

**CITY OF MENDOTA HEIGHTS
DAKOTA COUNTY, MINNESOTA**

**PLANNING COMMISSION MINUTES
April 28, 2009**

The regular meeting of the Mendota Heights Planning Commission was held on Tuesday, April 28, 2009, in the Council Chambers at City Hall, 1101 Victoria Curve at 7:00 P.M.

The following Commissioners were present: Chair Lally, Commissioners McManus, Norton, Povolny, Viksnins, Hennes and Field. Those present were Public Works Director John Mazzitello, Assistant to the City Administrator Jake Sedlacek, and Planner Steve Gritman. Minutes were recorded by Rebecca Shaffer.

Approval of March 24, 2009 Minutes

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER FIELD, TO APPROVE THE MINUTES OF MARCH 24, 2009 AS PRESENTED.

AYES: 7
NAYES: 0

Hearings

PLANNING CASE #09-09

Matt and Julie Brooks

1754 James Road

Conditional Use Permit

Planner Steve Gritman reviewed a map showing the property located at 1754 James Road, which is single family home, and zoned R-1. The applicant is requesting approval for a conditional use permit to allow the construction of a detached accessory in the rear yard of their property. The proposed storage shed / greenhouse / workshop would replace an existing 10 ft. by 8 ft. storage shed on the property.

The proposed building will consist of a 240 sq. ft. main structure with an attached greenhouse area of 160 sq. ft. The height of the building appears to be about 18 ft. at the peak with an average measured building height of 15.5 ft. The applicants would like to build this structure and use for storage and workshop space. It is also noted that the peak of the building exceeds the standard height limit.

Findings of Fact include:

- The building can be designed to meet all building standards, including height.
- The building will be partially screened from the neighboring property.
- The building will exceed the minimum required setbacks.
- Under the conditions listed in the staff report, the building would be consistent with the principal building on the property with regard to color, design and materials.
- The proposed building will not crowd other buildings on the site, nor will it create crowding for the neighboring property.
- The proposed uses of storage, workshop space, greenhouse space and other recreational uses are consistent with allowed uses for accessory residential buildings.

Staff recommends approval of the conditional use permit subject to the following conditions:

- The proposed storage building is redesigned to meet the maximum building height standard of 15 ft.
- The existing shed is removed from the property as proposed.
- The building is used solely for accessory storage and workshop space – no residential living quarters or business use is permitted.

Commissioner Hennes asked for clarification that the building will sit comfortably in the area. Mr. Grittmann confirmed that it would.

Commissioner Povolny asked if this request would be for a garage, would staff recommend it? Mr. Grittmann said if it were a secondary garage, it would not be allowed by code and a variance would be needed for that as there would most likely be some space issues. The code distinguishes between garage buildings and other accessory buildings.

Commissioner Povolny asked if this will be on a slab or on a wood floor. Mr. Grittmann said he does not have that information.

Matt and Julie Brooks, 1754 James Road, were in attendance for questions from the commission. Mr. Brooks said the building is planned to be on a wood frame.

Mr. Brooks asked if, assuming this is approved, the building can be tweaked a little if they decide to place it at a different angle as long as they do not encroach into the setbacks. Chair Lally said as far as staying out of the setback areas, it should be fine but that they applicant should first check with the city engineer.

Commissioner Viksnins asked Mr. Brooks if he was aware that the conditions stated in the Planners Report and if the applicant is agreeable with those conditions. Mr. Brooks said he was aware and is in agreement.

Commissioner Povolny asked if this building has a second floor. Mr. Brooks said half of it is a loft area.

Chair Lally therefore opened the public hearing. Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER NORTON, TO CLOSE THE PUBLIC HEARING.

AYES 7
NAYES 0

COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER HENNES, TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT SUBJECT TO THE CONDITIONS LISTED IN THE PLANNERS REPORT AND BASED ON FINDINGS OF FACT AS PRESENTED.

AYES 7
NAYES 0

PLANNING CASE #09-10
Ross Fefercorn / Mendota Heights Town Center
Zoning Ordinance Text Amendment

Planner Steve Grittmann reviewed the application for a zoning ordinance text amendment which would establish “massage therapy” as a permitted use within the MU-PUD, Mixed Use PUD zoning districts. The Mendota Heights Town Center, known as The Village, is zoned MU-PUD which presently does not make an allowance for such use. Mr. Grittmann noted that while the ordinance change would accommodate massage therapy uses in a shopping center, this request would also make an allowance for any similarly zoned properties. Presently, massage therapy is allowed on as an accessory to medical clinics here in the city, such as chiropractic offices.

Mr. Grittmann presented for the Commission’s review a draft zoning ordinance amendment which would make massage therapy business a permitted use in the B-2, Neighborhood Business Zoning District. Staff has used for example, the ordinance that is presently used in the City of Burnsville.

The draft amendment also stipulates that the licensing requirements of the City Code must be satisfied, but because this specific use requirement is non-existing, it will likely be necessary to amend the "Business and License Regulations" (Title 3) of the Mendota Heights City Code.

Staff recommends approval of the requested zoning ordinance text amendment with the understanding that a follow-up amendment to the City code will be necessary to address massage therapy licensing requirements, with the finding that massage therapy is similar in nature to personal services presently allowed in the B-2, Neighborhood Business Zoning District.

Commissioner McManus asked if the success rate is known in other communities and asked for some history in communities. Mr. Grittmann said it have become more common over the last four or five years. The monitoring of the licensing processes have also gone very well and there has been no need for law enforcement intervention.

Mr. Grittmann said the people in this industry have been very aggressive in trying to improve the image of this practice.

Commissioner McManus asked if there is some kind of board that oversees this kind of business. Mr. Grittmann said this would be better answered by the applicant. Commissioner McManus said he would feel better to see these businesses having some type of state certification.

Commissioner Norton asked if there were changes to be made to the language of the licensing ordinance, should they be made now or wait until the City Attorney reviews them. Mr. Grittmann said the commission can certainly put in their input and made suggested changes now.

Commissioner Viksnins asked for confirmation on where these types of businesses could be located. Mr. Grittmann indicated some of the business areas on the map.

Chair Lally asked if the old fire hall site is B-2. Mr. Grittmann said it is residential.

Commissioner Viksnins asked about the city licensing process. Mr. Grittmann said he is not sure how the city will set up the licensing process, but it will primarily involved an annual review of how the business has been run, and the most common way any indication of problems would come up would be from customer complaints.

Mr. Sedlacek said the applicant will be able to address those concerns.

Commissioner Hennes asked of other communities that have these types of licenses. Mr. Grittmann said he has not done an inventory but his firm works for about 35 communities in which a great percent do license this type of business and is not aware that any of them have turned businesses down.

Ross Fefercorn, 1221 West Lake Street, Minneapolis, is the owner of the Mendota Heights Town Square and is the applicant for this case. Mr. Fefercorn has just leased retail space to an existing and successful 5 year old retail business, "Relax-n-Tan" that is moving from its present location in Inver Grove Heights to The Village. "Relax-n-Tan" is a spa business that offers both tanning services and massage therapy. Mr. Fefercorn said he believes that this business will be very complementary to other businesses and services in The Village. Mr. Fefercorn spoke of all of the other massage therapy tenants he currently has in some of his other properties, and that there businesses have done very well, and have not caused any issues whatsoever.

Mr. Fefercorn spoke of the benefits of massage therapy and believes this is a very important and viable business, offering beneficial services to customers.

Commissioner McManus said he would like to know how to the city will be enforcing the licensing and expressed his concerns that no criminal or sexual activity will be taking place in these businesses. Mr. Sedlacek said the ordinance will address those issues by doing criminal background checks annually.

Chair Lally said there are state boards that apply to other services such as dentistry and cosmetology, and does not know if there is any that applies to massage therapy.

Chair Lally asked what the license revocation process is. Mr. Sedlacek said there is language in the city code and staff will ask Attorney Diehm to review that language on behalf of the Planning Commission's request.

Commissioner Povolny said he does not see anything addressing the hours of operations. Mr. Gritman indicated there are general hours that businesses use and there are not specific limitations in place except for certain instances. Commissioner Povolny said it would put a window on the intent to have some specific reasonable hours of operation. Mr. Fefercorn said all of his tenants work seven days a week from 9:00 am to 9:00 pm which seems to work well.

Commissioner Norton asked the applicant's tenant com forward to speak on the certification of their business. Kim Lendt, owner of R&L Enterprises, currently is the new owner of the Relax-n-Tan, talked about the certification process that reputable massage therapy schools use, and that there is no state associated board of certification that governs this. Ms. Lendt said there is no licensing at the state level but only at the city level. Some cities don't require it now but it is getting more common to do so.

Chair Lally opened the public hearing. Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER FIELD MOVED, SECONDED BY COMMISSIONER NORTON, TO CLOSE THE PUBLIC HEARING.

AYES 7
NAYES 0

COMMISSIONER HENNES MOVED, SECONDED BY COMMISSIONER NORTON, TO APPROVE THE REQUEST FOR ZONING ORDINANCE TEXT AMENDMENT WITH THE UNDERSTANDING THAT A FOLLOWUP AMENDMENT TO THE CITY CODE WILL BE NECESSARY TO ADDRESS MASSAGE THERAPY LICENSING REQUIREMENTS.

Further Discussion

Commissioner Norton asked about some wording conflicts in item #5 "therapeutic massage enterprise" and item #8 "sexually oriented crime" and asked if those terms and phrases are used anywhere else other than in this document. Mr. Gritman said not in any of the city codes. Commissioner Norton said he questions using these terms without any other definition in place within certain statutes.

Mr. Gritman said he will make note of that and said the licensing ordinance will be reviewed by the City Attorney.

Commissioner McManus said he believes "sexually oriented crime" is appropriately stated in the state statutes and is not subject to a great deal of controversy.

Commissioner Field said while the license says the applicant cannot be convicted of a sexually oriented crime, it says nothing of the actual employees needing to meet that requirement.

Chair Lally suggested that any additional suggestions from the Planning Commission could be submitted to staff on this language or this ordinance discussion could be tabled.

Mr. Gritman reminded the Planning Commission that the only thing before them is the zoning ordinance and not the license language. The Planning Commission is not supposed to be voting on the license language and while the Council will be taking the action on this part, the concerns and comments from the Planning Commission is well received by the Council.

Commissioner Viksnins said in summary, that all the Planning Commission is doing at this time is voting on whether the massage therapy business is an acceptable business in the B-2 district.

Chair Lally said it seems to be some checks and standards in the process that have been identified in relation to the licensing of this type of business.

AYES 7
NAYES 0

**PLANNING CASE #09-11
Dodge Nature Center
Huber Drive, west of Delaware Avenue
Preliminary / Final Plat (Glen Toro 3rd Addition)**

Planner Steve Grittman introduced the request for a preliminary and final plat approval of a four lot subdivision entitled “Glen Toro 3rd Addition”. Ben VanGundy, on behalf of the Dodge Nature Center, is seeking to have existing boundary issues adjusted for these properties, which are located in the R-1A zoning, One Family Residential and guided INS, Institutional.

This proposed subdivision is intended to resolve existing boundary issues resulting from the current metes and bounds descriptions applied to the property, and the intention is to eliminate gaps and overlaps that presently exist in the property legal descriptions.

Mr. Grittman noted in his report that no new development is proposed as part of this requested preliminary and final plat. For purposes of identification:

- Parcel 1 is owned by Mary R. Shepard, 2155 Delaware Avenue, ID: 273020026600
- Parcel 2 & 3 is owned by Mary E. Niehaus, 2155 Delaware Avenue, ID: 273020026100 & 273020026400
- Parcel 4 is owned by Dodge Nature Center, and is identified as the “cabin property”, 555 Huber Drive, ID: 273020025000

Commissioner Field acknowledged that he has talked to the City Attorney’s office as the current President of the Board of Directors for the Dodge Nature Center and that the City Attorney has confirmed there will be no conflict of interest in Commissioner Field’s participation in this discussion.

After some initial clarification questions, the Planning Commission came to the conclusion that this case cannot be properly discussed because a lot of the information needed has not been presented.

Mr. Ben VanGundy, on behalf of the Dodge Nature Center, apologized to the Planning Commission stating he thought this would be an easy task to adjust some of the interior lot lines which has been requested by Dakota County to do so, and that this would be just an administrative housekeeping action. But because of the way this public notice was presented to the public, without more clarifying documentation on how the lines presently are laid on a map as opposed to a new site plan that would give the indication of where the lot lines would be moved, where instead the public notice was just a documentation of property legal description, no one really knew what the purpose of the lot line adjustments were for. There has been no history or backup materials submitted by the applicant to clarify why this request is being made, nor was the surveyor in attendance at the Planning Commission meeting to answer any questions.

Mr. Niehus, son of Mary E Niehaus, said he was not even sure why this was happening to his mother’s property and it is his understanding that his mother has no intention of developing the property.

Because residents have come to the public hearing with their concerns, Chair Lally opened the public hearing to allow comments to be heard at this time.

Dewey Forbeck, 2121 Delaware Avenue, said he was the developer of the Glen Toro 2nd Addition, and talked about the cul-de-sac, which was originally going to be extended to the roadway to the north, but because of the county’s concern about Shepard Road, that cul-de-sac was never extended. Mr. Forbeck said it sounds like Dodge Nature Center is trying to separate the cabin property so that they can develop it, acknowledging that the Niehus’ and the Shepard’s have the right to develop their property at some time.

David Swanson, 545 Huber Drive, talked about his concern about his property lines which affect his property to the west and the north. Mr. Grittman said that all the lot line adjustments seem to be internal and should not affect those lines.

Michael Walsh, 2165 Glen Toro Road, said a lot of residents such as himself, who are not lawyers and engineers, are trying to make sense of this public hearing notice. Mr. Walsh is very concerned about the possibility of the cul-de-sac extending to the north.

Jay Debertin, 2160 Glen Toro Road, said he is also concerned about the cul-de-sac. Mr. Debertin asked if the cabin property would be put into the conservation easement or not. Mr. Debertin referred to Schedule B – Section B, No. 9 which talks about “Possible interest of the Thomas I Dodge Foundation in the other parcels” and asked what that means, and that does this mean that egress and access language refers to the possibility of developing land through the other parcels.

Bob Devine, 607 Huber Drive, said every one is stating tonight that they have no clue what is going on and asked if someone could do a laymen’s version. Mr. Devine said a lot of people are asking if the property will be developed and would like to know what the intent is.

Paul Rhein, 522 Dodge Lane, spoke of his concerns that the Dodge Nature Center will be developing their property and asked what the real intent of this application is for. Commissioner Field asked to take the issue of developing the land off the discussion as there is no intention of the board to develop this property and he has no knowledge of any money being put into this property for a conservation easement. Commissioner Field confirmed that the Lilly property portions of the Dodge Nature Center is currently under conservation easement, but that the cabin property is not.

Scott Anderson, 2244 High Pointe Road, asked for clarification of the Industrial guided use, and spoke about how much people really enjoy and appreciate the trails into the nature center through this access from Huber Drive.

Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER NORTON, TO CLOSE THE PUBLIC HEARING.

AYES 7
NAYES 0

City Staff was directed to provide a second notice to area property owners with an existing conditions plat, proposed conditions plat and a layman’s description of the requested action.

COMMISSIONER HENNES MOVED, SECONDED BY COMMISSIONER MCMANUS, TO TABLE DISCUSSION OF THE REQUEST FOR APPROVAL OF A PRELIMINARY AND FINAL PLAT FOR THE GLEN TORO 3RD ADDITION UNTIL THE NEXT PLANNING COMMISSION MEETING, IN WHICH STAFF WILL PRESENT THIS CASE IN A LAYMEN’S TERMINOLOGY AND WITH BETTER CLARITY.

AYES 7
NAYES 0

Commissioner Field asked that the Planning Commission agree to allow these speakers to attend and speak again at the next Planning Commission public hearing on this case.

Verbal Review

Mr. Mazzitello gave the following verbal review:

PLANNING CASE #09-06 Paul LaManna Variance to the Side Yard Setback
• Approved by the City Council as recommended by the Planning Commission

PLANNING CASE #09-07 Lisa Silverberg Lot Line Adjustment
• Approved by the City Council as recommended by the Planning Commission

Other updates:

- Mr. Mazzitello updated the Planning Commission about the Council actions regarding the approval of the Developers Agreement and Final Plans for the Mendota Plaza
- Mr. Mazzitello reminded everyone that May 2nd is the City’s Cleanup Day.

COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER HENNES, TO ADJOURN THE MEETING AT 9:00 PM

Respectfully submitted,

Rebecca Shaffer, Recording Secretary