

**INVER GROVE HEIGHTS
PLANNING COMMISSION AGENDA**

Tuesday, October 5, 2010 – 7:00 p.m.
City Council Chambers - 8150 Barbara Avenue

1. **CALL TO ORDER**

2. **APPROVAL OF PLANNING COMMISSION MINUTES FOR SEPTEMBER 21, 2010**

3. **APPLICANT REQUESTS AND PUBLIC HEARINGS**
 - 3.01 **PDB AUTOCARE LLC – CASE NO. 10-31CA**

Consider a **Conditional Use Permit Amendment** to amend the approved site plan allowing for a 30' x 34' building addition for the property located at 6466 – Cahill Avenue.

Planning Commission Action _____

 - 3.02 **CITY OF INVER GROVE HEIGHTS – CASE NO. 10-04ZA**

Consider an **Ordinance Amendment** relating to improvements located in the side and rear yard setback areas and an ordinance relating to a permit being required prior to the expansion or construction of a driveway.

Planning Commission Action _____

4. **OTHER BUSINESS**

5. **ADJOURN**

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, September 21, 2010 – 7:00 p.m.
City Hall Chambers - 8150 Barbara Avenue

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

Commissioners Present: Tom Bartholomew
Paul Hark
Harold Gooch
Pat Simon
Tony Scales
Christine Koch

Commissioners Absent: Dennis Wippermann (excused)
Damon Roth (excused)
Mike Schaeffer (excused)

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

APPROVAL OF MINUTES

The minutes from the September 7, 2010 meeting were approved as submitted.

CITY OF INVER GROVE HEIGHTS – CASE NO. 10-20ZA

Reading of Notice

The notice was read at the August 17, 2010 Planning Commission meeting.

Presentation of Request

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that at the July 6, 2010 public hearing staff was directed to create an ordinance to ban all future OWBs and to incorporate reasonable performance standards for existing OWBs in the City. At the August 17, 2010 meeting the ordinance was tabled for staff to obtain additional information on five different issues. The first question was whether scrubbers were used on OWBs and whether they were effective. Staff spoke with a representative from a Central Boiler dealer, who stated he was not aware of any reburners or scrubbers that could be added to existing units, however, some of the newer models have a fusion chamber/reburner which would help reduce emissions. The second question was whether OWBs could be eliminated at point of sale of the property. Ms. Botten advised that unless a City declares non-conforming OWBs to be nuisances which require their removal, the City cannot force a seller or buyer to remove a non-conforming OWB from the property when it sells. The third question was whether the City could establish a deadline or sunset provision on existing OWBs. Ms. Botten advised that the City should either adopt performance standards that it believes will eliminate the nuisance posed by the OWB or declare OWBs to be nuisances and provide for their removal with a sunset clause. The fourth request was for staff to explore further the reasoning for stack height, especially as it relates to the impact on neighboring properties. Ms. Botten advised that after staff review it was determined that monitoring chimney heights from neighboring structures would have administrative difficulties and therefore, staff does not support chimney height requirements from neighboring structures. The last question was whether existing OWBs could be enlarged or expanded. Ms. Botten advised that Minnesota Statute permits owners to repair, replace and maintain their nonconformities; however,

they are not permitted to expand.

Ms. Botten advised that City staff does not have a consensus for a recommendation. She advised there are six known existing OWBs in the city; and some staff believe they should be considered legal non-conformities as long as they comply with approved performance standards. There are other staff that believe that even with performance standards there will be continual complaints with no enforcement solutions, and therefore they believe all future OWBs should be banned and existing ones should be removed.

Commissioner Hark asked for clarification of the recommendation listed in the report.

Ms. Botten stated that the recommendation was taken from the last planning report. She advised there has been discussion since, however, and some staff believe that existing OWBs should be removed so there is a split recommendation.

Commissioner Hark recommended that Section 10-17-1-D-3 be changed to require that owners of existing OWBs comply with Sections 10-17-D-2(a) on or before October 1, 2011 (the start of the burning season) rather than December 1, 2011.

Ms. Botten stated staff would be agreeable to that date.

Commissioner Hark asked if staff had received complaints only on the one property.

Ms. Botten replied in the affirmative, stating they have officially received a complaint about the one property.

Opening of Public Hearing

David Gaydos, 11660 Albavar Path, asked for clarification of the issue regarding removal of existing OWBs on point of sale.

Ms. Botten replied it was determined that the City cannot require the removal of existing OWBs on point of sale.

Mr. Gaydos asked for clarification on the repair of existing OWBs.

Ms. Botten replied that according to the City Attorney existing OWBs could be repaired and replaced to the same size or smaller, but no expansion would be allowed.

Mr. Gaydos asked if only the six properties would be affected by that, assuming that the City banned all future OWBs.

Ms. Botten replied there were only six known OWBs in the city at this point, but the rule would apply to any existing OWBs in the city.

Richard Larson, 7038 Angus Avenue East, stated it seemed like extreme actions were being taken over a single complaint. He stated he had a petition signed by 12-14 property owners within a quarter mile of his home stating they had no issues with his OWB.

Chair Bartholomew asked if Mr. Larson presented the petition to the City, to which Mr. Larson replied he forgot to bring it along but had it available.

Chair Bartholomew asked if Mr. Larson had a chance to read the proposed ordinance, to which he replied he did not.

Chair Bartholomew asked if Mr. Larson had received any complaints on his OWB in the years he had owned it, to which Mr. Larson replied he had not.

Bob Heidenreich, 11632 Akron Avenue, stated he had never received complaints on his OWB and felt it was unfortunate that the issue had gone to this level over one complaint. He stated that OWB dealers were at the State Fair this summer and he found a number of boilers that have improved technology which run nearly smokeless and can be put in detached accessory buildings. He stated he would hate to see the City take a path which would result in OWB owners not being allowed to upgrade as technology improved. He stated one of the OWBs burned during the entire State Fair with no complaints.

Chair Bartholomew asked if the ordinance as written would allow homeowners to upgrade their existing OWBs as new technology becomes available, to which Ms. Botten replied in the affirmative.

Armando Lissarague, 11730 Albavar Path, stated that although he was the only complainant on record, he questioned being the only one as there were a number of other residents on Albavar Path that were concerned about the effects of OWBs. He advised that the emissions from OWBs were not only a nuisance, but a serious health issue and he encouraged the Commission to completely ban all OWBs in the city. Mr. Lissarague recommended that all OWBs be banned, and questioned why existing OWBs, which probably emit more toxins than new ones, would be allowed. He stated that the health of the neighbors should be considered of greater importance than the monetary loss to OWB owners. He stated he was concerned as well about depreciation of neighboring homes. Mr. Lissarague read an email that was forwarded to him from Don Henk at 11325 Albavar Path. Mr. Henk's email stated he was concerned about toxins released from OWBs as well as an OWBs impact on real estate values. He stated that one uncontrolled OWB could cost thousands of dollars per resident in lost property value, which would offset any heating costs an OWB owner might save. He stated that stove ratings are based on high quality fuel and therefore there are no guarantees that a stove will meet the manufacturers listed emission rate since there is no way to regulate what is burned in the OWBs. Mr. Lissarague stated that the emissions from OWBs have the same chemicals and characteristics as second hand smoke, however, property owners in close proximity to OWBs do not have an opportunity to avoid the discharge.

Richard Elbert, 8569 Alverno Avenue, stated he did not go to the State Fair this year because he has gotten ill in the past from the emissions from the OWBs on display. He stated his wife went, however, and spoke with a representative from a boiler company. She was told they were aware of no afterburner, but that the new ones were much better. Mr. Elbert stated there were likely many people affected by OWBs that just did not complain, and he questioned how the toxins from OWBs were affecting gardens and yards in the area.

Sandra Larson, 7038 Angus Avenue, stated she did not agree that the smoke from OWBs was a health hazard. She advised she has had asthma since she was a child, and the OWB they own has not exacerbated that condition and, in fact, she is on less medicine now than she was ten years ago. She questioned a previously stated concern that OWBs lower property values, stating her home was recently appraised and the appraiser never mentioned anything about the OWB affecting their property value. Ms. Larson questioned how they would be able to pay their heat bills if they had to remove their OWB, stating it saved them \$3,000 a year and they are on a fixed income.

Don Frost, 7132 Ballard Trail, requested that this issue be dealt with on the basis of the facts rather than by the number of complaints. He stated that smoking in public places was banned not

because of complaints, but because second hand smoke was proven to be a significant health hazard. Mr. Frost stated this was a serious situation because a person could choose not to visit an establishment that allowed smoking, however, a homeowner did not have the same opportunity to walk away if there was an OWB in their neighborhood.

Planning Commission Discussion

Chair Bartholomew advised that Commissioner Wippermann was unable to attend tonight's meeting but asked that it be reiterated that he supported the banning of all OWBs, both existing and future.

Commissioner Koch stated she supported a ban on future OWBs because the preponderance of evidence indicates that OWBs are a nuisance. However, she has difficulty requiring the removal of existing OWBs as the rights of the OWB owners should be considered as well. Commissioner Koch questioned how to resolve the issue regarding performance standards and the fact that there is contradiction as to the most beneficial stack height. She asked for clarification on whether existing OWBs could stay in existence if they were deemed a nuisance.

Tim Kuntz, City Attorney, advised that the law states that a legal non-conformity (a use which once was legal but now is prohibited) can continue and can be improved, repaired, maintained, or replaced but cannot be expanded. He stated that one option is to prohibit OWBs and allow those in existence to continue as legal non-conformities. Option 2 would be to deem OWBs as public nuisances. In regards to existing OWBs, the law states that if a city declares OWBs to be a public nuisance the city can impose reasonable performance standards to lessen the impact of the nuisance, or another option would be to eliminate all existing OWBs as a public nuisance. Therefore the City has the option of banning all future OWBs as a nuisance and only regulating the existing, or banning the future and existing OWBs and setting a reasonable date at which they have to cease.

Chair Bartholomew asked for clarification of the intent of the draft ordinance in the report.

Mr. Kuntz advised that the ordinance in the report was drafted on the basis of future OWBs being prohibited as nuisances, and existing OWBs being allowed to continue only if they meet the performance standards - if not they must cease.

Chair Bartholomew stated that because the preponderance of evidence shows OWBs to be a health hazard, he would be in favor of banning all OWBs and requiring that existing OWBs be given a sunset date at which they must be removed.

Commissioner Hark stated he was leaning in favor of declaring OWBs a public nuisance and banning all future ones but applying performance standards to those that exist. He stated the proposed ordinance seems to be a good effort at finding middle ground on this issue. He noted that only one of the six OWBs in the city was on a lot smaller than two acres, and that one was in an industrial area. He stated there was some question as to whether the recommended stack height would create more problems.

Commissioner Scales stated he did not support removal of existing OWBs, comparing it to prohibiting someone from driving classic cars because they put out more pollutants than newer vehicles.

Commissioner Koch questioned whether the existing OWBs could be improved without being expanded.

Mr. Kuntz stated the State Statute does not allow a non-conforming use the right to expand,

however, a city may by ordinance allow expansion.

Commissioner Gooch questioned whether only the one OWB that received complaints could be defined as a nuisance, and whether the City Attorney had any suggestions for an ordinance provision that would be an alternative to a neighbor having to take civil action against an offending OWB owner.

Mr. Kuntz stated that the regulations imposed by the Zoning Code must be uniform with respect to the zoning district in which they apply. In terms of creating a performance standard that would provide increased protection for the surrounding properties; he stated it would be difficult to create a standard that would prohibit smoke from entering a neighbor's property while still being enforceable. Mr. Kuntz stated that it is against the law to have a public nuisance; however, it is a difficult situation to deal with in terms of judgment, monitoring, and enforcement. Therefore, the City is trying to be more specific and identify what the public nuisance is. In this case the City may make a judgment with the proposed ordinance that an OWB is a nuisance.

Commissioner Simon stated she was in favor of banning all future OWBs and requiring that all existing OWBs be removed by October 1, 2011. She stated she was a proponent of individual property owner rights; however, in this case the smoke from an OWB could not be controlled and confined to just the OWB owners' property.

Planning Commission Recommendation

Motion by Commissioner Hark, second by Commissioner Scales, to approve the ordinance amendment prohibiting new outdoor boilers and establishing performance standards for existing outdoor wood burners/boilers, changing the deadline for existing OWB owners to comply with Sections 10-17-D-2(a) on or before October 1, 2011 rather than December 1, 2011.

Motion failed (3/3 – Bartholomew, Gooch, Simon).

Motion by Commissioner Simon, second by Commissioner Gooch, to recommend to City Council an ordinance which bans future OWBs as a public nuisance and requires the elimination of existing OWBs by October 1, 2011.

Motion failed (3/3 – Koch, Hark, Scales).

Commissioner Gooch stated there was passion from the Planning Commission on both sides of this issue, and they should forward it on to City Council as a split vote. He stated he was disappointed that neither the State nor the Federal government have adopted regulations or standards in regards to OWBs.

Commissioner Simon stated she would like the City Council to see that the Planning Commission was as mixed on this issue as City staff was.

Ms. Botten suggested perhaps making a motion in regards to future OWBs and sending the portion regarding existing OWBs on without a recommendation.

Motion by Commissioner Simon, second by Commissioner Gooch, to ban all future OWBs based on the fact that they have been determined to be a public nuisance.

Motion carried (6/0). This item goes to the City Council on October 11, 2010.

OTHER BUSINESS

Allan Hunting, City Planner, gave a brief update of the Housing Task Force's final report and recommendation to City Council. The report recommended that City Council address three main issues: housing education, senior housing, and affordable housing. The City Council received the 2010 Housing Action Plan Report and then directed staff to prepare a resolution creating a permanent Housing Committee which will be appointed to discuss and determine how to implement the ideas found in the Housing Task Force report. That resolution is scheduled to go to City Council on September 27, and if adopted, staff will then begin the process of seeking volunteers to serve on the committee.

Commissioner Hark asked if the City had received any inquiries about 'granny pods', to which Mr. Hunting replied they had not.

Tim Kuntz, City Attorney, gave an update on variance review criteria. He advised that for a number of years there were two or three court of appeals cases which indicated that if the application for a variance was in keeping with the spirit and intent of the ordinance, if the variance did not alter the essential character of the locality, if economic considerations alone did not constitute the undue hardship, if the property had a uniqueness to it, if there was practical difficulty caused because of all the above in meeting the code standard, and if the proposal seemed reasonable, then the variance would be upheld. As a result of those cases it became common in cities throughout the state to grant variances. However, in 2010 a new case went to the State Supreme Court at which time the court pointed out that the statute which allows cities to grant variances contains the criteria that he talked about earlier, but also requires that there be an undue hardship. Mr. Kuntz advised that when used in connection with the granting of a variance, undue hardship means the property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls. In this particular instance the case came to the Supreme Court because the city had granted a variance and the city found the request complied with the variance criteria, except they could not make the finding about the property having no reasonable use unless a variance was granted. The Supreme Court determined the variance could not then be granted, and stated they could not in their local code change or soften the criteria of the statute. Mr. Kuntz stated the City's power to grant variances is granted by statute, and if the statute requires undue hardship, and if undue hardship means there has to be no reasonable use to the property without the variance, then that is the finding the City must make. He stated this dramatically shrinks the City's opportunity to grant a variance. In the future, staff will now list reasonable use as a separate criterion and the City Council and Planning Commission will have to make their decisions accordingly. In response to this the League of Cities, spurred on by their member cities, seems to be joining with the Builders Association in a joint effort to go back to the legislature and request more flexibility in granting variances. This will then be debated in the next legislative session. If the ruling does not change, in the future cities may have to use a conditional use permit to gain that flexibility in lieu of a variance.

Commissioner Koch asked if the court's decision regarding variances applied only to residential, to which Mr. Kuntz replied it applied to every land use.

Commissioner Koch questioned what would happen if the City did something which forced the property owner to request a variance (i.e. widening of the road, etc.).

Mr. Kuntz replied that in an instance such as that although the City's action created a smaller lot, the property owner would still have reasonable use of their property.

Commissioner Koch stated what is considered 'reasonable' seems to be subjective.

Mr. Kuntz stated that subjectivity has been greatly reduced with this latest variance criterion as it

would be difficult for the homeowner to argue that he had no reasonable use of his property just because it was smaller.

Commissioner Koch questioned whether individual property rights were taken into account.

Mr. Kuntz stated the statute recognizes the right of the property owner to be there, and in a taking situation, the property owner is protected by their non-conforming rights to repair, maintain, replace, and improve – just not expand.

ADJOURNMENT

Chair Bartholomew adjourned the meeting at 8:32 PM.

Respectfully submitted,

Kim Fox
Recording Secretary

P L A N N I N G R E P O R T
C I T Y O F I N V E R G R O V E H E I G H T S

REPORT DATE: September 30, 2010

CASE NO: 10-31CA

APPLICANT: PDB Autocare, LLC

PROPERTY OWNER: PDB Autocare, LLC

REQUEST: Conditional Use Permit Amendment

HEARING DATE: October 5, 2010

LOCATION: 6466 Cahill Avenue

COMPREHENSIVE PLAN: CC, Community Commercial

ZONING: B-2, Neighborhood Business

REVIEWING DIVISIONS: Planning
Engineering

PREPARED BY: Allan Hunting
City Planner

BACKGROUND

The applicant is proposing to construct a 1020 square foot addition to the Sinclair gas and service station located at the northeast corner of Cahill and 65th Street. The addition would be for additional garage service area. Additional improvements would be made to the front of the building replacing some of the front glass and rearranging the interior rooms to update the building. The addition would be an extension to the northeast corner of the existing building. No other changes to the site are proposed

An automobile service station is a conditional use within the B-2 District. The building was constructed in 1972 and a conditional use permit was issued around that time frame. An amendment was approved in 1994 to add the propane tank to the south side of the site.

The specific requests consist of the following:

- a) A Conditional Use Permit amendment for an automobile service station to allow an expansion of the existing building.

EVALUATION OF THE REQUEST

The following land uses, zoning districts and comprehensive plan designations surround the subject property:

North Commercial multi-tenant building; zoned B-3; guided CC

East Car wash building; zoned B-3; guided CC

West Commercial multi-tenant building; zoned B-3; guided CC

South Commercial multi-tenant building; zoned B-3; guided CC

CONDITIONAL USE PERMIT REVIEW

Setbacks. The proposed building addition exceeds setback requirements and the existing building and gas pump island also meet current setbacks. No changes are proposed to any paved areas. All setback requirements have been met.

Parking Lot. As stated earlier, no changes are being proposed to the paved areas. All required areas are paved and the layout is consistent with previous approvals and no further changes are required.

Lot Coverage. There are no lot coverage or building coverage limits in the B-3 district. No calculations were required to be submitted.

Landscaping. The site contains existing landscaping in the open yard areas along the north, east and south sides of the property. Based on previous CUP reviews, no further landscaping

Building Materials. The building expansion would be constructed of block painted to match the existing building. The proposed building materials would comply with code standards.

Engineering. The City, as a MS4 community, has been required by the Minnesota Pollution Control Agency (MPCA) to implement infiltration and storm water management practices in conjunction with redevelopment sites. The non-degradation guidance is in place to reduce the volume of run-off, sediment, phosphorous, and total suspended solids leaving the site.

In compliance with MPCA guidance, staff have reviewed the site drainage and determined that there are two locations on the site where a rain garden or infiltration pond would be beneficial to meeting the non-degradation requirements and reducing run-off reaching the neighbor to the north. Rain garden 1 and rain garden 2 locations are shown on the attached map and coincide with natural low points which accept a good portion of impervious surface from the site.

Staff have completed calculations and discussed the construction of the rain garden options with the Owner's Contractor in order to minimize expense and impact. It has been decided that type 1a and 2a rain gardens can be built, 200 sf and 300 sf respectively, with 1-foot depth, 1.5-foot engineered soils (existing soils mixed with 30% leaf litter compost), 1-foot of scarifying (below grade), and plantings of the owner's choice (spaced in accordance with standard landscaping recommendations), as approved by the City Engineer.

General CUP Criteria

This section reviews the plans against the CUP criteria in the Zoning Ordinance.

1. The use is consistent with the goals, policies and plans of the City Comprehensive Plan, including future land uses, utilities, streets and parks.

The description of the Community Commercial District states that these areas are for lots that contain retail sales and services located along community collector and arterial roadways that serve the community. The proposed expansion and existing operation provide goods and services that are needed by the residents of Inver Grove Heights in an existing community shopping node. There would be no negative impacts on existing land uses, street systems or the park system.

2. The use is consistent with the City Code, especially the Zoning Ordinance and the intent of the specific Zoning District in which the use is located.

Suitability of the use is discussed above with the Comprehensive Plan. The proposed project does comply with all of the performance criteria of the B-2 Zoning District.

3. The use would not be materially injurious to existing or planned properties or improvements in the vicinity.

All of the surrounding property is developed with a mix of retail uses. The building expansion would not have a negative impact on the surrounding area as it lies within areas of the lot that are currently developed and used as part of the service station.

4. The use does not have an undue adverse impact on existing or planned City facilities and services, including streets, utilities, parks, police and fire, and the reasonable ability of the City to provide such services in an orderly, timely manner.

This commercial neighborhood is all developed and the land use patterns set. The proposed use would not have an adverse impact on fire protection or on any city service as the building expansion provides for a small addition to the service capability of the business.

5. The use is generally compatible with existing and future uses of surrounding properties, including:

- i. Aesthetics/exterior appearance

The design of the proposed addition would be compatible with the existing building and with the surrounding uses. Materials are similar to others in the area.

- ii. Noise

The building addition is to provide additional enclosed service space. No additional noise is expected since the service use would be inside the building.

- iii. Fencing, landscaping and buffering

There are no buffering or fencing requirements. Landscaping has been satisfied with previous approvals and plantings are in place.

6. The property is appropriate for the use considering: size and shape; topography, vegetation, and other natural and physical features; access, traffic volumes and flows; utilities; parking; setbacks; lot coverage and other zoning requirements; emergency access, fire lanes, hydrants, and other fire and building code requirements.

The property contains ample size to allow for the addition without impacting neighboring properties. The addition would be located over areas that are currently paved. The building addition would not have a negative impact on city services or emergency services.

7. The use does not have an undue adverse impact on the public health, safety or welfare.

The service station operation has been in existence since the early 1970's. Any auto service would be done inside the building. The building expansion would not have an adverse impact on the surrounding uses.

8. The use does not have an undue adverse impact on the environment, including, but not limited to, surface water, groundwater and air quality.

The building addition would enclose the automobile service performed and building code and fire code requirements must be met so any fluid handling into any city system would be required to meet all current standards. The addition would not have an undue adverse impact.

ALTERNATIVES

The Planning Commission has the following actions available on the following requests:

- A. **Approval.** If the Planning Commission finds the application to be acceptable, the following action should be taken:
 - o Approval of the **Conditional Use Permit Amendment** for an automobile service station to allow an expansion of the existing building subject to the following conditions:
 1. The site shall be developed in substantial conformance with the following plans on file with the Planning Department except as may be modified by the conditions below.

2. A minimum front setback of 10 feet is to be maintained from Cahill Avenue and 65th Street right-of-way lines to the paved asphalt or concrete area of the service station.
3. All display pennants, flags, searchlights balloons and other special sales promotion devices shall be limited to not more than 10 days per year.
4. All areas not paved or on which buildings are constructed shall be landscaped.
5. The business on the site shall be engaged primarily in the sale of motor fuel but also may be engaged in supplying services and goods generally required in the operation and maintenance of motor vehicles. These may include sales of petroleum products, sales and service of tires, batteries, automotive accessories and replacement items, washing and lubrication services and the performance of minor automobile maintenance and repair.
6. A 1000 gallon propane tank shall be permitted on site for the retail sale of propane subject to the following conditions:
 - a. The propane tank shall be located and installed in accordance with Exhibits A, B, C attached and on file with the Planning Division except as may be modified by the conditions herein.
 - b. The fueling area shall be provided with lighting.
 - c. Guard posts shall be installed as defined on Exhibit D on file with the Planning Division.
 - d. The installation must be in conformance with NFPA Standard 58 as adopted by the 1991 Minnesota Uniform Fire Code Article 82.
 - e. Protection against trespassing and tamper must be provided in accordance with NFPA 58. If not provided by fencing, the unit must be inspected and approved by the Fire Marshal prior to bringing it into the City.
7. Prior to commencement of any grading, the final grading, drainage and erosion control, and utility plans shall be approved by the City Engineer.
8. A storm water facilities maintenance agreement shall be drafted by the City Attorney and executed by the owner prior to issuance of the certificate of occupancy. The rain garden shall be constructed and vegetation placed by June 15, 2011.
9. Prior to the issuance of a building permit, an Engineering cash escrow of \$750 shall be submitted to ensure the proper construction of the improvements by June 15, 2011. In addition the City will utilize the cash escrow for the attorney's expenses, staff review time, engineering staff inspections, fees, and maintenance requirements. The remaining escrow will be released when the project is completed, turf is established, punch list items have been addressed and approved by the City Engineer

10. The City Code Enforcement Officer, or other designee, shall be granted right of access to the property at all reasonable times to ensure compliance with the conditions of this permit.
11. No storage of vehicles for a period longer than forty eight (48) hours shall be permitted. All storage of vehicles shall be on paved surfaces only. No storage or parking allowed on landscaped areas.
12. No sales of motor vehicles shall be permitted.
13. Resolution #6192 shall become null and void and replaced with the conditions of this permit.

B. Denial. If the Planning Commission does not favor the proposed application the above request should be recommended for denial. With a recommendation for denial, findings or the basis for the denial should be given.

RECOMMENDATION

Based on the preceding report, staff recommends approval of the conditional use permit amendment with the conditions listed.

Attachments: Location Map
Applicant Narrative
Site Plan
Floor Plan



Location Map

Case No. 10-31CA



Legend

A, Agricultural	R-1C, Single Family (0.25 ac.)	R-4, Mobile Home Park	OP, Office Park	I-1, Limited Industrial
E-1, Estate (2.5 ac.)	R-2, Two-Family	B-1, Limited Business	PUD, Planned Unit Development	I-2, General Industrial
E-2, Estate (1.75 ac.)	R-3A, 3-4 Family	B-2, Neighborhood Business	OFFICE PUD	P, Public/Institutional
R-1A, Single Family (1.0 ac.)	R-3B, up to 7 Family	B-3, General Business	Comm PUD, Commercial PUD	Surface Water
R-1B, Single Family (0.5 ac.)	R-3C, > 7 Family	B-4, Shopping Center	MF PUD, Multiple-Family PUD	ROW



Heather Botten

From: JOHN STREIFF STREIFF CNSTRCTN [bearslayer25@msn.com]
Sent: Sunday, September 12, 2010 10:31 PM
To: Heather Botten
Subject: PDB Auto Care LLC

Heather Botten
Associate Planner
8150 Barbara Avenue
Inver Grove Heights, MN 55077

Heather,

My name is John Streiff of Streiff Construction Services, Inc. I am giving a narative of the project for PDB Auto Care LLC. We propose to make the property much more customer friendly and handicap accessible with more work capacity and upgrade plumbing for environmental purposes and a more energy efficient facility.

To start off, we will remove and replace the sidewalk on the front with a 5 ft sidewalk and handicap ramp and replace the glass front with a half wall and upper thermal pane windows only. Next we will relocate the rest room doors creating a unisex handicap lavatory, a "private" lavatory, a customer lounge and merchandise display area, general cleanup & fresh paint, up to code equipment, and doors to the shop.

The main phase of the job is the shop addition at the rear with an office and the installation of a "flammable waste" tank and an up to code HVAC system, adding insulation in some areas. With these improvements, we hope to achieve an energy efficient, attractive, accessible customer friendly facility.

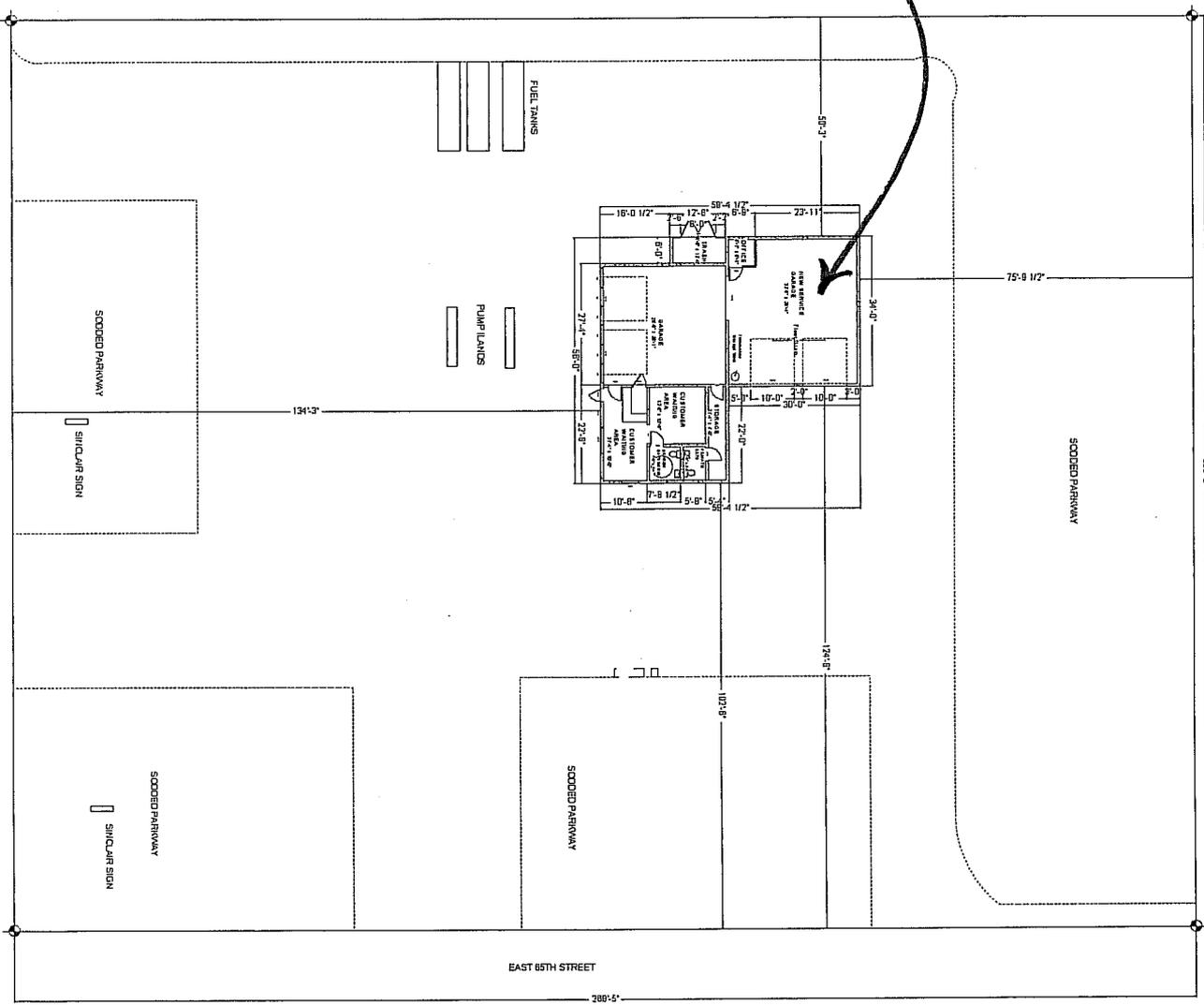
Thank you for your time and attention to this matter.

John Streiff
Streiff Construction Services, Inc.

ADDITION

CAHILL AVE

CAHILL



EAST 65TH STREET

65th ST

THIS PLAN
HEREIN REPRESENTS AN
APPROXIMATE



P L A N N I N G R E P O R T
C I T Y O F I N V E R G R O V E H E I G H T S

REPORT DATE: September 30, 2010

CASE NO: 10-04ZA

APPLICANT: City of Inver Grove Heights

REQUEST: Driveway setbacks

HEARING DATE: October 5, 2010

REVIEWING DIVISIONS: Planning

PREPARED BY: Heather Botten
Associate Planner 

BACKGROUND

The City Council directed staff to hold a public hearing regarding the regulation of driveway setbacks. Over the past year the City Council reviewed a few variance requests for driveway encroachments into the side yard setback and the City drainage and utility easements. The requests were brought forward because improvements were made to the property by the property owner and City staff noticed the encroachment violations during the street reconstruction projects.

The Council direction given to staff was to keep the five (5) foot driveway setback from side and rear property lines and to look into a permitting process for driveways. Additionally, new language is to be considered to further enforce the setback requirement on a going-forward basis and to establish existing encroachments as legal non-conformities.

ANALYSIS

The current requirement of a five foot driveway setback has been in place for over 20 years and was created for the following reasons;

- to provide a buffer between abutting properties
- to keep private improvements and obstructions out of City easements
- to allow the City access to public utilities
- to maintain the drainage and stormwater runoff for a property and neighborhood
- to lower the number of property line disputes on improvements inadvertently crossing over the property line
- to provide enough space for home owners to retain snow storage on their own property
- to allow private utilities use of the five-foot drainage and utility easements.

Based on Council's direction the driveway section of the ordinance would not be changing, and the five foot side and rear setback shall remain. 10-15-20H states: *Setback requirements from side and rear property lines for all driveways shall be a minimum of 5 feet except where a shared driveway access is approved as a part of the plat.*

To clarify the setback requirements and to better inform and educate the public, new ordinance language was discussed including the following potential language: *In the Residential, Estate, and Agricultural districts, the following may not be placed, constructed, or located in the side yard or rear*

yard setback areas: any bituminous pavement, concrete pavement, or paving blocks. Notwithstanding anything to the contrary, this prohibition shall not apply to shared driveways located along or within lot lines approved by the City. This language would be included in the “Required Yard and Open Space” section of the code. The potential new language would not address materials such as gravel, class V, or landscaping rock located in the setback area. Additionally, the proposed language does not restrict the location of parking and/or storage of vehicles, trailers, boats, etc... on private property. The proposed ordinance is narrowly written to address the location of bituminous, concrete, paving blocks or similar materials at or near property lines.

The City Council has expressed concern about the existing driveway encroachments into the side and rear yard setbacks; staff share these concerns. There are numerous driveway encroachments existing in the City that have been there for many years. There is currently no way to track when a driveway was installed as a permit is not required. Attached is a draft ordinance that would establish current existing driveway encroachments as legally established non-conformities. While currently existing encroachments would be allowed to remain because they would be deemed legal non-conformities, **future bituminous, concrete, and paving block encroachments** would not be allowed within the five foot side and rear setback, without an approved variance and hardship.

MISCELLANEOUS

The City has invested substantial sums and time in its stormwater and drainage and utility easements, typically located within the five foot setback. Obstructions in drainage easements, such as driveways, jeopardize the effectiveness of these easements. Allowing driveways into the setback and easement area could create drainage problems for the abutting properties, along with an entire neighborhood, because grading is often done for the installation of driveways and driveway expansions. Therefore, to protect the City’s easements the Council has discussed requiring a permit to install or expand a driveway. Attached for your review is the proposed code language requiring a permit and the internal procedure for obtaining a driveway permit. Staff has discussed a \$25 permit/processing fee.

ALTERNATIVES

The Planning Commission has the following alternatives available for the requested action:

- A. **Approval.** Approval of an **Ordinance Amendment** adding additional language regulating materials located in the setback areas, an **Ordinance Amendment** allowing the temporary placement of existing encroachments creating legal non-conformities, and an **Ordinance Amendment** requiring a permit for the expansion or construction of a driveway.
- B. **Denial.** If the Planning Commission does not favor the proposed Ordinance Amendments the above request should be recommended for denial. With a recommendation for denial, findings or the basis for the denial should be given.

RECOMMENDATION

Staff recommends approval of the attached ordinance amendments to the Zoning Code as proposed.

Attachments: Ordinance language – temporary ordinance
Ordinance language – new ordinance language
Ordinance language – requiring a permit for driveway additions
Driveway permit process

Temporary Ordinance

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

ORDINANCE NO. _____

**AN ORDINANCE REGULATING CERTAIN MATERIALS LOCATED IN
SETBACK AREAS**

The City Council of Inver Grove Heights does hereby ordain:

The City Council of Inver Grove Heights does hereby enact an Ordinance relating to the location of certain materials located in the side yard and rear yard setback areas in the Residential, Estate, and Agricultural districts:

Section 1. In the Residential, Estate, and Agricultural districts, notwithstanding anything to the contrary contained within the Inver Grove Heights City Code, effective _____, it shall be permissible to locate concrete pavement, bituminous pavement, paving blocks, or similar materials within the side yard and rear yard setback areas. This Ordinance shall not be codified.

Section 2. Effective Date. Pursuant to Title 1-2-3-E, this Ordinance shall become effective after passage and five days after publication in the City’s Official Newspaper.

Section 3. Repeal. Section 1 of this Ordinance is repealed and shall be of no further force and effect six (6) days after publication of this Ordinance in the City’s official newspaper.

Passed this _____ day of _____, 2010.

Mayor George Tourville

Attest

Melissa Rheaume
Deputy City Clerk

New Ordinance to Judge

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

ORDINANCE NO. _____

**AN ORDINANCE REGULATING MATERIALS LOCATED IN SETBACK
AREAS AND ESTABLISHING INVER GROVE HEIGHTS CITY CODE TITLE
10-5-2-D**

The City Council of Inver Grove Heights does hereby ordain:

Section 1. Section 10-5-2-D of the Inver Grove Heights City Code is hereby enacted as follows:

D. In the Residential, Estate, and Agricultural districts, the following may not be placed, constructed, or located in the side yard or rear yard setback areas: any bituminous pavement, concrete pavement, or paving blocks. Notwithstanding anything to the contrary, this prohibition shall not apply to shared driveways located along or within lot lines approved by the City.

Section 2. Effective Date. This Ordinance shall be effective from and after its passage and the publication of the ordinance according to law.

Passed this _____ day of _____, 2010.

Mayor George Tourville

Attest

Melissa Rheume
Deputy City Clerk

*Ordinance 10-15-20-I
requiring a permit for
driveways.*

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

ORDINANCE NO. _____

**AN ORDINANCE REGULATING DRIVEWAYS AND AMENDING INVER GROVE
HEIGHTS CITY CODE TITLE 10-15-20-I**

The City Council of Inver Grove Heights does hereby ordain:

Section 1. Amendment. Title 10-15-20-I of the Inver Grove Heights City Code is hereby amended as follows:

I. Approval, Permit Required; Time For Completion: No driveway may be constructed or expanded without first obtaining a driveway permit from the City. The applicant shall pay the fee for the driveway permit as established by City Council resolution or ordinance. The design of and the materials used for all driveways shall be approved by the engineer or the building official. The driveway shall be completely constructed in accordance with this section within one year from the date the building driveway permit was issued. (Ord. 1098, 11-8-2004)

Section 2. Effective Date. This Ordinance shall be effective from and after its passage and the publication of the ordinance according to law.

Passed this _____ day of _____, 2010.

Mayor George Tourville

Attest

Melissa Rheaume
Deputy City Clerk

MEMO

CITY OF INVER GROVE HEIGHTS

TO: File

FROM: Heather Botten, Associate Planner

DATE: July, 2010

SUBJECT: Driveway permitting process

Processing Applications:

1. Application Acceptance: Submittal documents are accepted by staff after an applicant submits a complete permit application with two site plans.
 - a. The Building Permit Technician ensures that all submittal documents contain all required information.
 - b. The Building Permit Technician stamps the submittal documents with the current date and logs the project into the plan log sheet and forwards the plans to the Planning Division.
2. Planning Review: This review ensures that the proposed driveway improvements are consistent with the zoning requirements, setbacks, driveway widths, spacing, and impervious surface allotments.
 - a. Upon completion of zoning review, the planner reviewing the plans initials the permit application and forwards the permit to the Engineering Division.
 - b. The planner then updates the log sheet showing their review is complete.
3. Engineering Review: This review ensures that the proposed driveway is in conformance with City standards pertaining to erosion control, drainage, easements, and right-of-way requirements.
 - a. Upon completion of engineering review, the engineer reviewing the plans initials the permit application and forwards the permit back to the Building Permit Technician.
 - b. The engineer updates the log sheet showing their review is complete.
4. Permit Approval: Upon completion of the review process the inspections department collates the submittal documents and approves the issuance of the permit.
 - a. The Building Permit Technician contacts the applicant and informs them that the permit application and plans have been approved and are ready for pick-up with the total permit fee amount.

5. Inspections: Staffing levels cannot assure all driveways will be inspected. The Engineering Division will inspect the driveway improvements if time permits, upon request, or upon complaint.
 - a. If an inspection is requested the property owner would call the Engineering Support Specialist to contact an Engineering Tech to set up the inspection.
6. Complaints: If a driveway complaint is received prior to a permit being issued the Code Enforcement Technician will handle the complaint. If the complaint is received after a permit is issued then the Engineering Department will address the complaint in regards to drainage and erosion control. If the Engineering Department deems the driveway to be in violation of setbacks the complaint would be turned over to the Code Enforcement Technician for code compliance.

Additional Information:

- It is the home owner's responsibility to verify property lines.
- The process for right-of-way permits is not changing and is handled through the Engineering Division.