

MINUTES OF THE
AUSTIN CITY PLANNING COMMISSION REGULAR MEETING
TUESDAY, OCTOBER 9, 2001

MEMBERS PRESENT: Jack Rosenberg, Rich Bergstrom, Lois McConnell, Sue Grove, Glenn Mair, & Brian Johnson

MEMBERS ABSENT: Janet Anderson & Gordy Kuehne

OTHERS PRESENT: Community Development Director Craig Hoium & Craig Byram from the Hoversten Law Office

Commission Chair Brian Johnson called the meeting to order at 5:37 p.m., October 9, 2001, in the Austin City Council Chambers located at 500 4th Ave. N.E., Austin, Minnesota.

Motion to approve the minutes of the September 11, 2001 meeting was made by Commission Member Rosenberg. Motion was seconded by Commission Member Bergstrom. Unanimous Ayes. Motion passed.

- 1.) **SIGN APPEAL: To consider a request from the Austin Medical Center, 1000 1st Dr. N.W., for the denial of the issuance of a sign permit to erect an additional four ground signs totaling 84 sq.ft. in sign face area. Said property is located in an "R-2" Multi-Family Residential District.**

The request was reviewed by Mr. Hoium. The Austin Medical Center is a conditional use located in an "R-2" Multi-Family Residence District. In 1998 the Planning Commission reviewed a conceptual sign plan where numerous signs were placed on the medical center property. Many of these signs were directional signs for the public and for emergency vehicles. The surrounding land uses are residential land uses to the north and south which are "R-2", to the east is a business in a "B-2" District, and to the west is a combination of business- "B-1", and residential land uses which are in an "R-2" District. There are three Austin Medical Center Smoke Free signs, and a free-standing sign with two cabinets of 6' x 4'. The cabinets say that the Austin Medical Center is in the top 50 category for top medical centers and top 100 in another category. With this appeal are signs which are currently in place, but the sign face is being proposed to be changed. This appeal is for an additional 84 sq.ft. of sign face area in addition to the permitted sign face area.

Commission Chair Johnson asked the height of the signs. Jon Boyer, of Precision Signs, said 8'-9' for the cabinet signs and the others are ground signs. Commission Chair Johnson asked if there is an ordinance limit to the sign height. Mr. Hoium said 9' if the sign was erected over a sidewalk area or 14' for vehicle clearance. Mr. Boyer said that all of the proposed signs are away from the residential area- they are mainly inside the entrances to the facility.

Motion was made by Commission Member Rosenberg to recommend to the City Council approval of these signs as per the permit application. Motion was seconded by Commission Member Mair. Unanimous Ayes. Motion passed.

- 2.) **SIGN APPEAL: To consider the sign appeal from Frank and Jeannette Hernandez, 801 4th Ave. N.E., for the denial of the issuance of a sign permit to erect a 4 foot by 8 foot fascia wall sign onto the west exterior wall of their business facility. Said property is located in an "R-2" Multi-Family Residence District.**

Mr. Hoium reviewed the request. This property is located on the northeast corner of the intersection of 4th Ave. N.E. & 7th St. N.E. The request is for a non-illuminated exterior wall sign. With the existing sign in place there would be a total wall sign coverage of 10% of the west exterior wall. City Code limits sign face area to 2 sq.ft. in area in an "R-2" Multi-Family Residence District. This property is a non-conforming land use. The petitioners had some signage in place previously. The exterior of the building has been painted during renovation. Precision Signs came to Mr. Hoium's office to request a sign permit to place new signage there. A Vacuum Center sign is located toward the upper part of the west exterior wall and the sign in

question is a 4' x 8' area. The building face area is 700 sq.ft. Total sign face area is 71 sq.ft. Surrounding land uses are residential land uses to the north and south- "B-2" & "R-2" Districts, to the east are residential land uses with an "R-2" District, and to the west is business land use located in a "B-2" District.

Mr. Boyer, of Precision Signs, said there are currently no signs in place, but a 2.5 foot by 13 foot along with a 4 foot by 6 foot is proposed. Mr. Boyer said the previous sign was 66 sq.ft. Commission Member Rosenberg asked if this appeal would need to be re-presented because the size has changed. Mr. Hoium said no- this is not a public hearing with required public or mailing notices.

Motion was made by Commission Member McConnell to recommend to the City Council approval of the sign appeal for the 6-foot by 8-foot & 2.5-foot by 13-foot wall signs on the west side of the building. Motion was seconded by Commission Member Rosenberg. Unanimous Ayes. Motion passed.

3.) OPEN PUBLIC HEARING: To consider a request from Sheila Helmers, 1501 8th Ave. N.W., for the re-zoning of their property in an "R-2" Multi-Family Residence District (used car sales). This re-zoning request is to change their property legally described as Lots 1, 2, and 14, Block 2, Auditor's Plat to a "B-2" Community Business District which conditionally permits this type of land use.

Mr. Hoium reviewed request. The address of this property is 1501 & 1503 8th Ave. N.W. Currently this property is a non-conforming land use located in an "R-2" Multi-Family Residence District. This land use is located on two of the parcels- Lots 1 & 14. Lot 2 is a parcel that was acquired by the petitioner with a single family dwelling located on it. The petitioner had the structure removed and it is now partially hard surfaced. The surrounding land uses are Educational Land Use (Riverland Community College) located in a "R-O" Residential Office District to the north, "R-2" Residential District to the south, and to the east and west are "R-2" Residential Districts. The petitioner purchased Lot 2 in December 1998 to expand the site of the used car dealership and has been through the request to re-zone process into a "B-2" Community Business District. A "B-2" District lists car sales and service of motor vehicles as a conditional use. The minimum distance from an "R" District is 50 feet. Mr. Hoium received a letter from Glenn Thaisen, of 1502 7th Ave. N.W. and read the letter to the Commission. In it Mr. Thaisen stated that he is opposed to this proposed re-zoning request stating that the Planning Commission has repeatedly denied the Helmer's prior requests. Mr. Thaisen states that the only reason this business presently exists is due to the fact that on one occasion the Planning Commission was over-ridden by City Council action. He also stated that this request constitutes spot zoning inconsistent with the zoning ordinance and overall plan that the City has set forth and is contrary to the overall use and theme of the neighborhood and should once again be denied. Mr. Hoium said that the Planning Commission should also refer to the Comprehensive Plan and the Future Land Use map when considering this request. This property should be used as a low density land use according to the Future Land Use Map. Resolution 1162 lists the findings of facts approved by the City Council June 19, 2000- the findings that were addressed during the public hearing when the City Council reviewed this matter earlier. Section 11.41 Subd.3 which addresses conditional uses in a "B-2" Community Business District lists that automotive service, farm implements, automobiles, trucks, trailers, for sale or display, trailer lots, etc. are conditional uses provided that there shall be at least 50 feet from either residential district and that the premises shall be screened by a site obscuring solid wall fence or vegetative screen at least 6 feet in height. Currently the petitioner has been given permission by the City Council as a non-conforming land use to conduct his business on all of Lots 1 and 14. If this matter is recommended by approval by the Planning Commission the petitioner would have to re-petition for a conditional use permit for this type of land use. If that conditional land use were approved by the Planning Commission a minimum 50-foot distance would have to be maintained from the adjacent residential district. Cars for sale on the property would have to be 50 feet from the "R" District. Mailings went out to surrounding property owners and publications were submitted to the newspaper. The only response Mr. Hoium received was the letter from Mr. & Mrs. Thaisen.

Commission Member Rosenberg asked the status of Lot 2. Mr. Hoium said the petitioner purchased Lot 2.

Commission Chair Johnson questioned the date for bringing the property into compliance stated in the staff report. Mr. Hoium said June of 2000 is correct. Chair Johnson asked Mr. Hoium if the buffer zone has been discussed with the owner. Mr. Hoium said yes.

Commission Member McConnell asked if the zoning were approved and recommended for change, would it always be a "B-2" zone. Mr. Hoium said if a recommendation was made by the Planning Commission and it was approved by the City Council what would then have to take place would be a petition for a conditional use permit. If that were approved by the Planning Commission there would be limitations placed on the approval of the conditional use permit.

Craig Byram, City Attorney, said that there is a well established policy now that when a request for re-zoning is received where the re-zoning will take the property outside the Comprehensive Plan that there is also in place a request to change the Comprehensive Plan so that the zoning stays consistent with the plan, otherwise the Comprehensive Plan could become meaningless. Mr. Byram also asked the Planning Commission to reference Section 11.80- "it is the intent of this Section to permit these non-conformities (the existence of the property now) to continue until they are removed, but not to encourage their survival. It is further the intent of this section that non-conformities shall not be enlarged upon, expanded, nor extended, nor be used as a basis for allowing additional structures or uses prohibited elsewhere within the same district." Mr. Byram stated that the zoning code indicates that it should be considered that the point of all this is to allow non-conforming uses to exist, but not to necessarily encourage them. If the Planning Commission votes to recommend this re-zoning Mr. Byram asked them to make some reference as to why this portion of the Code should be disregarded (for the record).

Commission Member Rosenberg asked if there are any changes since the last three times this has come before the Planning Commission. Mr. Hoium said there are no rules prohibiting the times a petitioner can re-petition.

Mr. Byram asked that the Commission should consider this request on its merits, drawing upon the experience of the findings of the materials and discussions on past occasions, but the findings should be on the merits in regard to this request- there is no legal reason why this request cannot be made again.

Commission Chair Johnson pointed out Section 11.07 Amendments- in considering whether to change the zoning boundaries "the City Council shall consider public health, safety, and welfare and the aesthetic and historic value of the area." The Comprehensive Plan states that "strips of commercial use will be discouraged along arterial streets."

Tim Sorgine, of 312 37th St. S.W., owns the property at 1418 7th Ave. N.W. Mr. Sorgine stated that the building on the property in question also contains a double garage and service bay used to work on vehicles and is within 10-20 feet of the Thaisen property. Mr. Sorgine said that in expanding the business to include the hail and dent business there is more noise along with the carports being erected and sold from the property- is this "expanding?" Mr. Sorgine said that the amount of lighting at night on the petitioner's property is so bright it illuminates the inside of the surrounding residences- is there an ordinance for directional lighting? In regard to the extra lot on the petitioner's property Mr. Sorgine questions the condition of this lot. Mr. Sorgine says that customers to this business continue to park illegally. Mr. Sorgine questions the 50-foot setback from the Thaisen property.

Commission Member Rosenberg said that Mr. Thaisen's rear yard becomes a swimming pool after a heavy rain- the rain drains from the sales lot drains west and south to Mr. Thaisen's property.

Mr. Hoium said that if Lots 1, 2, & 14 were re-zoned and if a conditional use permit were granted for auto sales the "R-1" District would follow along the west boundary of Lot 2, the north boundary of Lot 13, and the west boundary of Lot 14. This 50-foot buffer would be west of all of those points.

Bob Helmers, spoke on behalf of the property owner- his wife Sheila Helmers. Mr. Helmers said that eleven years ago he purchased this piece of commercial property. When he purchased this property he understood that this was commercial property, but was not under the understanding that this was an "R-2" District. Mr. Helmers was notified that it was "R-2", a meeting was held, and the car lot use was okayed, but another thing not understood by Mr. Helmers at that time was that when the car lot was approved (this property has been used commercially since the 1940's) that it was not okay to install a free-standing sign because it is an "R-2" District. On Mr. Helmers tax slips it says "commercial", not residential. In 1998 they purchased Lot 2 and when the tax slip came it said "homestead". Mr. Helmers is paying about \$1700 a year taxes on the two

front lots. Lot 2 taxes are \$16 a year. Mr. Helmers said that in Mr. Thaisen's letter it refers to "spot zoning." Mr. Helmers said there are five other pieces of "R-1" and "R-2" properties in Austin (in neighborhood type settings) that within the last few years have been re-zoned to "B-1" & "B-2" Business Districts from residential zones. Mr. Helmers said this does not sound like "spot zoning." Some of these properties reverted under the 1976 law to "R-2" Districts. Mr. Helmers is asking the City to be fair and re-zone his property back to a "B-2" Commercial Business District. Mr. Helmers says they have improved their property and invested a lot into Austin in the past eleven years. He also wanted to point out that Mr. Sorgine's property is always full of vehicles.

Commission Chair Johnson asked Mr. Helmers why he would want to reduce the size of his business. Mr. Helmers said that he tore down the dilapidated house to improve the area. Mr. Helmers said that there is not a rain runoff problem in Mr. Thaisen's property. Commission Chair Johnson stated that each property is considered on its own merits and that when an owner purchases a property it is their responsibility to be aware of the zoning. He also said that in looking at the City Ordinance and the Comprehensive Plan, both say that enlarging, changing, or expanding a non-conforming use, and the concerns with health, safety and welfare of the neighborhood do not warrant a change of zoning. Mr. Helmers said that since the Comprehensive Plan has been in place other property has been re-zoned from "R-2" to "B-1". Commission Chair Johnson said that in looking at the neighboring properties and this non-conforming use he sees no reason to change. Mr. Helmers said that this is a heavily traveled street and everyone must admit that this was a commercial property.

Commission Member Grove asked Mr. Helmers if he wishes to reduce the amount of space in his business. Mr. Helmers said no. Member Grove said there is a possibility that he may not be able to use one of the lots on 14th St. N.W. if this were to be rezoned. Mr. Helmers said that if the rezoning were approved he would want the buffer to be waived. Commission Chair Johnson said a buffer zone is part of the ordinance and cannot be waived. Commission Member McConnell asked Mr. Helmers if the property were rezoned from "R-2" to "B-2" what would the difference make in the business. Mr. Helmers said that if this was rezoned the value of the property for resale would be greater. Commission Chair Johnson said the value of the surrounding residential properties would probably also be affected.

Mr. Sorgine said that when Mr. Helmers bought the property it was common knowledge- it was a plumbing shop to be grandfathered in as a plumbing shop- not a retail shop- it was never expanded. In regard to the other properties referred to by Mr. Helmers, he feels that they are not surrounded by strictly residential- they were surrounded by commercial properties with room for expansion.

Commission Chair Johnson asked Mr. Helmers if he would like to withdraw his application if rezoning would mean losing some of his business property to a buffer zone. Mr. Helmers said no and told the Planning Commission to do what they felt comfortable with.

Motion was made by Commission Member Mair to recommend to the City Council denial of the rezoning request from an "R-2" Residential District to an "B-2" Business District, citing Section 11.80 which states, "to permit these non-conformities to continue until they are removed, but not to encourage their survival, and that conformities shall not be enlarged upon, expanded, nor extended, nor be used as a basis for allowing additional structures or uses prohibited elsewhere in the same district." The Comprehensive Plan also addresses the difficulty of this space- the disjointed character of the area and "that strips of commercial use will be discouraged on all arterial streets." Motion was seconded by Commission Member Bergstrom. Unanimous Ayes. Motion passed.

4.) OPEN PUBLIC HEARING: To consider a request from Doran and Darcy Schroeder, 811 12th Ave. S.W., for a 6 foot variance to be issued pursuant to Austin City Code Section 11.30, Subd.5 which requires a minimum 25-foot front yard setback for structures located in an "R-1" Single-Family Residence District. This requested variance is for the construction of a 5-foot b7 8-foot roof over an existing front yard deck.

Mr. Hoium reviewed the request. This property is completely surrounded by residential land uses and "R-1" District. The petitioner has a permit in place to construct a deck in the front yard area that is in compliance with the setback requirements. There are special provisions for encroachments into front yard areas. This

code is for decks without roofs. A roof on a deck puts it into a different category. The petitioner would like to construct the roof to divert water runoff from the dwelling and to improve the aesthetic looks to the front of the residence. In reviewing this matter the Planning Commission needs to take note of statutory requirements as what to consider when granting or denying a variance. Mailings went out to surrounding property owners and was published in the newspaper and Mr. Hoium did not receive any replies.

Commission Member Grove asked if the deck was approved. Mr. Hoium said yes.

Mr. Schroeder, the petitioner said this cedar deck was constructed over the top of the original steps. He would like a small area to receive guests and retrieve his mail without getting wet from the rain.

Commission Member Mair asked if the roof is the only project being proposed. Mr. Schroeder said yes. Commission Member Rosenberg said this deck does not extend as far into the yard as some others on the block.

Motion was made by Commission Member Grove to recommend to the City Council approval of the 6-foot variance to construct the roof based on the fact that this variance is in keeping with the spirit and intent of the ordinance and a use of the property in a reasonable manner for the petitioner. Motion was seconded by Commission Member McConnell. Unanimous Ayes. Motion passed.

5.) OPEN PUBLIC HEARING: To consider a request from Greg and Jane Hovland, 2006 11th Ave. N.E., for a conditional use permit for the construction of a flood berm within a designated floodway district. This action is pursuant to City Code Section 12.13, Subd.3 (F).

(Sue Grove exited the meeting)

Mr. Hoium reviewed the request. The petitioner's residence is adjacent to the Nature Center. To the east and west of this property there are some berms that have been constructed in the neighboring properties. In the floodplain area there are two distinct classifications- there is a flood fringe area and a floodway area. In the area between the floodway boundary and the flood fringe boundary you may, as a permitted use, place up to 1,000 cubic yards of fill per parcel within the flood fringe area. From the southwest corner of the backyard it is approximately 30 feet to the floodway district. This makes it difficult to for the owner to eliminate future flooding of his residence. The berm will probably be "U" shaped as are the neighboring berms are and the top of the berm will be 1 foot above the floodplain eliminating future flooding. Bob Ruzek, the area hydrologist from the DNR has reviewed this along with Mr. Hoium and Mr. Hovland. Mailing notices did go out to adjacent property owners and the notice was published. City Code Section 12 also requires the City to notify the Commissioner of the Department of Natural Resources about the project and the meetings. Mr. Hoium has not received any replies to any of the notices. Most of the berms in this area are 400-500 cubic yards. If the Planning Commission chooses to recommend this conditional use permit, Mr. Hoium requested that they do place a limit of fill that could be placed in the floodway area of 250 cubic yards.

Commission Member Rosenberg asked if this berm will connect to the existing berm on the property directly to the east of the petitioner. Mr. Hoium said no. On the sides of the structure there is a descending direction and this berm will run from the southeast corner of his garage in a "U" shape and connect back to the west side of his residence- very similar to the neighboring properties have done. Mr. Hovland is trying to save the trees in the rear yard area. If this berm were built in the flood fringe area he would have to remove the trees. Mr. Hoium commended those homeowners who have tried to minimize the flood damage in the community.

Commission Member McConnell asked if the 250 cubic yards is the total for the whole project. Mr. Hoium said most of the berms constructed have ranged from 400-500 cubic yards. Mr. Hoium is referring to the amount of fill in the *floodway* be limited.

Commission Member Rosenberg asked how tall the berm would be. Mr. Hovland said at the highest point it would be 8 feet directly behind the home. He does not have the total numbers, but he would not exceed the limit allowed. Commission Member Rosenberg asked if the berm is constructed entirely of earth. Mr.

Hovland said yes, mainly clay with topsoil on top. Commission Chair Johnson asked if 250 cubic yards would be enough. Mr. Hovland said yes.

Commission Member Bergstrom asked what is inside the berm to keep water away. Mr. Hovland said there is a 6" pipe with a one-way valve so water can come out, but not go back through.

Motion was made by Commission Member Howard to grant the conditional use permit with the condition that the floodway will have 250 or less cubic yards of fill. Motion was seconded by Commission Member Rosenberg. Unanimous Ayes. Motion passed.

OTHER BUSINESS

Commission Chair Johnson said he received a call from a resident regarding the Steve Carroll petition earlier this year. Mr. Carroll was denied when requesting an accessory structure over 1,000 sq.ft., but is now constructed a two-story garage. The resident asked if there should be a limit on the characteristics of a structure such as the height. Mr. Hoium said the garage plan that was submitted shows a one-story structure. Mr. Hoium told Mr. Carroll that if he adds a second story that will be a whole other permit. Mr. Hoium said there is a workshop scheduled for the Ordinance Committee and this will be one of the ordinances in front of them. Mr. Hoium said the maximum height now for structures in a residential area is 30 feet.

Mr. Hoium said he received a memo regarding the Ordinance Revisions- they will not all be covered this year, but the more critical ones will be addressed before the end of the year.

ADJOURN

Motion was made to adjourn by Commission Member Rosenberg. Motion was seconded by Commission Member Mair. Unanimous Ayes. Motion passed. Meeting adjourned at 7:01 p.m.