

MINUTES OF THE
AUSTIN CITY PLANNING COMMISSION REGULAR MEETING
TUESDAY, JANUARY 14, 2003

MEMBERS PRESENT: Rich Bergstrom, Jack Rosenberg, Sue Grove, Roger Stratton, Gordy Kuehne, Brian Johnson, and Glenn Mair

MEMBERS ABSENT: Sue Howard and Janet Anderson

OTHERS PRESENT: Community Development Director Craig Hoium, City Attorney Craig Byram, and Council Members Lynn Koch, Mickey Jorgenson, and Dick Pacholl

Commission Chair Johnson called the meeting to order at 5:30 p.m., January 14, 2003, in the Austin City Council Chambers located at 500 4th Ave. N.E., Austin, Minnesota.

Motion to approve the December 10, 2002 minutes was made by Commission Member Rosenberg. Motion was seconded by Commission Member Mair. Unanimous Ayes. Motion carried.

Commission Member Rosenberg made the motion to appoint the position of Planning Commission Chair to Brian Johnson. Motion was seconded by Commission Member Grove. Unanimous Ayes. Motion passed. Commission Member Mair made the motion to appoint the position of Planning Commission Vice-Chair to Sue Grove. Motion was seconded by Commission Member Rosenberg. Unanimous Ayes. Motion passed.

- 1.) **OPEN PUBLIC HEARING: To consider a request from Schammel Properties, 1210 14th St. N.E., Austin, MN, for a change of non-conforming land-use of the Burr Oak Manor property located at 400 10th Ave. N.W. This request would change the previous non-conforming land-use from a nursing home care facility to a 24-unit multi-family rental apartment complex. Said action is pursuant to City Code Section 11.80, Subd. 2(E)**

Mr. Hoium reviewed the section of zoning ordinance which addresses this type of action. Section 11.80 states that any non-conforming use of a structure or structure in premises may be changed to another non-conforming use provided that the board of adjustment and appeals shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. Mr. Hoium asked that the Planning Commission consider this Section when reviewing this request. The surrounding land uses are of single-family residential. There is another multi-family structure located just west of the Burr Oak Manor property and to the south is the Austin Medical Center located in an "R-2" District. The petitioner has requested to change the previous land-use from a licensed nursing home to a 24-unit multi-family apartment complex that would be market rate rental units. The complex would include nine (1)-bedroom apartments, ten (2)-bedroom apartments, and five (3)-bedroom apartments. The center portion of the building was once called the Wagner mansion and was part of the Burr Oak Manor facility. The nursing home care land-use of Burr Oak Manor was licensed as a 116-bed nursing home facility, and before it closed there were 70 residents living there. Burr Oak Manor employed 90 people. There are two wings that were added onto the original Wagner mansion. One wing was constructed in 1966 and the other wing in 1969. The Schammels have provided a conceptual plan for a 24-unit complex. The Wagner mansion portion of the building and the carport are proposed to be demolished and that will accommodate additional off-street parking spaces and would also relocate the existing garbage containers to the west side of the property behind screening. There would be fourteen parking stalls off 4th St. N.W., five stalls farther into the property, five stalls to the north of the building, and six stalls provided in between the two wings. City of Austin Development Standards and Code Section 11.70 require 1¼ off-street parking stalls are provided for multi-family developments. With the proposed thirty off-street stalls this is in compliance to the requirements. Mr. Hoium asked that if the Planning Commission chooses to recommend approval of this project to the City Council he asks that they consider the included Sections in their backup material. Mr. Hoium recommended that the present area of asphalt be removed if there is not a specific use for that and turned into greenspace. He also recommended that the petitioner develops some type of modular

playground equipment for younger families which may have children. A large portion of the current parking areas in the development are screened from adjacent properties, but there are some areas that are not screened. Mr. Hoium asked the Commission to require some type of screening- vegetative or a minimum 6' high fencing to provide a buffer. Mr. Hoium said the development would occur in two separate phases and asked that if parking problems occur after Phase I of the project, that consideration could be taken for additional property acquisitions to accommodate those needs. Mr. Hoium said that if this property were to be developed in accordance to the provisions of a multi-family residential district there are some issues such as off-street parking and other development standards such as lot coverages. The standard for a conforming land-use for an "R-2" District maximum lot coverage would be 40%. The proposal shown on the submitted plan provides a 32.7% area of greenspace. This is currently a non-conforming land-use and when a non-conforming land-use is changed it still has a non-conforming land-use status. Various conditions can be listed (similar to a conditional use permit), but he asked the Planning Commission to be careful not to confuse this with a conditional use permit. The minimum provisions required for this type of action in Section 11.80 that this will be reviewed by the Board of Adjustments and Appeals (City Council). The legal notification for this type of action is that it is published in City Hall three days prior to the hearing- there is not a requirement by State Statute that says that adjacent property owners have to be notified for this public hearing, which was done, but it is not a requirement. Mr. Hoium also recommended that there are designated parking stalls for each unit.

Commission Chair Johnson asked who and how would it be determined if the parking was adequate after Phase I. Commission Member Kuehne asked what land could be acquired- isn't the surrounding property already owned by homeowners. Mr. Hoium said one neighboring property owner would be willing to sell his property if additional parking is necessary.

Chair Johnson asked how long the ordinance for off-street parking been in effect to result in the present 30 parking stalls. Mr. Hoium said November 1975. Chair Johnson felt that may not be enough stalls per unit. Chair Johnson said that in Code Section 11.80 Subd. 1 it talks about the intent- "the intent of the Section is to permit non-conformities to continue until they are removed, but not to encourage their survival. The non-conformities shall not be enlarged upon, expanded, nor extended, nor shall be used as a basis for allowing additional structures or uses prohibited elsewhere in the same district." Subd. 1 (E) talks about changes in the non-conforming use, but the intent section seems to say it shouldn't be changed or expanded at all. Craig Byram said the sections refer to two different things- the intent description has to do with the existing non-conforming uses- uses that were in place when the zoning ordinance was passed that don't conform with the zoning that was passed with the area. When Burr Oak was in existence it was a non-conforming use that was in existence at that time. If Burr Oak had wanted to build an additional structure, to put in more rooms, expand the facility, or modify the use, Subd. 1 would say that's not what we intend to do- what we intend to do is to allow the structure and the business as it sits to be grandfathered in. Subd. 2 talks about changes and says when a change occurs or a non-conforming use ceases to exist and you may be faced with a structure that doesn't have a use consistent with zoning, it's original non-conforming use is no longer intended to be it's on-going use- what should the City Council's ultimate measure be when looking at whether or not to grant a change. Is it consistent with the impact that the old use had on the area. The intent is not to allow the non-conforming use, either the old one or the new one, to be expansive from where it was to begin. When looking at the change you ask if this will impact the community worse, or in a different way, than it did under it's original use. Commission Member Kuehne asked if the old permit is still in effect- Subd. 2(B) states that "after one year of non-use it no longer exists." Mr. Hoium said that if a nursing home tried to obtain a license or move into the facility there is a time limit as to when the previous non-conforming land-use can continue to locate there. Mr. Hoium said that what is being proposed is not what the previous land-use was, and that's why we are going through this process. Member Kuehne said that Section 11.80 Subd. 2(B) states that "any non-conforming use which is voluntarily discontinued or becomes inactive for a period of one year or more shall not be permitted to resume except in compliance with the use of the regulations of the zoning." This building has been empty for more than one year so he believes the original permit is no longer in effect. Chair Johnson asked that if a new apartment building was being proposed, and there was no history behind it, it could not be built in this zoning district- is that correct. Mr. Byram said yes, that is right. Mr. Hoium said that he spoke with the petitioner about this- if this facility is going to be used in the future as something as it is, there are two ways to approach it. The first is to petition to re-zone it as an "R-2" use and then anything permitted within an "R-2" District would be permitted as a land-use with no conditions. Or you can reference the City Code Section for conditional uses and go through the conditional

use process. Mr. Hoium's recommendation to the petitioner was to petition for the non-conforming land-use for the fact that with that, conditions can be placed on the proposed land-use and there could be considerations given by the Planning Commission and City Council to adjacent property owners in regard to the land-use. Chair Johnson asked if that when this property was before the Commission last year it was for a re-zoning. Mr. Hoium said yes, and one of the reasons for its denial was probably a lack of a specific plan of use. Chair Johnson said that because this current proposal is not a permitted use they could not apply for a conditional use permit. Mr. Hoium said yes. Mr. Hoium said that mailings did go out to surrounding property owners and his office did receive visits from Mark Owens and Gary Schloo with questions relating to the development, parking issues, and possible traffic impact. He also received phone calls from George Martin wanting clarification on the proposal and if this property was in a T.I.F. District. Mr. Hoium showed the conceptual plan that each apartment has its own bathroom, kitchen, living room, bedroom(s), and there are storage facilities for each unit. This will be a change of occupancy classification, so if this project is approved, it will be updated to meet all minimum building code requirements for a multi-family building.

Kevin Schammel, of Schammel Properties, 2201 6th Ave. N.W., explained the project drawn by Paul Johnson to meet all the building code requirements. They are trying to come up with a nice project and a nice use for the property and he has gone around the neighborhood trying to meet all the neighbors and explain the project. Commission Chair Johnson asked Mr. Schammel what he thought of all the suggested conditions brought forward by Mr. Hoium. Mr. Schammel said he agreed with some of the conditions- the phasing of the project will allow them to recognize parking problems. He did talk to one of the neighbors about purchasing his property. Commission Member Rosenberg asked if there is an asbestos problem with the building. Mr. Schammel said that the Wagner mansion portion of the building does have some suspect materials and that will be addressed before demolition of the building. Member Rosenberg asked about laundry facilities and dishwashers. Mr. Schammel said that each unit will have laundry facilities and a dishwasher.

Commission Member Mair referred to a memo that Mr. Schammel issued and asked about the statement, "how does this affect me as a neighbor?" The answer was that "it would eliminate some of the overcrowding problems seen in the past." Member Mair asked Mr. Schammel the meaning of that statement. Mr. Schammel said that there had previously been parking concerns with employees and other nursing home traffic. The proposed parking will be for residents only.

Commission Member Kuehne said that less than two parking stalls per unit may be too few. Mr. Schammel said he did research at nearby apartments and found they all have 1½ stalls per unit and he did not find areas with the parking overfilled and flowing into the street. Member Rosenberg said that the people who have contacted him have been concerned with parking and safety issues regarding the traffic. There is only one road out of the area and trying to turn south onto 4th St. N.W. is difficult.

Mr. Schammel said if safety pulling out of the parking area is problem, then he will look at the landscaping. Mr. Hoium said that 4th St. N.W., 1st Dr. N.W., and Main Street are all available egress and ingress options. Commission Chair Johnson said that neighbors have told him they are concerned about parking. There are 24 units with a total of 44 bedrooms- 30 parking stalls seems a little low. Chair Johnson said with the parking ordinance being issued 28 years ago, it may be time for a review of that ordinance. Chair Johnson asked that if after Phase I was done and parking was found to be a problem, what would the alternatives or solution be to that problem. Mr. Schammel said that he could acquire additional property for parking, or rent additional parking space in a nearby area. Commission Member Rosenberg asked if the parking would be designated by apartment number or will parking not be assigned. Mr. Schammel said that if each unit is assigned a parking stall and numbered, and a unit is found to need more than one stall- they can be assigned on a first-come basis- using the ¼ stalls from someone who doesn't need them. Commission Member Kuehne said that most families today own two cars and there are 24 units with 30 parking spaces- what is going to be done if each unit has two cars- will the acquisition of additional property even provide sufficient parking. The additional cars may be in the street and that is a major concern for the neighbors. Mr. Schammel said that the additional lot would provide room for twelve more parking stalls. He has also talked to the Johnsons, the owners of the A&W, about renting additional parking space off of their parking lot. Mr. Schammel said he is willing to meet all of the existing codes.

Commission Member Rosenberg asked if there is a shortage of apartments in the City of Austin. Mr. Schammel talked to the HRA and Tom Smith and was that the Maxfield Study showed there is a high demand for two and three bedroom apartments. These apartments will be developed with the same style and quality of the Chauncey and Courtyard Apartments. Commission Member Rosenberg said he talked to a landlord and was told there is an abundance of apartments available in the City. He asked if this would be subsidized housing. Mr. Schammel said not at this time and there are no plans for it. He has talked to City Administrator Pat McGarvey about the possibility of Tax Increment Financing for some of the improvements and that is a possibility. The property is coming off of a tax-exempt status and going to taxable status.

Commission Member Bergstrom asked about rent rates for a two-bedroom. Mr. Schammel said the information he received from the HRA for a two-bedroom was \$650, and a three-bedroom is \$850 - \$900- this is his guideline for the upper limit on rents.

Commission Member Rosenberg again stated his concern about the 30 parking stalls being adequate, and also his traffic concern. Mr. Schammel said he is hoping to attract employees of the Austin Medical Center and the Hormel Corporate South building who may elect to walk to work.

Paul Johnson, architect of the project, made some comments regarding the parking- they are trying to meet or exceed the required number of parking stalls. They are also trying to meet the greenspace to lessen the impact of asphalt. The entire parking area, not just the Phase I portion of the project, does meet the existing ordinance. They are not able to provide through traffic between 3rd and 4th Streets N.W. because the lot is not feasible for that. There is a neighbor interested in selling a portion of his backyard so that there would be access between 3rd and 4th Streets. There are six parking stalls between the building to lessen the impact to the surrounding neighborhood and the garbage has been brought into the middle of the complex- some items to try to satisfy the concerns of the neighbors. The amount of asphalt on the loop drive has been reduced as much as possible while still providing a turn lane. By eliminating the loop drive, there was concern that access to garbage and the six parking stalls would require backing up into 3rd St. N.W. and that was considered a possible traffic hazard. Commission Chair Johnson asked if there would be the possibility of a turn-around spot and not have the loop go all the way through. Paul Johnson said yes, and it may also result in a bit more greenspace. Paul Johnson said these are upper-scale units and the parking is relatively close to the units utilizing them- closer than the downtown apartments. The three-bedroom units are about 1050 – 1200 sq.ft- comparable to a 3-bedroom rambler. The two-bedroom units are 780 – 800 sq.ft. Commission Chair Johnson inquired about the plan of Phase I. Paul Johnson said Phase I will be the southern portion and Phase II will be the subsequent removal of the Wagner mansion. He said the HRA and other rental tenants have told him of a tremendous lack of 3-bedroom apartments in the City. These are aimed more at living units than transitional housing. Chair Johnson asked the number of units and parking spots with Phase I. Paul Johnson said the existing 14 parking stalls, plus the 6 parking stalls created with the demolition of the Wagner mansion, and there will be fourteen apartment units in Phase I. Commission Chair Johnson questioned the proximity of the tenant parking at Chauncey Apartments versus the proximity of the proposed parking in the Schammel apartment building.

Scott Richardson spoke, representing the surrounding neighbors. He said that Burr Oak Manor terminated the business October 15, 2001. If a year has gone by, then this property is no longer a non-conforming use and this status has been abandoned. Mr. Richardson said that according to City Statute 2(B) Mr. Schammel has lost the opportunity to request a change for a non-conforming use because the non-conforming use is no longer in effect. Mr. Richardson said a variance or a re-zone would have to be applied for. Commission Member Rosenberg asked if ownership means anything as far as the one-year is concerned. Mr. Richardson said the non-conforming use talks about the actual "use" of the building. Commission Chair Johnson asked if the earlier re-zone request was in November of 2001. Mr. Hoiium said yes.

Craig Byram said the logic behind non-conforming uses is to allow existing uses so that the zoning ordinance doesn't put businesses that are operating out of business. The concept of a change of non-conforming use is when you are going to make a change from one to the other- it should be consistent. Mr. Byram said the non-conforming use lapses after a year of inactivity or voluntary discontinuation. This leaves the neighbors with a re-zoning process, which gives the Planning Commission and the City Council less restrictive power on ways that it could be used if it is re-zoned. The idea of rejecting the re-zoning last November 2001 was because the neighbors didn't want to lose the ability to restrict the use. Commission

Chair Johnson asked what options are left. Mr. Byram said the Planning Commission serves only in a recommendation capacity. He said if the Planning Commission makes a recommendation either way, that the answers to this question could probably be provided to the City Council by the time of their meeting. Commission Member Kuehne asked if this request could be tabled until the next Planning Commission meeting. Chair Johnson said if the issue were tabled and the proposal was found to be unable to proceed, then less time has been wasted.

Peggy Boik, of 2709 8th Ave. S.W., is a rental property owner. She said that she and her husband have owned rental properties for 16 years in Austin. She said that many two-bedroom tenants will have up to four cars with four adults living in the apartment. She said that many of the apartment buildings in Austin have been added within the last 16 years and there are ads in the newspaper everyday with vacant apartments available for rent. Until two years ago Ms. Boik never had to put ads in the paper- it was all word of mouth. She said many tenants will move to where the newest buildings are. She does not feel that Austin needs any more rental units. Ms. Boik is a member of the Landlords Association and their biggest concern now is the number of apartment units now being built in Austin. She said their next meeting is January 22, 2003 at Murphy's Creek and she invited the Planning Commission Members to attend. She suggested to Mr. Schammel that he not have apartment units in Austin- that he will regret it.

Motion was made by Commission Member Grove to table this issue until more information is available. Motion was seconded by Commission Member Rosenberg. Unanimous Ayes. Motion carried.

2.) OPEN PUBLIC HEARING: To consider a request from Michael and Jan O'Connor, 605 4th St. N.W., Austin, MN, for a change of non-conforming land-use of the property located at 910 2nd Ave. N.W. This request would change the previous non-conforming land-use from a beauty salon/warehouse to a printing shop/warehouse. Said action is pursuant to City Code Section 11.80, Subd. 2(E).

Mr. Hoium reviewed the request. This property is located in an "R-2" Multi-Family Residence District. The surrounding land uses to the east and west are residential development in an "R-2" District, to the north is a "B-2" District with business development, and to the south is a park which is classified as an "A-1" District. This property is located on the northeast corner of 9th St. S.W. and 2nd Ave. S.W. Most recently the front part of the building was used as a beauty salon and the rear portion as a warehouse. It has also been a plumbing shop, a ServiceMaster location, and a clothing cleaner business. Most of the building will be used as a print shop, with the remainder of the building used by a mason for his warehouse. The petitioners are proposing to change the land-use. Notification went out to adjacent property owners by mail and it was also published in the newspaper. Mr. Hoium asked the Planning Commission to consider if the proposed land-use is anymore offensive to the adjacent neighborhood than the previous business. If the Planning Commission should choose to consider recommending this to the City Council, Mr. Hoium asked that they consider this business' daily schedule, business hours, and exterior signage. There is an existing sign on the south exterior wall of the building and Mr. Hoium would recommend that same sign cabinet be used if there would be signage.

Commission Member Rosenberg asked how much noise would be produced by the print shop. Mr. Hoium said the exterior walls are of masonry construction which would probably dampen the noise.

Michael O'Connor, of 605 4th St. N.W., said it is a block building with 2x4 studs and insulation. He said this would be a small printing operation. Hours of operation will be 8-5 Monday through Friday with not a lot of walk-in customers. The owner of the print shop is Tom Krieger of Austin and the name of the business is Diamond Ridge Printing.

Commission Member Kuehne asked if most of the business is commercial printing. Mr. O'Connor said that is his understanding. He said there may be some walk-in business, but Mr. Krieger does a lot of his own delivering.

Commission Member Grove said that the printing equipment at the college was not real modern, but it was a very minimal amount of noise.

Motion was made by Commission Member Mair to recommend to the City Council this non-conforming land-use change, that it be a Monday through Friday 8-5 operation, and that the signage would be limited to 2 sq.ft and mounted on the face of a wall- no freestanding or projecting signs. Motion was seconded by Commission Member Stratton. Commission Member Kuehne asked that the motion be amended- that he would hate to limit this individual to operating his business only 8-5. The Planning Commission discussed this. The sign code was also discussed. Commission Member Mair amended his original motion to include the business hours of 8 a.m. to 8 p.m., and that the non-conforming sign currently on the building will be allowed to be used. Motion was seconded by Commission Member Stratton. Unanimous Ayes. Motion carried.

- 3.) **OPEN PUBLIC HEARING: To consider a request from Jack and Marlys Dunlop, 604 26th St. S.W., Austin, MN, for the re-zoning of property from an “R-O” Residential/Office District to an “I-1” Limited Industrial District for the property located at 101 21st St. S.E. Said action is pursuant to City Code Section 11.02 and would classify this parcel to the same zoning district as adjacent properties.**

Mr. Hoium reviewed the request. This property is located on the southeast corner of Highway 218 (or 21st St. S.E.) and East Oakland Avenue. The surrounding land uses to the south and southeast are “I-1” Limited Industrial Districts, the Municipal Airport to the east as an “A-1” District, and to the west is an “R-1” Single Family Residence District. Referencing the Future Land Use Map, this area is included as a future industrial property. A general contractor and the property owner have spoken with Mr. Hoium numerous times about adding some garage type storage structures on the property. The property owner would like to construct the garages to accommodate parking for the tenant’s vehicles. The petitioner has decided that it would be in his best interest to not only make this property a similar zoning classification to the other “I-1” properties, but it would also enable him to broaden his proposed land uses. Mailings went out to adjacent property owners and it was published in the newspaper. Mr. Hoium did not receive any responses speaking for or against the request.

Commission Member Grove felt this request was in agreement with the Comprehensive Plan to eliminate small areas of zoning.

Mr. Hoium recommended to the Planning Commission that if they approve or deny this request that they include findings with the recommendation.

Motion was made by Commission Member Kuehne to recommend to the City Council approval of this re-zoning request to change from an “R-O” to an “I-1” Industrial District, being that this brings this piece of property into compliance with the Comprehensive Plan, and it would broaden the uses and allow for more appropriate use of the property. Motion was seconded by Commission Member Bergstrom. Unanimous Ayes. Motion carried.

- 4.) **OPEN PUBLIC HEARING: To consider a request from Kimberly Benning, 1900 2nd Ave. S.W., Austin, MN, for a conditional use permit to accommodate a proposed beauty salon home occupation. Said action is pursuant to City Code Section 11.30, Subd. 3(D), involving this property located in an “R-1” Single-Family Residence District.**

Mr. Hoium reviewed the request. This property is located just a block south of West Oakland Avenue and approximately ½ block west of Banfield School. The surrounding property is classified as “R-1” Single Family Residence District. The types of conditional uses for home occupations include professional type offices, one-chair beauty salons, etc. This property is a single-family residence with a three-season porch and a detached garage. The back portion of the house will accommodate the proposed beauty salon. The petitioner is proposing to do some renovations to the dwelling if the approval is given for this conditional use permit. Mr. Hoium asked the Planning Commission to consider the following recommendations when reviewing this request:

1. Outside advertising is in compliance to Section 11.70 (Mr. Hoium has reviewed this with the petitioner).
2. That only two customers be allowed on the premises at one time.

3. Hours of hours operation to be Monday through Friday 9 a.m. to 9 p.m. and on Saturdays 8 a.m. to 5 p.m.
4. Only the resident of the home is allowed to be employed by this operation.

Mailings went out to surrounding property owners and Mr. Hoium did not receive any calls speaking for or against this request.

(tape change- missed a comment)

Ms. Benning said access to the salon would be handicap accessible.

The Commissioners discussed with Ms. Benning the possibility of an 8 a.m. opening time.

Commission Member Grove asked if Ms. Benning would be adding a sign to the residence. Ms. Benning said just something small with directions to the back of the house.

Motion was made by Commission Member Grove to approve this conditional use permit with the following conditions: only a small directional sign as indicated, only two customers allowed on the premises at any one time, hours of operation limited to 8 a.m. to 9:30 p.m. Monday through Friday, and 8-5 on Saturday, only the resident of the home will be employed by this operation, and that the business itself is located only to the area in the back of the house on one floor, and any necessary building code improvements are implemented. Motion was seconded by Commission Member Kuehne. Unanimous Ayes. Motion carried with a 15-day appeal period.

OTHER BUSINESS

Mr. Hoium asked the members to update the Planning Commission roster.

Mr. Hoium said that a workshop with land use attorneys will be set-up soon, now that the City Council has all of it's members.

ADJOURN

Motion was made to adjourn by Commission Member Rosenberg. Motion was seconded by Commission Member Grove. Unanimous Ayes. Motion passed. Meeting adjourned at 7:20 p.m.