

BLUE ASH PLANNING COMMISSION

May 7, 2009

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ITEM 1. - MEETING CALLED TO ORDER

Chairman Schafer called the regular meeting of the Blue Ash Planning Commission to order at 7:05 p.m. on Thursday, May 7, 2009.

MEMBERS PRESENT: Raymond Schafer, John Moores and James Sumner

MEMBERS NOT PRESENT: Beverley Gill

ALSO PRESENT: Assistant Community Development Director Dan Johnson, Administrative Clerk Traci Smith, Assistant to City Manager Kelly Osler, Council Member Lee Czerwonka, Council Member Tom Adamec and interested citizens

ITEM 2. - OPENING CEREMONY

Pledge of Allegiance

ITEM 3. - APPROVAL OF THE MINUTES

Commission Members waived the reading of the minutes.

DECISION: Jim Sumner moved, John Moores seconded, to approve the regular meeting minutes of April 2, 2009 as submitted. A voice vote was taken. All members present voted aye. Motion carried.

ITEM 4 – 8793 Kenwood Road – Bloomin’ Garden Centre

Application for a Zoning Text Amendment

PRESENT: Chris McKeown, Applicant

Chairman Schafer asked Dan Johnson for any comments that would help the Commission understand what is being requested. Dan Johnson said this request would not be for this address only, that it would be applied across the board. What is being applied for is a zoning text amendment, which our Code allows anyone to propose a change in the way the Code is written. Depending on what type of text amendment is proposed, it could apply to a specific district or could apply across the whole city. The agenda item tonight is a change to the nonconforming use section of Section 1187.05 Special Permit Improvements. The law currently allows Council to grant a Special Permit, after recommendation by Planning Commission and the Board of Site Arrangement, to allow expansion of a nonconforming use, but only on the same lot on which it currently exists. Under the proposed change, Council could allow the nonconforming use to extend to an adjacent lot under the same ownership. There is currently no mechanism for nonconforming uses to expand onto adjacent property.

Ray Schafer asked the Commission members if they had any questions first to the City or if any clarification is still needed. John Moores asked if this was just to amend the ordinance. Dan Johnson confirmed and clarified that this would be a recommendation to Council to amend or not amend based upon the application.

Ken Schneider identified himself as an attorney with Wood & Lamping and said that he is representing the McKeowns in this matter, along with his partner Jeff Forbes. He

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said the proposed change in wording would open the door for this request and others as needed, but with proper oversight on the part of elected and appointed officials. He said the McKeowns' actual improvement plan would improve the neighborhood and be beneficial to the Bloomin' Garden Centre business. The McKeowns purchased the property next door to the business that contains an extremely deteriorated residence. Mr. Schneider showed plans for a new office in place of the house that would have a residential look consistent with the neighborhood. Since the adjacent property is under the same ownership, the new provision would allow a development plan like this to be considered. There would be no storage of equipment; it would be for office use only.

Jeff Forbes addressed a few points that Dan Johnson mentioned in the staff report regarding the technical reason why they are asking for this change. He said that cities need to strike a balance with existing nonconforming uses. The current Code does not provide an avenue to be able to make improvements on the adjacent property. They realize this change would not give them the approval to redevelop the site as shown; they would only be given the right to apply for such a development.

Chris McKeown stated their main reason is not only to benefit their business but also to improve the look of the neighborhood. He showed a panoramic view of Kenwood Road with the deteriorated house and also showed a view with the proposed new office. He stated that the renovated structure would not change the residential feel of the neighborhood. He said there would never be any retail in that area and that customers would not feel that it was part of the business. They would also like use this property to showcase the landscaping business. He feels the display would draw people to Blue Ash and he feels that garden centers are beneficial to residential communities. Ken Schneider added that any approved Special Permit can specifically limit the terms of the use.

Ray Schafer thanked the applicants for their presentation and asked Dan Johnson to describe Special Uses. Dan Johnson said that Special Permit limitations can be as detailed as Council chooses, including the physical development of the site and the operational standards of the use. Operational limitations are more of an administrative challenge because they are ongoing in nature, which requires constant monitoring.

Jim Sumner asked Mr. Johnson to review the Special Use Permit process. Dan Johnson said the Board of Site Arrangement primarily reviews commercial developments in districts that are not "planned districts" and evaluates the physical layout of the property and how it fits into the neighborhood. It is very similar to what Planning Commission does during a Planned Development or Special Use Permit review. Most Special Use Permits are not reviewed by Board of Site Arrangement. Most Special Use Permit applications go to Planning Commission and Council, regardless of the district. In this case, the Code requires Planning Commission and Board of Site Arrangement review. It does not matter which body meets first; however, both of them would have to meet and make their recommendations prior to Council review.

Jim Sumner asked about the zoning principals regarding nonconforming uses, generally. Dan Johnson said the overriding goal is to eliminate all nonconforming uses. The practicality of that goal is a challenge, however, because it usually will conflict with a basic tenet of zoning, which is to maintain property values. Most nonconforming commercial uses will never go away voluntarily and, if they are not allowed to modernize, they will become obsolete. As they lose profitability in the marketplace, they lose the economic incentive for good maintenance, which can harm the values of nearby properties. To counter this risk, some codes make modernization provisions that have the potential to add longevity to nonconforming uses.

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Some uses, such as a garden center, have significant longevity and will likely always be useful, whereas something like a store that only sells wall phones will eventually be obsolete. Jim Sumner recognized the conflict between meeting the Zoning Code objectives and ensuring reasonable and attractive uses. He noted that we really do want to drive away the crane company next to a residential district and any provision that enables a use like that to continue is counter to what the Code should do.

Ray Schafer opened the discussion to public comment.

Walter Albrecht said he lives at 8849 Kenwood Road and has no objection to this. He said he thinks what they are doing is marvelous, since the current house has been such an eyesore for over ten years. He would appreciate this moving as quickly as possible so the McKeowns can get the project underway.

Jim Burnside lives across the street from this project and has concerns about the legality of opening the barn door and continuing down the street using the same argument from property-to-property. Ray Schafer pointed out that this Code change would not mean that the McKeown's plan, or any other plan, would automatically be granted a Special Use Permit. Mr. Burnside noted that this change would affect the entire City.

As there were no additional questions, Chairman Schafer closed the public comments.

Jim Sumner asked Mr. Schneider about the concern that this change would allow a nonconforming use to creep down the street. Mr. Schneider explained that this Code change does not rezone the property or allow a permitted use; it would only give them the right to apply for a Special Use Permit. Any subsequent applications would be decided individually by Council based upon a reasonable use and what would be beneficial to the City. He said the individual decisions would not be precedent setting and that this is the proper way to handle improvements to nonconforming uses. He feels the City is wise to have a Special Permit provision to allow improvements that protect the business.

Jim Sumner said he agrees with many of the objectives Mr. Schneider states, but he is struggling with how a future Council would deny a step-wise progression of an attractive nonconforming use. Mr. Schneider reiterated that this would not set a precedent and that each proposed change would be up to the Council. Mr. Sumner feels that once an expansion is allowed, it would be hard to say no to a future application that is similar. Mr. Sumner asked Mr. Schneider his opinion about what criteria should be used to evaluate a proposed expansion of nonconforming use. Mr. Schneider responded that there are many criteria. He said one community voted to allow expansion of nonconforming parking for an existing business because they felt it would be beneficial to the neighborhood. He said each decision would have to be taken individually.

Ray Schafer said the Commission is always concerned about setting precedent, but understands that the Special Use process is unique and gives flexibility. John Moores said he was more comfortable knowing that each request would go through the process.

Jeff Forbes added that the Code section that is the subject of this application already provides criteria for reviewing Special Permits such as preservation of property values, compatibility of the properties, and improved esthetics. The Special Use Chapter also has a list of criteria to consider when a Special Permit is being considered. They feel confident that their development plan would meet the criteria, but that not every one would.

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Jim Sumner asked how many other communities have this language in their Code. Dan Johnson said he contacted neighboring communities and learned that Montgomery, Sharonville, and Reading all have some process for expansion of a nonconforming use on an existing property. Evendale and Madeira do not. Sharonville allows expansion on an adjacent lot with a conditional use permit, which is the functional equivalent of a Special Use permit.

Jim Sumner said that since the beginning of his time in public service, he has done everything he could to preserve residential property and opposes the potential expansion of nonconforming use where it reduces residential property. He said he prefers the use of strict property maintenance standards; this property should not have been allowed to get into the deteriorated condition where it appears ripe for this kind of change. He said that he is uncomfortable with the switch, especially after hearing there was only one other community that allows this. Ray Schafer said he agrees with Mr. Sumner in regards to the loss of residential and has always tried to prevent that. He said there are some circumstances, however, where an exception makes sense and feels this may be one of them. He agreed that property maintenance should not allow properties to get into this situation. John Moores agreed with Mr. Schafer and felt a mechanism needs to be there.

Jim Schafer asked if a simple majority was all that was needed to pass a motion. Dan Johnson confirmed.

DECISION: John Moores moved, Jim Sumner seconded, to approve recommendation to Council to amend Section 1187.05 of the Zoning Code Special Permit Improvements as outlined in the request. A roll call vote was taken. Two members present voted aye and Jim Sumner voted nay. Motion carried.

ITEM 5 – MISCELLANEOUS BUSINESS

There was no miscellaneous business.

ITEM 6 – ADJOURNMENT

DECISION: There being no further business to be discussed, Jim Sumner moved, John Moores seconded, to adjourn the meeting. A voice vote was taken. All members present voted aye. Motion carried. The meeting was adjourned at 8:10 p.m.

Raymond Schafer, Chairman

MINUTES RECORDED BY:

Traci Smith, Administrative Clerk