same unit size.

Commissioner Wippermann asked for clarification that another alternative could have been considered.

Mr. Hunting replied in the affirmative.

Commissioner Scales questioned whether the applicant could have used a different material for the retaining wall that did not take up as much room.

Commissioner Robertson was concerned that the wall was not built according to the approved plan and did not want to set a precedent where developers make an error and then come to the City asking for an amendment.

Commissioner Simon stated one of the conditions of approval states that no other structures can be built outside the individual townhome lot; however, they are being asked to move the units.

Mr. Hunting replied they would still be within the actual townhome lot.

Commissioner Simon stated in her mind this was no different than a variance request. The applicants received flexibility concessions with their original approval and now they were coming back asking for more.

Commissioner Lissarrague asked if a situation like this had occurred in the past where a variance was requested for a townhome builder.

Commissioner Simon replied she was aware of a similar situation for a single-family home, but not for a townhome.

Commissioner Therrien asked how tall the wall was.

Mr. Hunting replied approximately 13 feet.

Commissioner Robertson pointed out that the top of the boulders were in line with the elevation of the townhouse land.

Commissioner Therrien questioned whether the boulder wall was constructed in the location indicated on the plan or was it moved five feet forward. He advised they may have moved it to provide a sufficient foundation around the pond.

Commissioner Scales stated even though he was torn, he would support the request as he understood why the builder would not want to move the wall or construct townhomes without decks.

Commissioner Weber asked if a safety railing was required on retaining walls of a certain height.

Mr. Hunting replied he was not aware of any ordinance that dictated a railing on top of a retaining wall.

Commissioner Simon advised that Mr. Deanovic originally stated they were going to install a four foot fence at the top of the wall.

### **Opening of Public Hearing**

Tracey Rust, CalAtlantic, 7599 Anagram Drive, Eden Prairie, advised she was available to ask any questions.

Chair Maggi asked the applicant if she read and understood the request.

Ms. Rust replied in the affirmative. She stated the wall was unintentionally put in the wrong location and they could have constructed the wall out of a different material; however, they think the boulders are beautiful and fit with the area. She advised they want to retain the decks rather than having a patio door leading out to nothing, and that the Homeowners Association would be responsible for maintaining the wall.

Chair Maggi asked how large the townhomes would be.

Ms. Rust could not recall the exact size but believed they would be just over 2,000 square feet.

Chair Maggi asked Ms. Rust to address Commissioner Wippermann's question about the possibility of changing the size or configuration of the townhome units.

Ms. Rust replied that as soon as they were made aware of the error they discussed how they could best resolve the issue. Moving the units forward five feet seemed to be the best option. She questioned where they would take the square footage out of the buildings if they tried to make them smaller.

Commissioner Lissarrague asked what size the decks were proposed to be.

Commissioner Therrien replied that the plan showed them being 15' x 8', with the one in the corner being 8' x 8'.

Ms. Rust stated 8 feet was a very small deck and it would not make sense to reduce the deck to less than that.

Commissioner Niemioja advised that, if this were approved, they may be able to expand the one 8' x 8' corner deck.

Commissioner Robertson asked what homeowners would be looking at from the proposed decks.

Ms. Rust replied that some units would see green space and others would see the boulder wall.

Commissioner Robertson questioned whether the green space for each of the units was reduced because the boulders were built closer to the townhomes.

Ms. Rust replied not for every unit. She advised that if individuals walked out the first floor they would be underneath the deck looking at 8 feet of green space and then the retaining wall.

Commissioner Scales stated that if the buildings were moved five feet forward everything would remain the same as was originally proposed on the back side.

Ms. Rust stated there was enough space within the buildable space for the buildings to shift.

Joe Vogel, 6963 Arkansas Avenue, stated the elevation for this area was raised 25-30 feet from the original grade and he assumed this request would move forward since the wall was already built and the utilities were stubbed in. He questioned whether this PUD amendment was the same as a variance.

Mr. Hunting replied that it was somewhat similar in that they were asking to reduce one of the requirements of the code.

Mr. Vogel advised that previously the neighboring property owner asked for a variance to build a deck closer to the lake and it was denied; this neighbor had requested to be 75 feet from the lake and now a retaining wall was built only 25 feet from the lake.

Chair Maggi asked staff to address a plan amendment versus a variance.

Mr. Hunting explained that because this is in a PUD they are asking for a PUD amendment for flexibility from the minimum front yard setback requirement. If this was not in a PUD this would be a variance request. PUD amendments need to show some rationale but are not held to a practical difficulty as are variances.

Mr. Vogel stated most variances are denied, the only hardship for this request seemed to be based on financial factors, questioned whether existing units were actually 20 feet from the retaining wall, and was concerned about a 15 foot front setback. He asked if the City owned the abutting property.

Mr. Hunting replied in the affirmative.

Mr. Vogel asked if there was a setback from City property.

Mr. Hunting replied it was part of the overall PUD plan so there were no separate setback requirements.

Mr. Vogel asked if the right-of-way was included in what staff considered 'ample' parking.

Mr. Hunting replied in the affirmative.

Commissioner Lissarrague asked Mr. Vogel if he was opposed to the request.

Mr. Vogel replied that it sets a bad precedent, especially since many people with much more of a hardship have been denied in the past.

Chair Maggi closed the public hearing.

### **Planning Commission Discussion**

Commissioner Niemioja stated her main concern was that the applicant did not provide any creative solutions other than to ask that the units be moved forward five feet, nor did the applicant explain why the possible solutions mentioned today would not work. She felt the applicant did not bring enough information to show they had looked at other possibilities.

Commissioner Therrien asked what the disadvantage to the City would be of moving the units forward five feet.

Chair Maggi replied one disadvantage is the aesthetic of the City and what neighborhoods would begin to look like if everyone was allowed reduced setbacks.

Commissioner Therrien stated they were asking for reduced setbacks for only a small portion of the development, they were not losing any pervious surface, and that sometimes there are issues when building on a mass scale such as this.

Commissioner Wippermann stated this is a good example of why he has historically been opposed to the shrinking setbacks that have occurred in the last couple of years and the cramming in of houses and townhomes; there is no leeway within the standard guidelines to correct any issues that may arise. He was opposed to the request and concerned about setting a precedent.

Commissioner Therrien stated we have to be willing to work with our citizens and the people who bring housing development to our City.

Commissioner Scales stated asking the builder to move the wall is not something he would consider, reducing the units by five feet would likely make the townhomes unsellable, and he would support the request as the error was unintentional and moving the units forward five feet would not affect the pervious surface.

Commissioner Robertson stated the builder has acknowledged there was an error in construction and she would be voting against the request knowing that it creates some challenges. She stated the City loses consistency every time a change like this is granted, it sets a precedent, and makes it difficult for people who buy or build because they do not know where the City stands.

Chair Maggi stated the Northwest Area has challenging topography and developers are going to try to add more and more units; we do not have the leeway for that if we do not build in that tolerance at the beginning.

Commissioner Lissarrague stated he would be voting against this because of the precedent it would set and the fact that the builder has other options they can bring to City Council.

Commissioner Niemioja stated they could perhaps table the request to allow the applicant to come back with more information regarding the issue.

**Planning Commission Recommendation**

Motion by Commissioner Scales, second by Commissioner Therrien, to approve the request for a preliminary and final PUD amendment to the Blackstone Ponds subdivision to allow one building complex with a 15 foot front yard setback whereas 20 feet is required, for the property located on the north side of 70<sup>th</sup> Street at Archer Trail.

Motion failed (3/6 – Maggi, Niemioja, Wippermann, Robertson, Simon, and Lissarrague).

Motion by Commissioner Wippermann, second by Commissioner Simon, to deny the request for a preliminary and final PUD amendment to the Blackstone Ponds subdivision to allow one building complex with a 15 foot front yard setback whereas 20 feet is required, for the property located on the north side of 70<sup>th</sup> Street at Archer Trail.

Motion carried (6/3 – Therrien, Weber, and Scales). This item goes to the City Council on July 25, 2016.

**CITY OF INVER GROVE HEIGHTS – CASE NO. 16-31ZA**

**Reading of Notice**

Commissioner Simon read the public hearing notice to consider the request for an ordinance amendment relating to Temporary Family Health Care Dwellings, codified at Minn. Statute 462.3593, allowing local governments to “opt out” of those regulations. No notices were mailed.

**Presentation of Request**

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that in May of this year the Governor signed into law regulations that allow landowners to place mobile residential dwellings on their property to serve as a temporary family health care dwelling specifically for those with mental and physical disabilities. That statute also allows cities to opt out of the new regulations by adopting an ordinance with such effect by September 1, 2016. Unless a city opts out, temporary family health care dwellings become a mandatory permitted use. The units would be limited to no more than 300 square feet in size, cannot be on a permanent foundation, must have water and electricity connection (which could be as simple as an extension cord and garden hose), proof must be provided for septic system management, the units must be on the property of either the caregiver or relative, units must comply with all structure setbacks, they are limited to one occupant who is mentally or physically impaired, and they require a permit from the local government which is valid for a period of six months with the ability to extend that one time for an additional six months. Some of the requirements raise questions about medical confidentiality and public information (i.e. health care insurance information, physician certification of mental or physical impairment, neighbor notification, etc.). Temporary healthcare dwellings cannot be placed on the front driveway and would then have to be placed in a side or rear yard. It would be difficult for such a dwelling to meet setback requirements and it also would be difficult to maneuver the pickup truck that brings these units in. The buildings would also not have to meet State building, electrical, or plumbing codes. The City’s police and fire chief are not in support of these units and recommend that Council opt out. The City recently adopted an ordinance allowing accessory dwelling units (ADU’s) and staff feels this ordinance does a better job of providing the same opportunities. Staff recommends the City adopt the opt out ordinance.

Commissioner Niemioja asked if staff knew of any cities choosing to adopt the temporary family healthcare dwelling regulations.

Mr. Hunting replied that a planner from another community has been tracking cities throughout the State and found the majority are opting out. One city chose to include it because their lots are so small that it would be unlikely anyone could fit a healthcare dwelling on it. He advised that communities must accept the statute in its entirety and cannot opt out of certain regulations.

Commissioner Scales asked who would enforce the temporary healthcare dwelling ordinance.

Mr. Hunting replied enforcement would be passed down to the City.

Commissioner Therrien asked why a temporary healthcare unit could not be put in a driveway.

Mr. Hunting replied that the units have to meet all local government setback requirements. Most homes in the City are built at a 30 foot setback which is the minimum.

### **Opening of Public Hearing**

There was no public testimony.

### **Planning Commission Discussion**

Commissioner Therrien asked how the public was made aware of this meeting.

Mr. Hunting replied that all required public notices are published in the official local paper, the *Southwest Review*.

Commissioner Therrien advised that he does not receive that paper and asked if a notice regarding these healthcare dwellings should have been included in the City's *Insights* newsletter.

Mr. Hunting replied that the *Insights* newsletter only goes out periodically and the State did not give cities enough time to address this. He advised that residents could subscribe to the *Southwest Review*.

Commissioner Simon stated that the *Southwest Review* was also available at libraries, City Hall, etc.

Commissioner Therrien questioned whether everyone in the City was aware that the newspapers were free.

Chair Maggi added that the agendas are also available on the City's website.

Commissioner Therrien stated that the younger generation does not always read newspapers and he was not sure if they had heard from all the residents as many were likely not aware of it.

Commissioner Niemioja asked staff to provide a summary of the ADU ordinance.

Mr. Hunting explained that homeowners were allowed to have an ADU inside their home. The code also allows an ADU in a detached structure as long as it meets the ordinance requirements. ADU's can be as large as 1,000 square feet versus the 300 square feet allowed for a temporary healthcare dwelling.

Commissioner Simon asked if a permit was needed for an ADU.

Mr. Hunting replied in the affirmative.

Chair Maggi asked if the Housing Committee had reviewed the temporary healthcare dwelling ordinance.

Mr. Hunting replied that it had not because they had not had any meetings in the short timeframe the City was given.

**Planning Commission Recommendation**

Motion by Commissioner Niemioja, second by Commissioner Wippermann, that the City adopt an 'opt out' ordinance relating to Temporary Family Health Care Dwellings, codified as Minn. Statute 462.3593, allowing local governments to "opt out" of those regulations.

Motion carried (8/1 - Therrien). This item goes to the City Council on July 25, 2016.

**OTHER BUSINESS**

Mr. Hunting advised that the next Planning Commission meeting will be Wednesday, August 3 rather than August 2 due to National Night Out.

The meeting was adjourned by unanimous vote at 8:04 p.m.

Respectfully submitted,

Kim Fox  
Recording Secretary