

CITY OF APPLE VALLEY
PLANNING COMMISSION MINUTES
SEPTEMBER 15, 2010

1. CALL TO ORDER

The City of Apple Valley Planning Commission meeting was called to order by Acting Chair Schindler at 7:00 p.m.

Members Present: David Schindler, Ken Alwin, Tim Burke, Keith Diekmann and Paul Scanlan

Members Absent: Jeannine Churchill and Tom Melander

Staff Present: City Planner Tom Lovelace, Associate City Planner Kathy Bodmer, City Attorney Sharon Hills, Assistant City Engineer David Bennett, and Department Assistant Barbara Wolff

2. APPROVAL OF AGENDA

Acting Chair Schindler asked if there were any changes to the agenda.

City Planner Tom Lovelace stated that agenda item 5A, Zoning Code Amendment, has an addition of a consideration of zoning map amendment to rezone Lot 1, Block 2, Eastview Addition from "I-2" (General Industrial) to "P" (Institutional).

Acting Chair Schindler hearing no further changes called for a motion.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Alwin, to approve the agenda as amended. The motion carried 5-0.

3. APPROVAL OF MINUTES OF AUGUST 18, 2010

Acting Chair Schindler asked if there were any changes to the minutes. Hearing none he called for a motion.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Alwin, to recommend approval of the minutes of the August 18, 2010, meeting. The motion carried 4-0. Acting Chair Schindler abstained.

4. CONSENT ITEMS

--NONE--

5. PUBLIC HEARINGS

- A. Zoning Code Amendment – Consideration of text amendment to the "P" (Institutional) zoning district to allow for a municipal government maintenance facility and zoning map amendment to rezone Lot 1, Block 2, Eastview Addition from "I-2" (General Industrial) to "P" (Institutional).

Associate City Planner Kathy Bodmer stated that on August 18, 2010, the Planning Commission held a public hearing to consider amendments to the zoning section of the City Code to ensure consistency between the zoning code and the City's recently updated 2030 Comprehensive Plan. A total of eleven sites were found to have inconsistencies between the comprehensive plan and zoning map. Most of the sites were rezoned to make

the zoning consistent with the current use of the property and consistent with the comprehensive plan designation. However, one of the sites, the City's Central Maintenance Facility (CMF), could not be rezoned until the "P" (Institutional) zoning district is amended to allow the use.

The 2030 Comprehensive Plan guides the use of the CMF property, located at 6442-140th Street West, for "INS" (Institutional) uses. Currently the property is zoned "I-2" (General Industrial) which is inconsistent with the 2030 Comp Plan designation. A rezoning of the property to "P" (Institutional) would make the property consistent with the comp plan, but a municipal maintenance facility is not currently listed as a permitted use in the zoning district.

Staff proposes that the text of the "P" (Institutional) zoning district be amended so that a municipal maintenance facility, along with associated maintenance buildings, outdoor storage, and municipal utility facilities, would be allowed as permitted uses in the zoning district. The amended language would read as follows:

§ 155.246 PERMITTED USES.

Within any P district, no structure or land shall be used, except for one or more of the following principal uses or uses deemed similar by the City Council:

* * * *

(H) Municipal government administrative buildings, municipal maintenance buildings and facilities including outdoor storage of municipal vehicles, equipment and materials, municipal utility facilities, fire stations and police stations;

* * * *

Bodmer stated that it is the policy of the Planning Commission to not take action on an item on the night of its public hearing. However, if there are no comments from the public and the questions and concerns of the Planning Commission have been addressed, the Commission may wish to take action this evening.

Commissioner Alwin asked if the zoning amendment would change the current use of the land.

Bodmer replied no; it would remain the same.

Acting Chair Schindler opened the hearing for public comment. Hearing no further discussion he closed the public hearing and called for a motion.

MOTION: Commissioner Alwin moved, seconded by Commissioner Burke, to recommend approval of the draft ordinance amending the text of the "P" (Institutional) zoning district to allow municipal maintenance buildings and facilities; outdoor storage of municipal vehicles, equipment and materials; and municipal utility facilities.

The motion carried 5-0.

MOTION: Commissioner Alwin moved, seconded by Commissioner Burke, to recommend approval of rezoning of Site 4, Apple Valley Central Maintenance, from "I-2" (General Industrial) to "P" (Institutional).

The motion carried 5-0.

6. LAND USE/ACTION ITEMS

- A. Applebee's Sign Variance – Ten foot (10') sign setback variance to relocate Applebee's pylon sign three feet (3') from newly established right-of-way line. (Sign relocation due to Cedar Avenue reconstruction project).

Associate City Planner Kathy Bodmer stated that the petitioner Muska Electric, on behalf of Applebee's Restaurant, requests a variance to the sign setback requirement to relocate their free-standing pylon sign three feet (3') east of the newly established permanent right-of-way easement. The sign must be relocated because it is currently located within a recently acquired permanent right-of-way easement in connection with the Cedar Avenue improvement project. The sign setback requirement is 13' from a right-of-way line. Applebee's requests a 10' variance to allow the sign to be located three feet (3') east of the newly established right-of-way line. The sign would be relocated six feet (6') east of its current location.

Applebee's restaurant is located on the northeast corner of Cedar Avenue and 147th Street West at 14678 Cedar Avenue. The free-standing pylon sign was originally installed in compliance with sign setback requirements, but must now be relocated because it falls within the new permanent right-of-way easement that Dakota County has recently obtained. Dakota County obtained additional right-of-way at the intersection to provide room for an enhanced intersection treatment with decorative paving, special signage and additional landscaping.

The Applebee's sign variance request was reviewed with the attorney's office in view of the recent State Supreme Court ruling concerning a city's authority to grant variances. In Apple Valley's case, Chapter 154 of the City Code regulates signs and is distinct and separate from Chapter 155 which regulates zoning. The attorney's office indicated that because Apple Valley's sign regulations do not fall within the zoning regulations, the findings of the Minnesota Supreme Court do not apply to sign variances. In order to grant a variance, the City must find that the requested variance meets the following conditions:

§ 154.07. SIGN ADMINISTRATION.

(F) *Variance; conditions to granting.* No variance shall be granted unless the Council shall find that either condition (1) or (2) hereinafter set forth exists:

- (1) All of the following requirements must be met:
 - (i) Special conditions exist which are peculiar to the land, structure, building involved and which are not applicable to other lands, structures or buildings in the same district;
 - (ii) The special conditions and circumstances do not result from the actions of the applicant;
 - (iii) A literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district and the terms of these sign regulations;
 - (iv) That granting the variance requested would not confer on the applicant any special privilege for a use not common to other lands, structures or buildings in the same district; and
 - (v) The proposed use of the property shall have an appearance that will not have an adverse effect upon adjacent properties and there will be no deterrence to development of vacant land.
- (2) Any proposed signage beyond the maximum square footage permitted would have the primary function of providing a public service.

In the case of the Applebee's property, the requirement to relocate the sign is not as a result of action by the restaurant but by action of Dakota County in connection with the Cedar Avenue improvement project. The new sign location confers no special privilege to this property; in fact, because of the unusually large right-of-way, the sign would be located farther east than similar signs along the east side of Cedar Avenue. The restaurant is simply relocating the existing sign, so there will be no negative impacts on neighboring properties.

Bodmer stated that staff reviews variance applications based strictly upon the requirements of the state statutes and the city code that require a demonstrated physical hardship to be present in order for a variance to be granted, and that logical alternatives are not available to the applicant.

Bodmer asked for comments or questions from the Planning Commission.

Commissioner Alwin asked how close the relocated Applebee's sign will be to the new wayfinding monument sign at the corner of Cedar Avenue and 147th Street West and if there is any thought of integrating the two signs.

Bodmer said that any kind of incorporating would pull a private sign into the public right-of-way. She said there is a desire to separate the private and the public.

John Sass, Project Manager with Dakota County Transportation, said the County bought highway easement on this corner to put the monument in and they're not allowed to have private structures in the highway easement by statute. Behind the sign is an existing drainage and utility easement. He said they are buying another easement on top of that easement which is a trail, drainage and utility easement to do landscaping. Landscaping will be incorporated behind the monument.

Commissioner Alwin stated that he didn't want the Applebee's sign to look out of place next to this nice looking, heavily landscaped monument.

Mr. Sass said that the architects did a nice job of integrating the two signs. They did look at other locations for the sign but most of them would cause additional damages by loss of parking stalls. He said the color of the sign and the monument will fit together.

Commissioner Alwin said he would like it to look like a unified, intentional placement.

Commissioner Diekmann asked if there was an option to co-locate on the existing complex sign and also asked if that sign is already out of the easement.

Bodmer said the main complex sign is on a separate parcel and that sign is not impacted by additional right-of-way or easements.

Commissioner Scanlan asked if the relocation of the sign would impact any of the parking spaces.

Bodmer said that there will not be any parking spaces lost with the relocation of the sign.

Commissioner Scanlan asked what would become of the concrete pad.

Mr. Sass said the area currently consists of gravel. He said it will be taken out to install trees and shrubs behind the monument. Mr. Sass said there will also be signal control cabinets, lighting controls and the sprinkling system.

Commissioner Diekmann asked if the Applebee's sign would be the same sign and the same height as it currently is.

Bodmer said that is correct.

Acting Chair Schindler hearing no further discussion called for a motion.

MOTION: Commissioner Burke moved, seconded by Commissioner Diekmann, to recommend that the sign setback variance for the Applebee's pylon sign be approved, allowing the existing pylon sign to be relocated three feet (3') from the newly established right-of-way line, based upon the hardship created by the newly obtained right-of-way easement and the following findings:

1. The relocation of the sign is not as a result of action by the property owner.
2. The sign must be relocated because the sign is currently within a right-of-way easement that was recently obtained by action of Dakota County in connection with the Cedar Avenue improvement project.
3. The new sign location confers no special privilege to this property.
4. There will be no negative impacts on neighboring properties resulting from this variance.

The motion carried 5-0.

7. OTHER BUSINESS

--NONE--

A. Review of the Upcoming Schedule and other Updates

City Planner Tom Lovelace stated that there are no additional updates.

8. ADJOURNMENT

Hearing no further comments from the Planning Staff or Planning Commission, Acting Chair Schindler asked for a motion to adjourn.

MOTION: Commissioner Burke moved, seconded by Commissioner Alwin, to adjourn the meeting at 7:26 p.m. The motion carried 5-0.