

**WAYZATA PLANNING COMMISSION
MEETING MINUTES
MAY 6, 2013**

AGENDA ITEM 1. Call to Order, Roll Call and Approval of Minutes.

Chair Gonzalez called the meeting to order at 7:00 p.m.

Present at roll call were Commissioners: Cooper, Crowder, Gonzalez, Pearson, and Vanderheyden. Absent and excused: Commissioners Iverson and Ramy Jr. City Planner Gadow was also present.

Chair Gonzalez requested the following corrections: Page 6, Line 8, "...where the tables are not against the building..." and Page 7, Line 11, "...if recommending approval without the stanchions..."

Commissioner Vanderheyden made a motion, seconded by Commissioner Crowder, to approve the April 15, 2013, meeting minutes as amended above. The motion passed 5/0.

AGENDA ITEM 2. Regular Agenda Public Hearing Item.

a. 100 Lake Street West – Benchmark Insurance Company
i. Amendment to PUD for Third Story Office Use

City Planner Gadow presented the application of Benchmark Insurance Company for an amendment to the existing Planned Unit Development (PUD) to convert the upper third story area for office use at 100 Lake Street West. He displayed aerial photographs of the subject site, noting the request would not impact the exterior or height of the existing building. City Planner Gadow reviewed the past approval for this building with the upper area to be utilized as storage area, and the late-1996 PUD amendment request to allow the upper area to be used as office space that was narrowly denied by the Council on a 2/3 vote. At that time, a super majority vote was required for a PUD amendment. City Planner Gadow explained that in 1997, that Statute was changed to allow a PUD to be amended by a simple majority vote. However, the building owner at that time did convert the upper floor to an office use without gaining City approval. Benchmark Insurance Company purchased the building assuming the upper floor could be used as office as a permitted use and staff became aware of the conflict when Benchmark Insurance Company submitted plans for its build out of the structure. Staff then informed Benchmark Insurance Company of the need to make application for a PUD amendment.

City Planner Gadow displayed a diagram of the first, second, and third floor build out for office spaces. He noted the third story is set back from the façade of the building and contains three office spaces with an additional kitchen and storage space. He stated staff conducted a parking analysis with the third story as office and determined 39 parking spaces would be required. It was noted that 100 Lake Street West does contain 39 parking spaces and there is also a shared parking agreement for additional parking, if needed to handle overflow.

1 It was noted the Planning Commission can develop findings of fact based upon the staff report
2 and any revisions the Commission wishes to make or to direct staff to prepare a Planning Report
3 and Recommendation with appropriate findings for review and adoption at the next Planning
4 Commission meeting.

5
6 Commissioner Crowder asked what type of insurance is handled by Benchmark Insurance
7 Company.

8
9 Jill Johnson, Benchmark Insurance Company, 775 Prairie Center Drive, Eden Prairie, stated they
10 have a reinsurance brokerage division and mostly handle work compensation and employers
11 liability insurance. She indicated they purchased the building recently on January 24, 2013.

12
13 Commissioner Pearson stated Attachment A represents that Benchmark Insurance Company had
14 no way of knowing that the use of the third floor as office was not a permitted use. City Planner
15 Gadow stated that is because the previous owner of the property did not get approval in 1996 of
16 a PUD amendment or apply for building permits to convert it to office space. In addition, when
17 the West Lake Street PUD was approved in 1996 as a whole, there was a development agreement
18 that spoke more broadly to all of the properties and it was not properly recorded with Hennepin
19 County so a property search would not reveal this is only an allowed two-story office building.
20 He stated the RFP document was also not recorded against the property.

21
22 Commissioner Pearson stated the information indicates they conducted due diligence, believed it
23 was permitted, and had no way of knowing. But, there was a public hearing on whether it would
24 or would not be allowed and a Council vote indicating it would not be allowed. City Planner
25 Gadow stated he was unsure of the due diligence conducted but he did not recall any
26 conversation with their attorneys so there was not a file search by staff until the building permit
27 request came in for the build out. That revealed the lack of approval of a third story use.

28
29 Commissioner Pearson asked if there are retroactive consequences to an after-the-fact request.
30 City Planner Gadow stated that could be investigated with the City Attorney but in this case, it
31 would result in punishing the new property owner for an action by a previous property owner.
32 The question to the City Attorney is whether there is a way to do retribution actions against the
33 previous property owner.

34
35 Commissioner Crowder stated ordinances will address violation of agreement or building codes
36 as being a misdemeanor. City Planner Gadow stated that is correct in some cases.

37
38 Commissioner Pearson stated it would also be a breach of representation if it was not revealed.
39 He stated that he sympathizes with the applicant but was uncomfortable with setting a
40 precedence of rewarding bad behavior.

41
42 Commissioner Vanderheyden asked what was the building square footage when the property was
43 listed for sale. Ms. Johnson stated it was 12,000 square feet and a year prior it was listed as a
44 full three-story building. She stated they had a full inspection conducted and the inspector talked
45 with Building Official Don Johaneson but had not asked if there was a use restriction. Ms.

1 Johnson stated their inspector did ask if there were any issues with the building and was told
2 there were no issues with the building. It was noted the previous owner was John Laurent.

3
4 Commissioner Crowder stated if the City does not prosecute the previous owner to the fullest
5 extent, he would ask what good are the City's ordinances.

6
7 Commissioner Cooper asked if the leasehold improvements were done by the tenant or building
8 owner. City Planner Gadow stated he does not know.

9
10 Ms. Johnson stated Mr. Laurent accompanied them during the walk through of the building. She
11 stated the kitchen, bathroom, and offices currently exist on the third floor.

12
13 Commissioner Crowder asked when the improvements were done to the third floor. City Planner
14 Gadow stated he does not know. Ms. Johnson stated the appliances are stainless steel so she
15 thinks it was recent.

16
17 Commissioner Cooper asked what Benchmark Insurance Company will do if the PUD
18 amendment is not approved. Ms. Johnson stated she is unsure, as their office space is tight with
19 only one cubical open at this time. She stated if not approved, there would be no additional
20 kitchen or break room of any type.

21
22 Commissioner Vanderheyden asked if there is previous experience that is similar. City Planner
23 Gadow stated there was one instance before his employment with Wayzata where the City took
24 legal action against a residential property on Bushaway Road that was operating an illegal salon
25 and required it to be removed.

26
27 Chair Gonzalez stated there are two different situations: Mr. Laurent broke his agreement with
28 the City and the City may or may not choose to pursue action against him; and, this brand new
29 application. She suggested the Planning Commission consider the application as if there is no
30 construction there and determine whether to allow that space for use as an office.

31
32 Commissioner Vanderheyden stated that is fair direction. He stated his understanding that the
33 original intent was for this building to be restricted at 10,600 square feet and it may have been
34 Mr. Laurent's intention to get back to that square footage. Commissioner Vanderheyden stated
35 he is comfortable with considering this ask.

36
37 Commissioner Pearson stated the 1996 minutes indicate staff did not recommend approval and
38 asked if staff had further insight on that recommendation. He stated the staff report now implies
39 a recommendation to approve. City Planner Gadow stated the 1996-1997 materials indicate staff
40 was concerned with granting the PUD amendment because the RFP indicated what the buildings
41 were to be and when this building was coming forward, the other buildings had not yet been
42 proposed or built. The concern was that if this building was allowed to have a third story, the
43 other buildings may ask for the same approval. The difference is that now those buildings have
44 been built out less than three stories so that prior concern cannot materialize. City Planner
45 Gadow stated if one of the other buildings wanted a third story, the Planning Commission could

1 consider that request as an independent application. He stated he is comfortable with this request
2 since it does not impact the exterior of the building and meets parking requirements.

3
4 Commissioner Cooper stated the building was originally going to be 11,000 square feet but the
5 City took more plaza space than planned so the building was cut back. She stated since there are
6 no planned changes to the exterior façade, she is comfortable with recommending approval of
7 the application.

8
9 Commissioner Crowder concurred and stated that he would support prosecution of the former
10 building owner for violation of the PUD.

11
12 Chair Gonzalez opened the public hearing at 7:26 p.m.

13
14 There being no comment, Chair Gonzalez closed the public hearing at 7:26 p.m.

15
16 Chair Gonzalez asked if the residential or commercial neighbors had submitted comment. City
17 Planner Gadow stated feedback has not been received from anyone.

18
19 Chair Gonzalez stated she shares the frustration with violation of the PUD and misrepresentation
20 of the property but the buyer had conducted due diligence.

21
22 Commissioner Cooper stated the new property owner also applied for a building permit.

23
24 Commissioner Crowder made a motion, seconded by Commissioner Cooper, to recommend
25 approval of the application of Benchmark Insurance Company for an amendment to the existing
26 Planned Unit Development (PUD) to convert the upper third story storage area for office use at
27 100 Lake Street West, based on the findings and subject to the conditions as detailed in the staff
28 report. The motion passed 5/0.

29
30 City Planner Gadow stated he will contact the City Attorney relating to the PUD violation by the
31 previous property owner.

32
33 **b. 426 Ferndale Road South – Michael and Brittany Reger**

34 **i. Conditional Use Permit for Carriage House**

35 **ii. Conditional Use Permit for Structural Element Height**

36 City Planner Gadow presented the application of Michael and Brittany Reger for a CUP to allow
37 a carriage house and structural height element at 426 Ferndale Road South. He displayed a
38 picture of the existing structure and explained a carriage house already exists on the property in a
39 nonconforming location. City Planner Gadow stated the applicant would remove the existing
40 structures, with the exception of the boathouse, and construct a new house and carriage house.
41 He displayed a site plan identifying the location of the current structures and proposed structures.
42 It was noted the existing pool structure would also be removed. City Planner Gadow stated the
43 building meets the height requirement for the R1-A District; however, the chimney height would
44 be 42.5 feet, exceeding the 40-foot restriction. Slides were displayed of exterior elevations,
45 foundation plans, first and second floor layouts, cross sections of the structure, and roof plan.

1 City Planner Gadow stated the proposed carriage house conforms with the R1-A requirements
2 and would be constructed of similar materials as the main house.

3
4 City Planner Gadow stated lot coverage is restricted to 10% and this proposal is at 9.6%.
5 Impervious surface is restricted to 20% and this proposal is at 19.8%. He advised of action
6 steps for the Commission's consideration to develop findings of fact based upon the staff report
7 and any revisions the Commission wishes to make or to direct staff to prepare a Planning Report
8 and Recommendation with appropriate findings for review and adoption at the next Planning
9 Commission meeting.

10
11 Commissioner Vanderheyden asked about chimney height and if a CUP is allowed, would it be
12 isolated to the single use. City Planner Gadow stated it would be limited to the single chimney
13 height.

14
15 Commissioner Crowder asked why the chimney has to be at 42.5 feet.

16
17 Michael Hayes, 2421 Loren Avenue, Minnetonka, contractor representing the applicant, stated
18 the applicant wants a wood burning fireplace so the chimney needs to be two feet above the
19 surrounding radius. City Planner Gadow stated that is a building code requirement.

20
21 Chair Gonzalez asked if there would be a lot of site grading. Mr. Hayes stated he thinks there
22 will be a number of yards of extra dirt.

23
24 Chair Gonzalez stated the code indicates that modifications to the site may not be undertaken as
25 a means to achieve increased building height. Mr. Hayes stated in this case, the height is set by
26 the walkout from the lakeside and that elevation is not being changed. The grading will come
27 from the front of the house towards Ferndale.

28
29 City Planner Gadow stated staff looked at the proposed grading and determined it would result in
30 matching existing grades and that fill would not be used to increase height.

31
32 Chair Gonzalez stated there is an existing swimming pool and asked if a new one would be built.
33 Mr. Hayes stated the new house will sit where the existing swimming pool is located so it will be
34 removed. He stated the new pool and surrounding concrete are accounted for in the calculations.

35
36 Chair Gonzalez asked where the swimming pool will be located. City Planner Gadow used a
37 slide to point out the location and indicated it meets the setback from the lake.

38
39 Chair Gonzalez stated she is a former member of the Heritage Preservation Board (HPB) and
40 asked Mr. Hayes to allow the HPB to visit the site prior to demolition to document this structure
41 for their archives. Mr. Hayes stated the Fire Department will be conducting testing and while he
42 had not thought about contacting the HPB, will do so. Chair Gonzalez stated the property
43 owners may enjoy learning about the history of this property.

44

1 Commissioner Vanderheyden stated the current driveway will circle down and asked if the trees
2 will be cleared, including the large Ash trees to the left and right side. Mr. Hayes stated one of
3 the big trees had to be taken down but other than that, the bigger trees will be reused.

4
5 Chair Gonzalez stated she is concerned with how close the calculations come to the requirement,
6 noting one is at 19.98%. City Planner Gadow stated one of the requirements is to provide an as-
7 built survey and if it shows more than 20% then it will have to be removed to meet the
8 requirement. Mr. Hayes stated that should provide some comfort because the Building
9 Department will not issue a Certificate of Occupancy until the as built is submitted.

10
11 Chair Gonzalez opened the public hearing at 7:44 p.m.

12
13 Deanne Straka, 130 Huntington, stated she would like something from the house as it was built
14 in 1895 by her great grandfather, Jessie Gray.

15
16 There being no comment, Chair Gonzalez closed the public hearing at 7:45 p.m.

17
18 Commissioner Cooper stated removal of the existing carriage house will be an asset to Ferndale.

19
20 City Planner Gadow stated the staff report contains recommended findings or staff can be
21 directed to prepare formal findings for consideration at the next Planning Commission meeting.

22
23 Commissioner Pearson asked whether the consideration would be of the italicized findings. City
24 Planner Gadow stated that is correct.

25
26 Commissioner Pearson made a motion, seconded by Commissioner Vanderheyden, to
27 recommend approval of the request by Michael and Brittany Reger for a CUP to allow a carriage
28 house and a CUP for a structural height element at 426 Ferndale Road South, based on the
29 conditions and findings of fact as contained in the staff report in italicized conclusions. The
30 motion passed 5/0.

31
32 **c. Review and Adoption of Planning Commission Report and Recommendation for**
33 **Outdoor Sidewalk Café CUP for 701 Lake Street East – Yogurt Lab**

34 City Planner Gadow presented the Planning Commission Report and Recommendation for an
35 Outdoor Sidewalk Café Conditional Use Permit (CUP) for Yogurt Lab at 701 Lake Street East.
36 He stated there are two corrections: Section 4.1.4, change the word “building” to the word
37 “streetscape elements” and Section 4.1.8, change wording to indicate: “metal, plastic, or other
38 weather resistant material.”

39
40 City Planner Gadow stated as part of the discussion at the last meeting on the pedestrian clear
41 way, the applicant considered whether the tables/chairs could be laid out in a way to create more
42 clear space. He displayed a slide depicting a new tables/chairs alignment in a parallel path to
43 create additional space between the stanchions, tree, and lamppost.

44
45 Commissioner Vanderheyden stated on Page 4, Section 3.1.e, the word “north” should be the
46 word “south.” City Planner Gadow stated that is correct.

Commissioner Vanderheyden stated at the last meeting the Planning Commission talked about the width of the sidewalk at Gianni's Steakhouse and City Planner Gadow had stated the extensions from the existing curb are seven feet in width. City Planner Gadow stated the interior space is five feet in width but the extender system is seven feet in width. Commissioner Vanderheyden stated it meets minimum ordinance standards.

Chair Gonzalez requested a revision to Section 3.1.e, to indicate: "shall maintain at least five feet."

Commissioner Pearson stated his only questions related to the furniture being constructed of metal and whether there were other alternatives, which has been addressed by the revision requested by City Planner Gadow.

Commissioner Cooper asked if the applicant re-measured the distances to assure they are accurate. City Planner Gadow stated that occurred and it will be field verified once installed.

Commissioner Pearson made a motion, seconded by Commissioner Vanderheyden, to approve the Planning Commission Report and Recommendation recommending approval of an Outdoor Sidewalk Café CUP for Yogurt Lab at 701 Lake Street East, with the following revisions:

- Section 3.1e., change the word "north" to the word "south"
- Section 4.1.4, change the word "building" to the word "streetscape elements"
- Section 4.1.8, change wording to indicate: "metal, plastic, or other weather resistant material."

Commissioner Crowder stated he had voted against this application at the last meeting but thinks what is presented is stated well. City Planner Gadow stated Commissioner Crowder has the option to maintain his original vote or he can vote to adopt the report. Commissioner Crowder stated he will be consistent.

The motion passed 4/0/1 (Crowder).

AGENDA ITEM 3. Other Items

a. Review of Development Activities

City Planner Gadow stated draft ordinances may be available for review at the next meeting. He invited Planning Commissioners to attend the upcoming Lakefront Effect workshops to brainstorm value statements and what it can mean in terms of projects and policies. He stated he will provide additional material as it become available.

b. Other Items

Chair Gonzalez asked about the upcoming workshop to address parking. City Planner Gadow stated the consultants will make a presentation addressing parking in the Central Business District and what could trigger the need for a parking ramp north of the 700 block of Lake Street. That meeting is open to the public.

1 Chair Gonzalez asked about activities of the Heritage Preservation Board. City Planner Gadow
2 stated over the next two weeks, the HPB will present Centennial House Awards, the Mayor's
3 Restoration Award, conduct a cemetery walking tour, and have informational boards on display.
4 Chair Gonzalez encouraged Commissioners to attend the presentation of the Centennial House
5 Awards.

6
7 Commissioner Cooper stated there has been discussion about the sidewalk and streets in the
8 Metropolitan Council project area. City Planner Gadow explained the Metropolitan Council is
9 in the process of completing its force main project in the heart of the Central Business District.
10 Since the Lakefront Effect process is underway, the City has asked the Metropolitan Council to
11 place money in escrow until those long-term plans are completed.

12
13 **AGENDA ITEM 4. Adjournment.**

14 There being no further business, Commissioner Vanderheyden made a motion, seconded by
15 Commissioner Cooper, to adjourn the meeting. The motion passed unanimously.

16
17 The meeting was adjourned at 8:03 p.m.

18
19 Respectfully submitted,

20
21
22 Carla Wirth

23 *TimeSaver Off Site Secretarial, Inc.*