

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Wednesday, February 2, 2022 - 7:00 p.m.
City Council Chambers - 8150 Barbara Avenue

1. CALL TO ORDER

Chair Niemioja called the Planning Commission Meeting to order at 7:00 p.m. The Pledge of Allegiance was recited.

Commissioners Present: Elizabeth Niemioja
Dennis Wippermann
Pat Simon
Joan Robertson
Anthony Scales
Kate Challeen
Jonathan Weber
Robert Heidenreich
Scott Clancy

Staff Present: Allan Hunting, City Planner
Heather Botten, Associate Planner
Kim Fox, Community Development Specialist

2. APPROVAL OF THE PLANNING COMMISSION MINUTES FOR JANUARY 18, 2022

The Planning Commission Meeting Minutes for January 18, 2022 were approved as submitted.

3. APPLICANT REQUESTS AND PUBLIC HEARINGS:

TERRY TRKLA - CASE NO. 22-03V

Reading of Public Notice

Commissioner Simon read the Public Hearing notice to consider the request for Terry Trkla - Case No. 22-03V for property located at 6050 Concord Boulevard. The request consists of a variance from the exterior building material requirements for a hoop structure, a variance from the side and rear setbacks, and any other variances. Notices were mailed to six property owners on January 19, 2022.

Presentation of Request

Allan Hunting, City Planner, explained the location on the east side of Concord Boulevard where the Applicant operates a landscaping/tree business on site and had constructed a temporary hoop type structure behind the main building. The structure is erected during the winter months and used for storing equipment. It was constructed without a Permit and is being addressed tonight regarding the material. That type of structure has an outer coating of a canvas/poly type material that does not meet the exterior material requirements for commercial or industrial buildings in the city. The exterior should consist of block, metal, brick, or glass, not this type of material which is in violation of the City Code.

He addressed setbacks with the structure having been constructed behind the building. Setbacks in the I-1 District for side and rear yards are 40 feet. In this case, it is about 15 feet from the north, 27 feet from the rear property line, and about 19 feet from the south. Variances would be required from those three property line setbacks. One of the two requests for consideration is with the canvas structure; it is not in compliance. Staff believed it difficult to come up with a Practical Difficulty. There are other Quonset hut type structures immediately to the south that have been in the location for a long time and were grandfathered in with the material they consist of. Those

cannot be used as a Practical Difficulty as they were grandfathered in. Staff felt since they are trying to redevelop the area, anything that is built new should meet exterior building material requirements. For setback variances, the I-1 District has a 1-acre minimum lot size with 100 feet of width. This and other lots along Concord are smaller/substandard in size. This lot is 100 feet wide and less than ½ acre in size. Any building built there would be limited to the size and would have difficulty fitting something within the required setbacks. That could be a potential Practical Difficulty. A factor to consider is that a majority of lots along Concord were platted a long time ago and substandard in size. While looking at aerials it was noted that a lot of the buildings don't meet setbacks because they were built so long ago, assuming most were built before the 1965 Code. He said the Commission could look at it as fitting the area, but need to look at the precedence and if it's different than any other lot. He mentioned there was potential in looking at the variance request. Staff does not support the material requirements whether it's a temporary or permanent structure, all have to meet all City Code standards.

Commissioner Simon asked when the hoop structure was built.

Mr. Hunting responded he was unsure. He recommended the Applicant answer the question.

Chair Niemioja referenced the temporary Quonset hut structure and said a lot of cities have them for temporary garden sales in, for example, a Cub Foods parking lot. She did not believe she had ever noticed one in Inver Grove Heights. She asked if the city doesn't typically allow anything like that.

Mr. Hunting replied the garden sales noticed seasonally by Code are only allowed in Arbor Pointe. The Arbor Pointe Ordinance has the provision for temporary sales, the standard Zoning Ordinance does not. They would not be allowed anywhere else in the city because there is not a provision for seasonal type structures. It's supposed to be permanent.

Commissioner Robertson mentioned as recently as last year there was a significant number of hoop type structures on residential lots. They have all been removed. She thought those were intended to be temporary but may have been reported.

Commissioner Heidenreich said there are a number of them located nearby and used as a greenhouse structure. He asked how those were allowed, if it was grandfathered in or agricultural.

Mr. Hunting responded the Agricultural District allows for greenhouses and would have different poly-type material to allow sunlight in.

Commissioner Robertson mentioned if it's determined the Quonset building cannot remain and would have to be replaced with something, she questioned if it was too early to be addressing setbacks. She asked if setbacks should be addressed at the time a Permit is granted for a different building.

Chair Niemioja said that may have to be addressed when they know about the failure/success of the Motion. She believed this item may need to be taken in two parts.

Mr. Hunting replied the Commission needs to address the currently existing structure. If denied, the City Council could say it should be removed and something should be built that meets requirements.

Commissioner Challeen questioned the term grandfathering. She asked if there was a length of time a structure has to be in place before it is considered grandfathered.

Mr. Hunting replied some could be when the original Code was established in 1965. Something

becomes grandfathered any time the Zoning Ordinance rules, size, setbacks, materials, or something has changed from when the building was originally built and what was allowed then. If the rules changed, it's grandfathered in. It's technically called a Legal Non-Conforming Structure.

Commissioner Weber asked when the Code changed.

Mr. Hunting replied he was unsure when the exterior material rule was put in place. He was unsure if it was from 1965 and was amended at some point. It has been around for 30 years or more.

Opening of Public Hearing

Terry Trkla, Owner of Kaposia Tree Service, has read and understands the report. He mentioned the material on the structure is fire retardant. It is a temporary structure. They only planned to put it up in the winter and take the canvas off in the summer. He said he doesn't own the property but plans on buying it. The variances were included because he showed interest in buying the property and would want to build a new building there.

Chair Niemioja said the goal was to create an actual building.

Mr. Trkla responded in the affirmative.

Commissioner Simon asked when the hoop structure was placed.

Mr. Trkla responded it was last summer. It was covered right before winter. They store their trucks inside.

Commissioner Simon asked if the huge tree trunks on the other side of the structure were his.

Mr. Trkla responded in the affirmative.

Commissioner Robertson asked Mr. Trkla if he was unaware of the need for a Permit when the hoop structure was built.

Mr. Trkla replied he was not aware. They considered it a temporary structure. There was a Quonset hut in the same spot that was grandfathered in but was condemned and had to be torn down. He had one year to build one exactly like it but was unable to.

Commissioner Heidenreich asked if there was a timeline for purchasing the property and constructing a building.

Mr. Trkla replied that Jim Kamish owns JAK Properties. They have been negotiating. It could be next year. Mr. Kamish is ready to sell, they are working on it.

Chair Niemioja closed the Public Hearing.

Planning Commission Discussion

Chair Niemioja said this was unique because they have an owner in transition. Something that used to be grandfathered in currently no longer exists. There is a new temporary structure there that has been denied in other parts of the city.

Commissioner Scales did not have a problem with the side yard setbacks. The site is unique, the lots are small, the businesses have run that way for many years. He fully supports the variance for the setbacks. He struggles with the exterior material and has a hard time coming up with a Practical Difficulty. He would not support.

Commissioner Weber asked Mr. Hunting what the typo was that was referenced earlier.

Mr. Hunting replied it was on Page 3 under the description, under the number two, Criteria Variance. It stated "the current lot size standards for the I-1 District is 40 feet". It should be 100 square feet not 40 feet.

Commissioner Weber said it states it was 15 feet from the north property line. The drawing in the packets show 35 feet 6 inches from the north property line. He believed it was backwards.

Mr. Hunting responded he wasn't sure where those measurements were taken from, they are not accurate. Its 27 feet from the rear property line. Their measurements may have been taken into the railroad right of way.

Commissioner Clancy said if talking about approving any sort of setback variance, it would be more applicable to apply it to the actual permitted structure that is going to go there. The Code doesn't differentiate between temporary and permanent. It's understood they know what the final intent would be. He doesn't understand why the issue can't be revisited when they have a permanent building to show what is being approved and can explain that to anyone down the line in the future.

Commissioner Scales questioned what if he decides to change some material on the side of the building. If changing the material to a conforming material then he can put it on if he has a variance.

Commissioner Robertson said he would need to get a Permit. At that time the setback can be addressed.

Commissioner Weber asked if it was a concrete footing that was on the site currently.

Mr. Hunting responded he was unsure.

Chair Niemioja said the Applicant shook his head no regarding the footing.

Commissioner Simon said she has a difficult time without a timeline. If the hoop was started last summer, she believed a year was a good time to decide whether he would be purchasing this or not. It was an after the fact variance. If running a business in the city she would think the first thing would be to check with the City Hall to see what Permits would be required. She was unsure if that was required, but just to be sure he wasn't going to get into trouble doing something that isn't allowed in this city that is allowed in other cities. She said she has an after the fact issue with the after the fact variance. She would not approve of the variance setbacks. She mentioned if choosing to make a new building the same size and it was ok on the temporary building, she questioned what was to say he wasn't going to ask if it would be ok to keep the permanent building at the same settings. There was nothing written in stone. She requested taking this issue as two variances for the same thing. One for the building and one for the setbacks. If coming in with a permanent building for a Permit or another variance, then a discussion could be had on the new variance for the new building.

Mr. Hunting clarified and said if approving setback variances, it would be for the structure if the Council chooses to allow this to exist, or it could be used for the future permanent. There are two years from the date of Council approval to get a Permit or do something with that variance otherwise it expires. This would be looked at for this structure and maybe the future permanent. If the Commission is fine with the setbacks, the Applicant, if purchasing the property tomorrow, could come in for a Building Permit, this size meeting those setbacks and conforming to exteriors. They would just need a Permit because the city would have approved the setback variances.

Chair Niemioja said it comes down to if having a Practical Difficulty. She said it sounded like there

was consensus from the Commission on the second matter having a Practical Difficulty. There is a clear understanding if moving forward on that variance it would allow the Applicant not to have to come back again if he is looking to build. The Commission still needs to determine if there is a Practical Difficulty for the building's materials, the canvas hoop structure.

Commissioner Robertson commented the usual protocol is they address issues about setbacks when receiving a formal request to build and/or a preliminary plat. The Commission has dealt with setbacks at the point of preliminary plat. This felt rushed to her. She said if there is a belief that upon the time of building there was a Practical Difficulty, that would be the time to address it. They are assuming a Practical Difficulty without knowing what is going to be built there. She felt it was a bit premature. She would not support approving the setbacks at this time.

Commissioner Scales said they know exactly what the Applicant was looking to build there, it's what was requested in the Application. Splitting them allows the opportunity to look at them individually along with the Council. He wanted to look at them individually.

Commissioner Robertson said the Applicant has indicated a desire to own the property at some point and build on it. She has not seen an application for a building. What was said was hopefully in the future, which is not the same as an application.

Commissioner Heidenreich said his concern was about the structure itself. Looking at the property, nobody can see it, there is a railroad behind it. He hopes they could come up with a creative way to help retain a business in Inver Grove Heights. He suggested maybe setting a time limit on it, letting the Applicant keep it for two more years until he agrees to build something. It's hidden from view. All the properties around it have similar structures. He knows an economic reason couldn't be used to accept/deny but would like to see a creative way to help keep businesses in the city and not force them due to hardship.

Chair Niemioja asked Commissioner Heidenreich if he has a Practical Difficulty for that under the Variance Law and Code.

Commissioner Heidenreich hoped the group could help him find it. He is newer and doesn't have the history. He knows it sets a precedence, but this is a unique property with the railroad behind it and a busy road in front of it. It's a necessary business to our environment.

Commissioner Weber asked if it was known when the plat changed. The original plat filed with the County is different than what is available online. The railroad took a wider berth around the railroad tracks.

Mr. Hunting was unsure, but assumed it was a while back. The layouts have been like this for a long time.

Commissioner Weber asked if they could utilize the railroad setback as a Practical Difficulty and the fact that it doesn't affect that many properties in the city.

Mr. Hunting replied it affects all the properties on the east side of Concord. That makes it a challenge. He was unsure if it was used before.

Commissioner Weber replied they used it on the farm property off Barnes. They used the railroad tracks as a Practical Difficulty. He said he made the Motion.

Chair Niemioja asked if Commissioner Weber was referring to the setbacks.

Commissioner Weber replied in the affirmative.

Commissioner Challeen thought the setback variance was a given in that the lot is substandard for an I-1 lot and could be approved based on that as a Practical Difficulty.

Planning Commission Recommendation

Motion by Commissioner Weber to approve the variance for a 27-foot rear yard setback and side yard setback set at 15 feet with the Practical Difficulty that it is a reasonably smaller lot than the typical I-1.

Commissioner Simon asked Commissioner Weber if he wanted to leave the setbacks registered as is.

Commissioner Weber responded he would have to trust Staff's numbers better than the drawing the Commission has. He trusts Mr. Hunting's numbers.

Commissioner Simon asked if the different numbers make a difference.

Mr. Hunting replied the numbers are clearly not accurate. Staff remeasured using aerials. Some of the numbers are physically not possible. He was unsure what they were using for property lines. He said if/when this is a permanent structure, a survey will be needed to identify. They couldn't exceed the footprint already there, which could be determined at that time. Staff is confident it was pretty accurate using the aerial photography from mapping.

Associate Planner Heather Botten asked if 15 feet was wanted for both side yards or just the north one.

Commissioner Weber suggested going with 15 feet for side yard setback.

Chair Niemioja requested hearing the Motion one more time for clarity.

Motion by Commissioner Weber, second by Commissioner Scales, to approve the side yard and rear yard setbacks at the side yard setback of 15 feet and the rear yard setback of 27 feet for the property with the Practical Difficulty of the I-1 Lot being smaller than normal for Terry Trkla and property located at 6050 Concord Boulevard

Motion carried (7/2) Robertson, Simon.

Chair Niemioja stated the Commission needs to make a decision about the building materials. She said Commissioner Heidenreich's point was well made that they want to support businesses. The city has a vision for the area, it's hard to get everyone in compliance moving forward but somebody has to. She doesn't see a Practical Difficulty.

Commissioner Weber said he didn't like saying hoop structure in general. He asked if it could be constricted to being a hoop style building but have metal.

Mr. Hunting replied it could but metal is only allowed on a certain portion of the sides of the building. They couldn't do the arched type and just put metal on it because it doesn't comply with exterior standards. They can't be that general and have to be careful how to classify.

Commissioner Scales hoped the Council does something that is good for the business. Helps a local business with a building that is not in the way of anything. It doesn't take away from anything in the neighborhood, doesn't affect the neighbor. He hopes the Council would look at this openly and help the business the best they can. He cannot come up with a Practical Difficulty to support it.

Motion by Commissioner Scales, second by Commissioner Challeen, to deny a variance from the exterior building material requirement to allow a hoop structure for Terry Trkla for property located at 6050 Concord Boulevard

Motion carried (9/0). Motion to deny passes unanimously. This item goes to the City Council on February 14, 2022.

HAUNT ARMADA - CASE NO. 22-04C

Reading of Public Notice

Commissioner Simon read the Public Hearing notice to consider the request for Haunt Armada - Case No. 22-04C. The request involves property located at 5280 Robert Trail South and consists of a Zoning Code Amendment to amend Title 10 Chapter 2 Section 2, definition of Recreation Center and a Conditional Use Permit for a Recreation Center Use within the existing Salem Square Building and any other related variances. Notices were mailed to four property owners on January 19th, 2022.

Presentation of Request

Associate Planner Heather Botten discussed the request for property located on the east side of Robert Trail, south of 494, zoned B-3 which is the General Business District. The Applicant is requesting a Conditional Use Permit to operate a recreational center type of use out of the existing Salem Square Building. There are no proposed additions to the building or any changes to the parking lot as it currently sits. The First Phase would be a haunted attraction the Applicant would plan to open this fall. The Applicant would expand that into a year-round entertainment venue that could allow uses such as escape rooms, mini golf, and laser tag. During the process Staff suggested to also look at the definition of Recreation Center to bring it up to date on today's recreation uses and make sure they are encompassing everything the applicant is wanting to do. The other tenants in the building include: a daycare, dance studio, cleaning business, and a Church. The Applicant has stated that their peak operation hours are typically at night and mainly on weekends (Friday and Saturday nights). Staff does not believe that their peak operation times would conflict with the everyday uses of the existing tenants in the strip mall. The use is consistent with the goals and policies of the 2040 Comprehensive Plan and consistent with the B-3 Zoning District with the Conditional Use Permit. She mentioned that the Fire Marshal and the Building Official would be reviewing any type of Occupancy Permits. She said the Applicant has been in contact with both already as they have been doing some internal remodeling of the existing suites. Access to the site is not changing, there is one access point off 54th Street. There is roughly 260 feet between the access point and Robert Trail providing plenty of stacking for back up and for traffic to move safely on and off Robert. There is also internal stacking before they get into the parking lot. If traffic and congestion become a problem, the Applicant has discussed mitigation efforts to help with public safety concerns. Staff believes the general CUP criteria have been met for the proposed use.

Ms. Botten addressed the amendment to the Zoning Code stating that Staff would be adding a new definition to be consistent with the Code. They currently have the definition of Recreation. There is a Recreation Public and Recreation Commercial. They did the same thing for the Recreation Center. The existing Recreation Center has the addition of the word "Public" behind it. A whole new definition was added for Recreation Center Commercial. The biggest change was incorporating the text of allowing Leisure, Amusement, and Recreation Activities. This was done to be generic and open for the types of uses the Applicant is proposing and that Staff has been hearing and seeing in today's market. Staff is also removing the name of one specific to a business and removing the name of the business out of the definition. Staff recommends approval of the CUP and the Zoning Code Amendment.

Commissioner Weber commented the Public Institutional properties that lie throughout the city are very limited. If looking at that for Recreation Center Commercial, he doesn't want to drop the permitted use or CUP use off of that on the Zoning Code.

Ms. Botten replied currently Recreation Center is a Conditional Use in the B-3 and permitted in the Public Institutional.

Commissioner Weber referenced the line above it that states "Owned and operated by a unit of the Government for the purpose of providing recreation". He said if an individual owns a piece of Public Institutional land, they fall out of the category of a permitted use if they want to put a recreational center on their Public Institutional land.

Mr. Hunting responded that wouldn't be owned and operated by unit of Government then. Commissioner Weber said that was what he was trying to avoid. If an individual owns a piece of Public Institutional property, and now they are making a Code change that would wipe them off.

Ms. Botten asked if they should add the word Public/Private.

Commissioner Weber said he would say that Recreation Center Commercial under the P-Institutional District and continue the Permitted Use there. That would stay cohesive with what they have now and separate out a little bit.

Ms. Botten understood what was being said. They don't want to make an existing use a non-conformity, which is not the intent.

Commissioner Robertson asked if there was Public Institutional that was privately owned.

Mr. Hunting responded Churches and Private Schools.

Commissioner Robertson asked what the standards were for porta potties with the city or permitting process, even if temporary. She asked if anyone could put up a porta potty. She was asking from a city perspective.

Ms. Botten responded they wouldn't want it for a permanent use.

Commissioner Robertson said she has seen them temporarily but was curious to know because it was the Applicant's desire, and a smart one. She asked if there was an additional step that has to be done if a business or entity wants to put up porta potties.

Ms. Botten responded not that she was aware of. They could not take up handicapped spots as it would become a Building Code issue. She was not aware of any separate Building Permits for temporary porta potties.

Opening of Public Hearing

Adam Peck, 443 13th Avenue South, South St. Paul, has read and understands the report. He did not have any comments or questions.

Chair Niemioja closed the Public Hearing.

Planning Commission Discussion

Commissioner Simon asked about the Applicant allowing their workers to park on Alta. She asked if it was wide enough to accommodate both directions and parking.

Ms. Botten said it if was not wide enough it would be signed no parking.

Planning Commission Recommendation

Motion by Commissioner Weber, second by Commissioner Wippermann, to approve the Zoning Code Amendment to amend the definition and land use table regarding Recreation Center Commercial and Recreation Center Public with the one change noted to allow the Public Institutional land designation to be Permitted Use under the Commercial side for Haunt Armada - Case No. 22-04C located at 5280 Robert Trail South. Motion carried (9/0).

Motion by Commissioner Weber, second by Commissioner Robertson, to approve the Conditional Use Permit to allow Recreation Center Commercial Use to be operated out of the existing building located at 5280 South Robert Trail with the five conditions listed.

Motion carried (9/0). This item goes before the City Council on February 28th, 2022.

4. OTHER BUSINESS

5. ADJOURN

The meeting was unanimously adjourned at 7:49 p.m.

Respectfully submitted,
Sheri Yourczek, Recording Secretary