

**INVER GROVE HEIGHTS
PLANNING COMMISSION AGENDA**

**Tuesday, October 19, 2010 – 7:00 p.m.
City Council Chambers - 8150 Barbara Avenue**

- 1. CALL TO ORDER**

- 2. APPROVAL OF PLANNING COMMISSION MINUTES FOR OCTOBER 5, 2010**

- 3. APPLICANT REQUESTS AND PUBLIC HEARINGS**
 - 3.01 CITY OF INVER GROVE HEIGHTS – CASE NO. 10-33ZA**
Consider an **Ordinance Amendment** to Chapter 10-3-4 of the City Code (Zoning Ordinance) relating to criteria granting a variance.

Planning Commission Action _____

- 4. OTHER BUSINESS**

- 5. ADJOURN**

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, October 5, 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
Christine Koch
Dennis Wippermann
Damon Roth
Mike Schaeffer

Commissioners Absent: Tony Scales (excused)

Others Present: Allan Hunting, City Planner
Heather Botten, Associate Planner

APPROVAL OF MINUTES

The minutes from the September 21, 2010 meeting were adopted as corrected.

PDB AUTOCARE LLC – CASE NO. 10-31CA

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for 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. 19 notices were mailed.

Presentation of Request

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the applicant is proposing to construct a 1020 square foot addition to the back of the Sinclair gas and service station located at the northeast corner of Cahill and 65th Street. Additional improvements will be made to the inside of the front of the building as well. Mr. Hunting advised that a conditional use permit for an automobile service station was issued around 1972. An amendment was later approved in 1994 to add a propane tank. No additional impervious coverage is being added since the addition will be constructed over existing bituminous. He noted that Engineering has reviewed the request and is requiring the applicant construct two depression ponds on their property to address stormwater runoff. Staff recommends approval of the request with the conditions listed in the report.

Commissioner Simon asked if the proposed depression ponds would be rain gardens, to which Mr. Hunting replied in the affirmative.

Commissioner Simon asked if Condition 8 covered the maintenance of the rain gardens, to which Mr. Hunting replied in the affirmative.

Opening of Public Hearing

The applicant, Paul Boehme, 1232 Wilderness Park Court East, Eagan, stated he would have to

get permission from the abutting landowner as a portion of one of the proposed rain gardens would be located on the property to the north.

Mr. Hunting stated the City Engineer would finalize the design and ensure the rain garden was located only on the applicant's property.

Chair Bartholomew reiterated Condition 11 regarding prohibiting storage of vehicles for a period longer than 48 hours, and Condition 12 prohibiting the sale of motor vehicles on the property.

Mr. Boehme stated normally he pushed vehicles he was working on into the garage in the evening; however, occasionally there may be an exception.

Planning Commission Recommendation

Motion by Commissioner Wippermann, second by Commissioner Schaeffer, to approve the conditional use permit amendment to amend the approved site plan allowing for a 30' x 34' building addition, with the 13 conditions listed in the report, for the property located at 6466 Cahill Avenue.

Motion carried (8/0). This item goes to the City Council on October 11, 2010.

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

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for an ordinance amendment to Chapter 10 of the City Code (Zoning Ordinance) 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. No notices were mailed.

Presentation of Request

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that over the past year the City Council has reviewed a few requests for driveway encroachments into the side yard setback and the City drainage and utility easements. Council subsequently directed staff to hold a public hearing regarding the regulation of driveway setbacks. Council direction given to staff was to keep the five 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. While existing encroachments would be allowed to remain as legal non-conformities, the future encroachment of bituminous, concrete or paving blocks would not be allowed within that setback area without an approved variance and hardship. Ms. Botten advised that, based on Council direction, the driveway section of the ordinance and the five foot side and rear setback shall remain. In an effort to protect the City's easements and the setbacks, staff drafted proposed code language that would require a driveway permit and the internal procedure for obtaining the permit. Staff has discussed a \$25 permit processing fee to obtain such a permit. Staff recommends approval of the proposed ordinances in the report.

Commissioner Simon asked if the legal non-conforming driveways could at any point in time be repaired or expanded, to which Ms. Botten replied they could be repaired or replaced but could not be expanded without an approved conditional use permit.

Commissioner Hark asked if the temporary ordinance would be in effect for only one day, to which Ms. Botten replied in the affirmative.

Commissioner Wippermann asked for clarification of the intent of the one day ordinance.

Ms. Botten explained that the existing encroachments which have been created over the years are technically illegal uses because the City has always had a five foot setback for driveways. The City cannot grandfather in an illegal use; therefore, they are creating an ordinance for one day to allow them to become legal non-conforming uses.

Commissioner Wippermann asked what would happen if a homeowner with an existing gravel driveway in the setback area wanted to blacktop it.

Ms. Botten advised that gravel driveways are not allowed in the Residential districts. In the Agricultural and Estate districts they are allowed; however, the City would be able to regulate a new driveway or expansion through the permit process.

Chair Bartholomew asked if gravel or Class 5 would be permitted up to the property line, to which Ms. Botten replied in the affirmative, stating many people use it for landscaping material.

Chair Bartholomew asked how the driveway ordinance treated landscaping rock or Class 5, to which Ms. Botten replied that the ordinance currently does not address landscaping materials.

Commissioner Hark asked whether the surrounding communities required a driveway permit and if so, what the fee amount was.

Ms. Botten advised that South St. Paul requires a permit but allows driveways right up to the property line. She was unsure of the permit fee.

Chair Bartholomew asked what the City's smallest permit fee was, to which Ms. Botten replied \$15 for a temporary sign permit.

Commissioner Wippermann asked if the proposed ordinance language required a permit to replace a driveway.

Ms. Botten stated the City would encourage it, but it would not be required.

Commissioner Gooch asked if surrounding cities allowed driveways right up to the property line.

Ms. Botten stated that out of the five cities that staff contacted (Eagan, Burnsville, South St. Paul, Farmington, and Woodbury) only South St. Paul did not require a setback. Farmington and Woodbury require a five foot setback, South St. Paul requires no setback unless it's for an RV greater than 23 feet in length, Burnsville has a two foot setback, and Eagan was somewhat ambiguous.

Opening of Public Hearing

There was no public testimony.

Planning Commission Discussion

Commissioner Roth stated he did not support the proposed ordinance and felt the City should enforce the five foot setback by requiring that homeowners remove any encroachments into the setback. He stated both the homeowner and contractor have a responsibility to research and verify code requirements prior to installation of projects, and he was opposed to requiring yet one more permit.

Chair Bartholomew stated he supported the proposed ordinance since historically the City has not been aggressive in asking homeowners to remove their encroachments into setbacks, and the

proposed language would at least allow the City to prevent future setback violations.

Commissioner Gooch stated that many homeowners have widened their driveways into the setbacks in order to store trailers, boats, RVs, etc. rather than parking them on the street. Because eliminating that parking would likely result in increased street parking, he would consider allowing driveways to go within two feet of the property line or perhaps right up to it. He supported grandfathering in existing encroachments.

Chair Bartholomew stated that allowing driveways to go up to the property line could cause impervious surface issues as driveways were factored into maximum impervious surface calculations.

Planning Commission Recommendation

Motion by Commissioner Wippermann, second by Commissioner Simon, to approve an ordinance amendment to Chapter 10 of the City Code (Zoning Ordinance) relating to improvements located in the side and rear yard setback areas, an ordinance relating to a permit being required prior to the expansion or construction of a driveway, and a temporary ordinance regulating certain materials located in setback areas.

Motion carried (6/2 – Roth, Koch). This item goes to City Council on October 25, 2010.

OTHER BUSINESS

Allan Hunting, City Planner, advised that the first meeting in November was scheduled for Wednesday, November 3rd due to November 2nd being Election Day.

ADJOURNMENT

Chair Bartholomew adjourned the meeting at 8:27 PM.

Respectfully submitted,

Kim Fox
Recording Secretary

**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
*KENNETH J. ROHLF
◦STEPHEN H. FOCHLER
✦JAY P. KARLOVICH
ANGELA M. LUTZ AMANN
*KORINE L. LAND
ANN C. O'REILLY
◻*DONALD L. HOEFT
DARCY M. ERICKSON
DAVID S. KENDALL
BRIDGET McCAULEY NASON
DAVID B. GATES
•
HAROLD LEVANDER
1910-1992
•
ARTHUR GILLEN
1919-2005
•
• ROGER C. MILLER
1924-2009

MEMO

*ALSO ADMITTED IN WISCONSIN
✦ALSO ADMITTED IN NORTH DAKOTA
◻ALSO ADMITTED IN MASSACHUSETTS
◻ALSO ADMITTED IN OKLAHOMA

TO: Allan Hunting, City Planner
FROM: Timothy J. Kuntz, City Attorney
DATE: October 14, 2010
RE: Ordinance Amendment regarding Variance Standards

Section 1. Background. As a result of the Supreme Court's decision in *Krummenacher vs. City of Minnetonka*, I have had a meeting with the Planning Commission and another meeting with the City Council to explain the need to conform the City Ordinance dealing with variances to the language of the State statute dealing with variances.

The attached Ordinance accomplishes this result.

The statutory language dealing with variances is found in Minn. Stat. § 462.357, Subd. 6 (2).

This statutory language states:

(2) To hear requests for variances from the literal provisions of the ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance. "Undue hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under conditions allowed by the official controls, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance. Undue hardship also includes, but is not limited to, inadequate

access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not permitted under the ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances to insure compliance and to protect adjacent properties.

Attachment

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

ORDINANCE NO. _____

**AN ORDINANCE AMENDING INVER GROVE HEIGHTS CITY CODE TITLE 10,
CHAPTER 3, SECTION 4 (D)(1) REGARDING APPROVAL OR DENIAL OF
VARIANCE**

The City Council of Inver Grove Heights does hereby ordain:

Section 1. Amendment. Title 10, Chapter 3, Section 4 (D)(1) of the Inver Grove Heights City Code is hereby amended to read as follows:

~~D. Approval Or Denial Of Variance:~~

~~1. a. The planning commission may recommend to approve, approve with conditions, or deny a request for a variance. The city council may deny or approve such variances and impose conditions and safeguards therein. The planning commission, in making a recommendation, and the city council, in acting upon a request for a variance, shall consider the following factors:~~

~~(1) That special conditions apply to the structure or land in question which are peculiar to such property or immediately adjoining property, and do not apply generally to other land or structures in the district in which said land is located.~~

~~(2) That the granting of the application will not be contrary to the intent of this title and the comprehensive plan.~~

~~(3) That the granting of such variance is necessary as a result of a demonstrated undue hardship or difficulty and will not merely serve as a convenience to the applicant.~~

~~(4) That economic considerations alone do not constitute an undue hardship.~~

~~b. Approval of a variance shall require a majority of the city council present.~~

D. Approval Or Denial Of Variance:

1. a. The planning commission may recommend to approve, approve with conditions, or deny a request for a variance. The city council may deny or approve such variances and impose conditions and safeguards therein. In making its recommendation, the planning commission shall consider the following factors and the city council, in acting upon a request for a variance, shall only grant a variance if the applicant demonstrates to the city council that the following factors have been met:

(1) That circumstances exist that are special and unique to the structure or land under consideration and such circumstances do not apply generally to other land or structures in the district in which the subject structure or land is located.

(2) That the granting of the application will not be contrary to the spirit and intent of this title and the comprehensive plan.

(3) That the granting of such variance is necessary as a result of a demonstrated undue hardship and will not merely serve as a convenience to the applicant. Undue hardship means that all of the following circumstances exist:

- The subject property cannot be put to a reasonable, beneficial use unless the variance is granted.
- The plight of the landowner is due to circumstances unique to the subject property not created by the landowner.
- The variance, if granted, will not alter the essential character of the locality.

(4) That economic considerations alone do not constitute an undue hardship if reasonable beneficial use for the subject property exists under the terms of this title.

b. Undue hardship also includes, but is not limited to, inadequate access to direct sunlight for solar energy systems.

c. A variance shall be granted for earth shelter construction as defined in Minn. Stat. § 216C.06, Subd. 14 when such construction and variance are in harmony with this title.

d. A variance may not permit any use that is not permitted under this title for property in the zone where the affected person's land is located.

e. A variance may permit the temporary use of a one-family dwelling as a two-family dwelling.

f. The council may impose conditions in the granting of a variance to ensure compliance and to protect adjacent properties.

g. Approval of a variance shall require a majority of the city council present.

SECTION 2. Effective Date. This ordinance shall be in force upon its adoption and publication.

Passed this _____ day of _____, 2010.

George Tourville, Mayor

ATTEST:

Melissa Rheame, Deputy City Clerk