

CITY OF APPLE VALLEY
PLANNING COMMISSION MINUTES
APRIL 7, 2010

1. CALL TO ORDER

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

Members Present: Jeannine Churchill, David Schindler, Keith Diekmann, and Paul Scanlan

Members Absent: Ken Alwin, Tim Burke, and Tom Melander

Staff Present: Community Development Director Bruce Nordquist, City Planner Tom Lovelace, Associate City Planner Kathy Bodmer, Associate City Planner Margaret Dykes, City Attorney Sharon Hills, Assistant City Engineer David Bennett and Department Assistant Barbara Wolff

2. APPROVAL OF AGENDA

Chair Churchill asked if there were any changes to the agenda. Hearing none she called for a motion.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Scanlan, to approve the agenda. The motion carried 4-0.

3. APPROVAL OF MINUTES OF MARCH 17, 2010

Chair Churchill asked if there were any changes to the minutes. There being none, she called for approval of the minutes.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Schindler, to recommend approval of the minutes of the March 17, 2010, meeting. The motion carried 4-0.

4. CONSENT ITEM

A. Heieren Variance – Consideration of a setback variance of 6’ from the required front yard setback of 30 feet to allow for the construction of a 6’ x 7’-4” covered front entry.

The applicant is requesting a setback variance of 6’ from the required front yard setback of 30 feet to allow for the construction of a 6’ x 7’-4” covered front entry. The site is located at 172 Strese Circle.

The Heieren residence is located in the Bobs Garden View Addition which was developed in the early sixties. The dwelling unit was constructed in 1963 and the front façade has very little detail. The applicant is proposing to construct a 44 sq. ft. covered entry as part of a remodeling project. The proposed covered entry will encroach into the front yard setback area by 6’.

City code currently allows patios and decks less than 18” in height from grade with no railing and handicap access ramps to extend up to 8’ into the front yard setback area. Because the entry is covered with a roof that is attached to the dwelling, it is considered part of the structure; therefore it cannot extend beyond the minimum front yard setback area without first obtaining a variance.

A variance is a legally permitted deviation from the literal requirements of the city code. A variance may be granted in instances where strict enforcement would cause undue hardship, the circumstances are unique to the individual property under consideration, and the granting of the variance will be in keeping with the spirit and intent of the applicable ordinances, goals and policies of the comprehensive plan, and will not alter the essential character of the neighborhood.

It appears that the proposed variance would be consistent with the comprehensive plan’s goals and policies that encourage residents to make improvements to their homes. Also, enhancements such as front entryways have been encouraged as a way to help update the city’s existing housing stock. The proposed variance request is consistent with similar front additions that have been approved by the City.

Furthermore, building setbacks are established to provide adequate space, light, and air, as well as safety from fire and for aesthetic reasons. The City has established setbacks in the “R-3” zoning district based upon abutting uses and their impact to adjacent properties. It does not appear that granting this variance will have a significant impact on the neighboring properties.

Church Churchill asked the Planning Commission members if they had any questions or concerns in regards to the proposed setback variance. Hearing no comments or questions, Chair Churchill asked for a motion.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Schindler, to recommend approval of a variance of up to 6’ from the required front yard building setback of 30’ in the “R-3” (Single Family Residential) zoning district to allow for the construction of a 6’ x 7’-4” covered front entry at 172 Strese Circle due to the following:

- 1) The granting of the variance will not alter the general character of the locality.
- 2) The granting of the variance would be consistent with the Comprehensive Plan’s goals and policies that encourage residents to make improvements to their homes as a way to help update and enhance the City’s existing housing stock and livability.

The motion carried 4-0.

5. PUBLIC HEARING

- A. **Panda Express C.U.P. – Consideration of a conditional use permit to allow for a Class II restaurant in the “RB” (Retail Business) zoning district, as well as a variance to locate a Class II restaurant closer than 1,000 feet from institutional or residential uses and site plan/building permit authorization to allow for the remodel of the former Proex building into a restaurant with an outdoor dining area.**

Associate City Planner Kathy Bodmer stated that Panda Restaurant Group, Inc., wishes to remodel the former Proex building located at 7735 – 150th Street West. They are requesting the following actions:

- Conditional use permit (CUP) for Class II restaurant in “RB” (Retail Business) zoning district.
- Variance to locate Class II (fast food) restaurant closer than 1,000’ from institutional or residential uses.
- Site plan review/building permit authorization to remodel the former Proex building, reconfigure the site and create an outdoor dining area.

Panda Express requests a CUP, variance, and site plan review/building permit authorization to remodel the Proex building to create a 2,357 sq. ft. Class II (fast food) restaurant. The existing drive-thru lane would be removed to create an 18’ x 28’ outdoor dining and landscaped area. The restaurant would have a total of 53 indoor seats and 32 outdoor seats.

The property is zoned “RB” (Retail Business) which allows a Class II restaurant by conditional use permit, provided it is located at least 1,000’ from institutional and residential uses. The petitioner requests a variance to allow it to be located approximately 250’ from Grace Lutheran Church and 640’ from residential properties west of Hoover Lane. The setback from institutional and residential uses is intended to help protect them from negative impacts created by fast food restaurants, which may include higher traffic levels, noise, and odors. Given the fact that the church and residential neighborhood are both south of County Road 42, impacts on the neighborhood are expected to be minimal. Other Class II restaurants in the immediate area include Taco Bell and Dairy Queen. The City may wish to address potential odors by requiring the regular cleaning and maintenance of the building’s air filters.

Three head-in parking spaces are shown being accessed directly off of the private street on the north side of the site. The private street on the north side of the site is shared with Dairy Queen, Bruegger’s, Tires Plus and Taco Bell and functions as a through-connection from Granada Drive to Pennock Avenue. Staff is concerned that cars exiting the parking spaces will back into one or two lanes of traffic. The City’s Traffic Engineer has been asked to review this item.

The petitioners must show evidence of the existing cross-access, cross-parking and maintenance agreements for the Margolis Addition. The petitioners will need to demonstrate that the easements are in full effect and that they will have full use of the shared access and parking areas.

Roy Kingsley, the City’s Fire Marshal, states that the building code views the change of the use of the building from a retail store to a restaurant as a “change in occupancy” which will require that a fire sprinkler system be installed in the building.

The Public Works Department will require that the petitioner provide a maintenance and pumping schedule for the exterior grease interceptor.

Bodmer asked for questions or comments from the Planning Commission.

Commissioner Diekmann asked why there is a separate application for the signs.

Bodmer replied that it is a separate process. The sign measurements and dimensions are figured out at the time of the sign application.

Commissioner Scanlan asked about the venting and maintenance agreement.

Bodmer stated that the petitioner has agreed to do a maintenance program and to provide information to the City on how that will be done.

Commissioner Scanlan asked how the venting and maintenance agreement is enforced.

Bodmer answered that is part of the building permit approval with the expectation that it is self policing and the petitioners would clean it on a regular basis. If it got to be a problem then the City would inspect to see when the last time was that it had been maintained.

Chair Churchill said that she would like to see the proposed landscaping for the area where the three parking spaces will be eliminated at the next meeting.

Bodmer replied that the petitioner can do that.

Chair Churchill asked for the petitioner to step forward.

Steven Belanger, Project Manager for Panda Express, Inc. in the Midwest region. He stated that Panda Express, Inc. is a family owned company that was started as a mom and pop shop 27 years ago. They are corporately owned and currently have 18,000 employees. He stated that they are progressively growing in this economy because they are privately held.

He said they are a quick food restaurant, not a fast food restaurant. All of their recipes are made from scratch and by hand. All the vegetables are cut daily and the food is cooked and prepared prior to coming out to the buffet. They have an internal organization named Panda Cares, which was started by one of their co-founders about 10 years ago. They encourage their local operators to become involved with the community in terms of children, up to high school age. They are intimately involved with the Children's Miracle Network.

Mr. Belanger commented that the maintenance contract for the hood cleaning is done by a company that oversees 300 of their 1,300 stores. It is done on a quarterly basis unless the sales volume causes it to be more. He stated that he provided the contracts, the procedures and policies, as well as the chemical sheet to staff. The store cleanliness is superior to other restaurants. In 2008 and 2009, both of their Bloomington locations received the Grand Reward for cleanliness from the City.

Mr. Belanger stated that he has no issue removing the three parking stalls and removing two seats from the indoor seating so that they can meet the code, bringing them to 51 interior seats. The change will be noted on the plans when they return to the Planning Commission. He said on the roof of the restaurant are two large exhaust fans, three roof-top units, a make-up air unit, three remote condensers and a restroom exhaust fan. They may not be able to keep the equipment 20 ft. back from the parapet, but the equipment will be screened as necessary. Landscaping will be replaced at the area where the

three parking spaces will be removed. Similar to the hood cleaning system, the 1,000 gallon grease trap is cleaned on a quarterly basis unless sales volume calls for more frequent cleaning. He will have the agreements with him when he returns to the Planning Commission.

Commissioner Scanlan asked about the east side of the parking access to the front of the restaurant. He said that there is not a sidewalk to access the front of the restaurant.

Mr. Belanger said that although that is a parking lot for the Taco Bell, it is realistic to say that their customers may use that parking lot and walk over to their restaurant, creating a path through the landscaped area.

Commissioner Scanlan asked for Mr. Belanger to look at some alternatives there when they are reviewing the landscape plan.

Mr. Belanger replied that they will take a look at that.

Mr. Belanger stated that he does have a copy of the cross agreement between the five owners with him tonight and will leave it with staff.

Chair Churchill stated it looks like a good addition to that area of the City. She thanked the petitioner. She asked if there was anyone from the public who would like to speak to the issue. Hearing no comments she closed the public hearing.

B. Property Maintenance Ordinance Amendments – Consideration of amendments to Section 155.360 of the City’s zoning code that addresses interior hazardous, structurally deficient, and poorly maintained properties; and unsanitary and unsafe living conditions in the city.

City Planner Tom Lovelace stated that the Commissioner’s packets included a draft of proposed amendments to Section 155.360 of the Apple Valley City Code that addresses interior hazardous, structurally deficient, and poorly maintained properties and unsanitary and unsafe living conditions. The draft amendments provide for interior inspections, code compliance, and when necessary, abatement actions in response to a complaint or when observed by someone entering the home to provide a service.

On September 10, 2009, staff presented information related to recent instances of unhealthy living conditions at a City Council informal meeting. The background information included several documents from the League of Minnesota Cities dealing with dangerous properties and public nuisances, as well as property maintenance ordinances from the cities of Bloomington, Burnsville, and Coon Rapids; and the International Code Council’s (ICC) International Property Maintenance Code. This information was reviewed by the City’s Housing Group, which is a committee made up of staff personnel from the administration, building inspection, public works, community development, fire, and police departments.

Upon review of the information from ICC, League and communities; as well as the City’s current maintenance code, the Housing Group engaged the City Attorney’s office and directed them to

prepare a draft ordinance. The strategy recommended by legal counsel was to work within the existing city code and add only those provisions that address conditions experienced in the field. Over the past couple of months, the Housing Group has reviewed a draft of the proposed amendments and incorporated changes and clarifications. The draft amendments were reviewed by the City Council at their February 25, 2010, informal meeting. At that time, they directed staff to proceed with the process of amending the housing maintenance code, by including the proposed amendments that would provide the City the ability to deal with very specific conditions, as described in the draft ordinance.

The amendments represent the result of the Housing Group's and City Council's review, which identifies the purpose of the amendments, adds definitions that will help staff determine what an interior hazardous building, property, and nuisance condition is; and gives the City steps in which to abate the property. It is expected that these changes will provide the City with the minimum amount of specific detail needed to handle complaints already being received to address a significant level of property maintenance concerns. A cornerstone already demonstrated by police and code enforcement personnel is compliance in a fair, equitable and expeditious manner. This approach would not change with the code updates to address challenging field conditions being observed.

Lovelace stated that although it is the policy of the Commission to refrain from acting on an item the same night as its hearing, if there are no outstanding issues, staff is asking for the Commission to act this evening.

Chair Churchill asked Lovelace if he could give the audience at home a thumbnail sketch of the major changes proposed to the ordinance.

Lovelace stated that the major changes include the definitions of:

- Garbage and refuse; accumulation of garbage
- Hazardous building or hazardous property or hazardous condition
- Infestation
- Pests
- Extermination
- Unsanitary conditions; identifying and defining what that is
- General appearance; keeping residence's houses in good repair
- Public nuisance; when the city can declare one and the enforcement procedure

Lovelace stated that the important key to this is getting the ability for the City to get in there and enforce City code and try to abate the situation. He stated that most of these situations are complaint driven.

Chair Churchill asked if there was any member of the public who would like to speak to this issue. There were no comments from the public.

Chair Churchill said that this may be an issue of concern for people that live in older neighborhoods in the City. She asked Lovelace if there was a place where the public could see this proposed ordinance.

Lovelace said that the public can take a look at the proposed ordinance amendments at City Hall and also that staff would work with the administration to post it on the City's website.

Chair Churchill hearing no comments from the public closed the public hearing. Although it is not the policy to act on an item the same night of a hearing, staff is requesting an action this evening. Chair Churchill asked for a motion.

MOTION: Commissioner Schindler moved, seconded by Commissioner Scanlan, to recommend approval of the amended housing maintenance code by including the proposed amendments that would provide the City the ability to deal with very specific conditions, as described in the draft ordinance.

The motion carried 4-0.

Chair Churchill asked for the minutes to reflect the project number of PC09-31-M.

Lovelace stated that this will go before the City Council on April 22, 2010.

6. LAND USE/ACTION ITEMS

- A. Menards Remodeling Project – Consideration of site plan building permit authorization request to allow for the remodel of the outdoor yard area that will include a garden center and the relocation of the yard entrance from the southeast corner of the site to off of Flagstaff Avenue, which will require the reconstruction and reconfiguration of Flagstaff Avenue from Florence Trail to 147th Street West.**

City Planner Tom Lovelace stated that the applicant is requesting site plan/building permit authorization approval to allow for the remodeling of their existing outdoor lumberyard. This remodeling project will include a new unheated garden center, warehouse and shipping area, relocation of an off-peak generator, and entrance into the yard area, which is proposed to be directly off Flagstaff Avenue. The site is located at 14960 Florence Trail.

The construction of the new entrance will require the reconstruction of the street, from Florence Trail to 147th Street West. The street currently has two driving lanes in both directions with no median. The plans submitted by the petitioner propose the reconstruction of this section to include two through lanes in both directions and north bound left turn lanes at the new yard entrance and 147th Street West intersection. A raised median will also be constructed. This reconstruction will require the construction of a retaining wall along the east side of the street, from just north of the Florence Trail intersection and continuing north approximately 600 feet.

Reconstruction of this street will be a public project with all project costs being the responsibility of Menards. No building permit shall be issued until the petitioner has entered into an agreement with the City agreeing to their acceptance of the cost of the street reconstruction.

The proposed garden center will be constructed of green metal and clear polycarbonate panels and warehouse and shipping areas will be constructed using green colored steel panels on the east and west elevations, and treated horizontal wood along the north elevation. The metal panels shall be integrally colored and not painted.

The petitioner is proposing to screen the relocated off-peak generator with a combination of landscaping and treated wood wall. The planned development ordinance requires that screening materials for mechanical equipment shall be compatible with the architecture of the building, which would therefore require the petitioner to construct a screening wall having a similar exterior finish as the building and not the outdoor yard screen wall.

Thirty existing trees along the north side of the property will need to be removed to accommodate the expansion of the yard and construction of the new warehouse. The petitioner is proposing to relocate the trees between the new wall and the sidewalks along the south side of 147th Street West. Staff will observe these trees for one growing season after replanting and any trees lost to this process will need to be replaced by the petitioner.

Lovelace stated that the City Attorney provided comments to staff on Monday relating to the shed and looking at it as an accessory structure. Since the comments were received after Friday the information was not included in the Commissioner's packets. Lovelace stated that the City attorney has some concerns related to the location and design of the shed. First the building materials proposed for the shed are not 100% combustible and non-degradable. Also, strict interpretation of the ordinance by our attorney states that the building needs to have a 40 ft. setback from 147th Street West. He said that it currently has a 20 ft. setback from the property line.

Lovelace asked for any comments or questions from the Planning Commission.

Commissioner Diekmann asked Lovelace to explain the term "integrally colored" used in the report in relation to the metal panels on the garden center.

Lovelace stated that it is not painted; it is factory finished which is more durable and the paint does not flake.

Commissioner Scanlan stated that the petitioner is adding additional parking spaces up front and there is not a city code requirement for this.

Lovelace said that currently Menards has over 400 parking spaces. He stated that City code would not require that many parking spaces, although their operations may require that many parking spaces.

Commissioner Scanlan asked about the relocation of the mature existing trees on the property.

Lovelace stated that Menards plans to relocate the trees along the wall on 147th Street West. The City's Natural Resources Coordinator has agreed to the relocation with the understanding that any trees lost to this process would need to be replaced. Lovelace said this is a standard procedure.

Chair Churchill said her biggest concern is the traffic on Florence Trail. On the weekends, left turns onto or off of Florence Trail become a major problem and back up traffic. This plan moves the entrance to the yard out onto Flagstaff Avenue. This suggests that it will increase the number of people coming out of the Menards lot and making a left turn onto Florence Trail. The vehicles that come into Florence Trail from Flagstaff Avenue generally are coming at a pretty good clip. She thinks this will create a greater danger on Florence Trail. She is concerned about anything that increases the number of left turns coming out of the Menards lot.

Lovelace said that he cannot recall if the traffic consultant looked at that issue or not. He will request that the City's traffic consultant take a look at that and provide information in regards to that.

Chair Churchill said it is not an issue for just Menards; it is an issue for any of the businesses off of Florence Trail. She stated that she is very hesitant to recommend approval of something that will exacerbate the problem.

Chair Churchill asked for the petitioner to approach the Planning Commission.

Tom O'Neil, Menard, Inc., 5101 Menard Drive, Eau Claire, WI. He stated that he is here on behalf of Menards asking for review and recommendation of approval. In regards to the conditions on the report, he stated that they are okay with them. He said that the clarification that Lovelace provided to the factory coated metal panels on the garden center is correct. It is a powder coating and they will provide spec sheets on that. The comments received from the City Attorney were received at a later date and those still need to be addressed.

O'Neil stated that to address the Chair's comments in regards to the alternative access; there are a couple of things they are trying to accomplish with this. He said they would like to bring the store up to their current merchandising standards of newly built stores. They're not building as many new stores, although they are remodeling current ones. They would like to add a 72 ft. overhang to the garden center. Because of the overhang this results in a conflict into the lumber yard which results in a need to relocate the entrance. There are grade issues and also intersection issues which limit where they could locate the access. He said that in order to help resolve this issue, they hired a traffic consultant and also got direction from the City traffic consultant. They looked at existing traffic counts vs. proposed traffic counts and the level of services that those would result in. Mr. O'Neil said that we can get confirmation of this from the city's traffic consultant, Tom Sohrweide. He said that the entrance proposed is a compromised entrance that would work for Menards and following the studies that we performed and provided to the City that would provide an adequate level of service. He said that not everything that is replicated on paper is necessarily going to work when a person goes out there on a Saturday and in all practicality you're always going to have times of

issue. He said that having the entrance at this proposed location would help eliminate commercial truck traffic that is traveling to the store from having to come down Florence Trail and through the parking lot and into the existing entrance and then exit back out onto Flagstaff Avenue. Although he does see the Chair's concern of the exiting traffic, he does feel that it is beneficial for the truck traffic to have a more direct route into the lumber yard. He said that the warehouse question is still unanswered as the comments were received with not enough time to address prior to the meeting.

Mr. O'Neil said that he appreciates the feedback and he asked that the item be tabled and no action taken this evening. He would like to gather more information to satisfy the Commission's concerns as well as work with staff to explore other alternatives. He said they are more concerned with losing depth in the lumber yard than with architectural upgrades. He said they can do some things to the outside of the fence and can eliminate the treated material that was proposed. They can use a split face block or some other type of architecturally enhanced multi-colored block material to create a heightened architectural appearance. He said that they had put some turning templates on the interior of the yard from a truck moving perspective and they are pushing the envelope the way it is proposed now. He is really reluctant to lose an additional 20 ft. in the interior of the yard and thinks that they may not be able to move forward if this area is lost.

Chair Churchill asked if it would be possible to open up an entrance to the yard close to where the current entrance/exit is and move it to the east so that it is hugging the east side of that area. That could be the entrance and then exit onto Flagstaff Avenue. She thinks that would eliminate the left turns coming out of the parking lot onto Florence Trail so that people can get around to the yard.

Mr. O'Neil said that they did look at that and it just doesn't work from a health and safety perspective because there is an inherent conflict. They have too many pedestrians that shop in the garden center and also to have all of their vehicular access to enter the yard at that point, it is just too large of a safety concern to do that.

Commissioner Scanlan asked about the necessity of the additional parking spots and adding additional water runoff.

Mr. O'Neil stated that they proposed the additional parking spaces because of additional foot traffic that they anticipate being generated as a result of the garden center. The garden center would have a manned exit door with a cashier. There is a portion of the proposed parking where the existing curb line starts to swing back to the west. He stated that they could live with just leaving the new parking spaces that get to that point and eliminating the spaces south of that point. That would still allow for adequate ingress and egress through the drive aisle.

Commissioner Diekmann asked what the grade elevation change is at the southeast corner of the building between Flagstaff Avenue and the parking lot.

Mr. O'Neil said 4-5 ft., maybe more. As you go further south it is more exacerbated.

Commissioner Diekmann said if they could have a right-out of the parking lot onto Flagstaff Avenue at that location, that could eliminate some of the people going out onto Florence Trail.

Chair Churchill commented that she has looked at that and it is quite steep.

Commissioner Diekmann said that he likes that they moved the exit further north on Flagstaff Avenue.

Chair Churchill said that she has no problem with the traffic exiting onto Flagstaff Avenue.

Commissioner Diekmann agreed.

Chair Churchill said that she is concerned with increasing the number of left turns onto Florence Trail.

Commissioner Scanlan asked that from a traffic/engineering stand point if there was something with the current entrance/exit onto Florence Trail that could be revisited to maybe somehow assist with the traffic flow in or out of the location to address some of the concerns of the Commission.

Lovelace said that he will ask the traffic consultant, Mr. Sohrweide, to run some numbers and run some distribution for analysis.

Lovelace said that the petitioner is asking for the item to be tabled and take no action this evening.

Chair Churchill hearing no further comments asked for a motion to table the meeting.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Schindler to table the item until the meeting of April 21, 2010. The motion carried 4-0.

Chair Churchill explained to the petitioner that although they had many comments, they do appreciate his interest in improving this property.

Mr. O'Neil thanked the Commission.

7. SKETCH PLAN

A. Sign Code Amendments – Review of proposed amendments to Chapter 154 of the city code to allow for LED changeable copy dynamic signs.

Associate City Planner Margaret Dykes stated that Holiday Stationstores, Inc. has requested a review of the City's sign regulations to determine if a code amendment allowing electronic changeable copy signs is feasible. These signs are also called electronic message centers and/or

dynamic signs. For this presentation, such signs shall be called dynamic signs, which are usually defined as “a sign that exhibits any characteristics of movement or that appear to change, caused by any method other than physically removing and replacing the sign or its components, whether the apparent movement or change is in the display, the sign structure itself, or any other component of the sign.” (*New Brighton, Eagan, Rosemount city codes*). Holiday Stationstores would like to retrofit the existing manual reader boards on their pylon signs with dynamic signs.

Recently, the Holiday Store located at 5980-149th Street West, northeast of the intersection of 149th Street West and Johnny Cake Ridge Road, applied for a sign permit to remove the existing changeable message board for a dynamic sign. The permit was denied because the City Code does not permit such signs. The City Code states “No illuminated sign which changes in either color or intensity of light shall be permitted, except one giving public service information.” Additionally, the Code strictly prohibits any flashing signs in any zoning district.

Minnesota Statute Ch. 173.16, Subd. 3 prohibits any advertising device that contains or is illuminated by any flashing light or lights, except those giving public service information such as time, date, temperature, weather, or news. This same statute also regulates lighting of advertising devices so that the intensity, brilliance, or direction of the lighting does not cause glare or impair the vision of motorists.

A number of cities have had to deal with the regulation of dynamic signs in recent years as similar requests have come forward. A quick review of other cities’ sign regulations found that cities such as Bloomington, Burnsville, Eagan, Maplewood, Minnetonka, New Brighton, Oakdale, and Rosemount all allow dynamic signs but regulate them to varying degrees in accordance with Minnesota statutes. Cities such as Arden Hills and Lakeville do not permit dynamic signs at all.

Cities that have determined that dynamic signs should be permitted have done so for a number of reasons. Generally, these signs have been allowed to accommodate recent changes in sign technology. Dynamic signs allow for a change of message much more easily than a manual message board does, and means workers do not have to climb ladders to change out the message. Additionally, LED and other new lighting technologies can save energy in comparison to current back-lit manual reader boards. However, the desire to accommodate dynamic signs must be balanced with the need to protect the community from frequent sign changes that can distract drivers and adversely impact residential uses.

Signs are a form of speech and, as such, are protected by federal and state constitutions. Local ordinances may regulate “time, place, and manner”, but may not regulate content. In other words, a city may either allow or prohibit a dynamic sign, but may not restrict the message content of that dynamic sign. If the City chooses to allow dynamic signs, it may regulate the size, location, setbacks, brightness, how often the message changes, how the message changes (scrolling, fading, shimmering, animation, etc.), whether such a sign can be placed on a building or must only be a ground/pylon sign, and other similar rules.

Over time, it could be expected that dynamic signs, if allowed, would replace existing manual reader boards at gas stations, pharmacies, churches, and schools. Such signs may also be incorporated into existing signs that do not have reader boards; some of these signs may be adjacent

to residential uses and may need to be subjected to different standards to prevent excess illumination from affecting adjoining residential property.

Other cities have done extensive review of the issues relating to dynamic signs. Attached to the Commission's packets were reports from the cities of Bloomington and Minnetonka that provide background and context to the issue. Also attached were excerpts from other cities' codes pertaining to dynamic signs.

Dykes stated that the applicant is requesting feedback from the Planning Commission regarding the regulation of dynamic signs in Apple Valley.

Commissioner Diekmann said that there are currently dynamic signs within the City that offer public messages. He asked what the change rate is at which those are allowed.

Dykes said the City does not regulate those. The City allows time and temperature, although the City does not regulate in regard to the duration of that. Other cities tend to regulate that at 2-3 seconds. In terms of other dynamic signs that you may see; the Hayes Senior and Community Center has one that is more static. Because this is adjacent to residential the City would want them to do it once every 24 hrs, perhaps 12 hrs. She said she cannot find any evidence that the sign at the Ryan Building on Cedar Avenue was ever permitted, other than a time and temperature sign. It has morphed over the years to be expanded. It is at this point, considered to be an existing use. If we were to move ahead with the proposed code changes, the City would probably want to have static signs and prohibit scrolling signs. If we amended the code, the Ryan building sign would become an existing non-conforming use and if they ever changed the sign, they would have to comply with the code.

Commissioner Diekmann asked how the City would define the difference between a time and temperature dynamic sign vs. another type of dynamic sign.

Dykes said the City has to be content neutral. The City is allowed to state that a time and temperature sign can be allowed to change every so many seconds. This would be a pretty extensive change to the City code.

Commissioner Scanlan asked if there is a means of controlling the luminary output.

Dykes said that there are sensors in the signs that the petitioner is proposing that respond to the ambient light. It is an enforcement issue that can get tough. Brightness controls for clarity, readability and responding to ambient conditions is something that she believes the City would want to incorporate.

Commissioner Diekmann asked for Dykes to explain the size of a two-thirds pylon sign and also asked what the maximum limit of an overall sign is.

Dykes said that the pylons are limited to 110 sq. ft. for ground signs. In a shopping center they can go up to 180 sq. ft. She said that looking at two-thirds of that would be approximately 70 sq. ft. It is possible to amend the code to change that amount. She said the City will want to treat these signs

more as way-finding than as an advertising sign. The purpose is to get someone to their place of business and some advertising for their wares, but it is more to let people know where a business actually is. Dykes stated that the applicant said they would not want to go more than 35 sq. ft. This would not only affect Holiday signs, but also encompass all other commercial signs within the City. Larger dynamic signs are typically found at churches and schools.

Chair Churchill stated that the signs are made so that they can change upon direction of the owner. She heard of a case with a City where a sign was installed that was non-conforming with City code and the City did not catch it right away and ended up in court. Then they were trying to regulate the sign retroactively after it had already been installed and used for awhile. She said the City had a terrible battle. A current owner might promise to have the sign change only every so many seconds to be in compliance with city code, but a new owner might change it.

Dykes said it becomes an enforcement issue.

Chair Churchill stated that she is concerned about that and doesn't want the City to look like Las Vegas.

Dykes replied that signs are a constant issue in any city. Businesses believe that signage helps them and so they want to do as much as they can.

Chair Churchill asked for the petitioner to come forward.

Gary Gandrud, attorney for Faegre & Benson LLP, representing Holiday Companies. The sign company applied for the sign with the City of Apple Valley and was denied and so they are looking to change the city ordinance. He complimented staff on a very methodical and thorough approach to this. He said that there have been significant changes to the technology of signs. Their signs are on-premise signs and the standard that Holiday uses is 30 sq. ft. It is generally within the constraints of the existing sign.

He said at the time that he wrote the letter to the City, Holiday had 137 of the dynamic signs up. The content is regulated at headquarters and the local manager cannot change it. It is state of the art technology and the content is controlled. He said that Holiday Companies is a family owned business headquartered in MN. He mentioned that one city did not allow pictures on the signs, only words. The sign was able to be changed from headquarters for that City only. There are automatic cells and sensors that control the brightness; the lighter it gets, the brightness goes down.

It is very easy for customers now to pay at the pump, but they still want the customers to come into the store. The duration is the biggest discussion. They feel that over 20 seconds, it's punitive to the store owner. A vehicle driving by on a 35-45 mph street, they will pass by the sign before it changes again so it's not a hazard. That can be strictly regulated. He said that Bloomington has 20 seconds but it is regulated in different districts. Technology is always changing and he said that people can't live with signs and they can't live without them. Cities are looking at the technology and adopting new regulations and that is what they're asking the City of Apple Valley to do. He said that unless the Planning Commission tells him to go home, he will bring back an application on behalf of Holiday.

Commissioner Scanlan asked if there are any communities that limit the time where the signs are not operational.

Mr. Gandrud said that when the business is open, the signs are operational. Most convenience store services are 24/7. It varies location to location.

Chair Churchill thanked Mr. Gandrud.

Mr. Gandrud said he respects the City's procedure and the opportunity for the City's ordinance to reflect technology. He said Holiday is a responsible company and they're proud of their local roots.

Chair Churchill asked Dykes if she wanted to add anything.

Dykes said that in terms of hours of operation the City would want to make sure that they treat this signage similar to whatever signage is existing, so that the City is not saying this is more distracting than an existing reader board. Also, in response to Holiday's request, the change in the ordinance would not only affect Holiday but also all other commercial businesses in the City. She said it is the number of the dynamic signs as technology changes and the longer hold time might be something the City would also want to take a look at.

Chair Churchill thanked Dykes.

B. "PD-409" Ordinance Amendments Parking Study – Review of a parking study to determine if medical uses should be allowed in the planned development.

City Planner Tom Lovelace stated that this item was brought before the Planning Commission as a discussion item at the December 16, 2009, meeting. The applicant indicated, via a letter, that the purpose of their request is due to the current economic conditions that have impacted the commercial real estate market, which has left their property at 14690 Galaxie Avenue at 74% occupied. They also indicated that their building has historically seen average occupancies between 95-100%.

Concerns were raised by the Commission regarding loss of industrial space, shifting existing medical uses from another area of the city to this location, parking, and traffic flow; with parking and traffic congestion being the biggest issues. Ms. Grant suggested that they do a parking study and come back to the City with the results, which they have completed.

Lovelace stated that the Commissioner's packets included information pertaining to a traffic analysis prepared by Towle Properties as part of an effort to determine if the City should consider amendments to Planned Development Ordinance No. 409 to allow for medical office uses as a permitted use. The analysis identifies parking requirements for property located at 14690 Galaxie Avenue, which is part of a 7.2 acre planned development zoning district that is generally located along the east side of Galaxie Avenue, between 145th and 147th Streets West. Located within the zone are three multi-tenant buildings totaling 76,854 sq. ft., a 9,676 sq. ft. self-service car wash and auto repair facility, and a 14,198 sq. ft. auto body shop with an outdoor storage yard.

The planned development district allows several types of uses, including limited industrial, general business, retail business and limited business uses. While some retail business and limited business uses, which would be described as office and professional use, are permitted in the development, the planned development district is primarily intended to provide for light industrial and general business uses, which are described as uses that tend to serve other business and industry. The planned development district does not allow certain high traffic or high volume retail uses and the amount of limited business, or professional uses are also restricted. The ordinance goes further to limit the amount of retail uses or limited business uses to 35% of the building floor area and when combined cannot exceed 50% of the floor area of a building. Finally, the planned development ordinance specifically states that “medical or dental office uses are specifically prohibited”. The reason for these restrictions is that the development was designed for land uses which generate low customer volumes; thus, parking is limited on the site.

Lovelace stated that staff does not believe that the applicant has provided any reason other than current economic conditions that would warrant an amendment. Staff expressed concerns about the ability of properties within the planned development to provide parking for medical uses and a shift of retail and office uses from other areas of the community to property intended primarily for industrial uses. Therefore, staff is reluctant to recommend amendments to Planned Development Ordinance No. 409 to allow for medical offices as a permitted or conditional use.

The applicant provided additional information at the meeting about absorption rates of industrial/commercial/office property in Dakota County. Dawn Grant of Towle Properties indicated that vacancy rates in these categories continue to rise. However, she pointed out that current employment statistics from the Minnesota Department of Employment and Economic Development (DEED) state that the health care related industry is one of the few currently seeing employment increases.

The parking study identifies three different scenarios for one multi-tenant building within the planned development that offer different percentages for medical, office and warehouse uses, which have been reviewed by the City’s Traffic Consultant. Generally speaking, it appears subject to some slight modification of the on-site parking numbers as pointed out by the City’s consultant, that the parking may be able to accommodate a certain percentage of medical office use within the planned development.

Therefore, staff would offer the following suggestions:

- Make no changes based upon the expressed concerns of staff at the December 16, 2009, meeting regarding the shift of retail and office uses from other areas of the community to property intended primarily for industrial uses.
- Allow the property owners to submit an application for an amendment to Planned Development Ordinance No. 409 to allow for medical uses as a permitted or conditional use.

Lovelace stated that if the Commission would be inclined to recommend submission of a planned development ordinance amendment request, staff would encourage that a percentage of space per building be devoted to medical uses similar to what currently exists for retail and office as well as

performance standards such as parking lot design and customer access to parking spaces in the rear of the buildings, just to mention a couple that initially come to mind.

Lovelace asked for comments and questions from the Planning Commission.

Commissioner Diekmann said that he is confused by the parking study. He said he didn't recall parking being the issue. He asked if the parking study was done solely to prove that they could park the space. He recalled that the Commission was worried about losing industrial space and allowing this use in this area.

Lovelace stated that is correct but another issue was the traffic access to Galaxie Avenue as well as the parking analysis. The applicant is showing that indeed it could be parked if it was a medical use based upon those numbers. Also, it does address the issue of loss of industrial zoned property for medical uses.

Commissioner Schindler stated that if there is a provision for percentage of retail and percentage of office, there is a reason they specifically prohibited medical. There is not much difference than a bank or credit union being there with the amount of people coming in and out. He doesn't see any reason to not want the medical there. Neither retail nor medical is industrial.

Lovelace stated that there is currently a credit union in the building.

Commissioner Schindler stated that he doesn't understand why medical uses were excluded.

Lovelace responded that staff could not find any information on that although Commissioner Melander stated that he was well aware of this property when it was developed and provided the Commission with some historical information. Commissioner Melander recalled that the approvals were based on not conflicting with uses at the Apple Valley Medical Center across the street.

Chair Churchill asked if the suggestions provided in the staff report are an either/or.

Lovelace stated that the Commission can make no changes or to allow the petitioner to submit an application to drive the amendment to allow for medical uses.

Commissioner Scanlan asked if any change to the ordinance would affect all three properties.

Lovelace said yes it would affect the property to the south and the two properties to the north unless the Commission wants to identify subzones within the development and allow for medical uses within the subzones.

Commissioner Scanlan said that he thinks there is a conflict with industrial space with medical. He said it doesn't seem like the right mix with patient traffic and trucks loading and unloading. Also, he is concerned with the loss of industrial space.

Lovelace said those are good points. He pointed out that the Fischer building removed all of their overhead doors and replaced them with windows. The large portion of that building is dedicated to

the offices for the sand and gravel operation that Fischer runs. They put in one overhead door to provide some garage space for the employee's vehicles. They also put in curb and gutter so it is a typical parking lot feel to it in its design.

Commissioner Scanlan said it seems you can't have an all purpose property as its being proposed.

Commissioner Diekmann asked how much of the existing building is currently in retail.

Lovelace asked for the petitioner to address that question.

Dawn Grant, Towle Properties, approached the Commission. She said that only one tenant is quasi-retail and that is Truestone Credit Union, although they also have offices. She said no more than 10% of the building is retail. There also are a number of service type tenants. The building is currently only 64% occupied and of that about half is office and a small portion is retail and the remainder is service type space.

She stated that a lot of this depends on what kinds of tenants they can go after. They're trying to accommodate and make adjustments to the market and she understands the Commission's concerns about the small businesses. She said that they've lost some of those small businesses and they aren't the ones that are growing right now. There is a lot of speculation that it will be awhile before they will grow. Medical is growing right now. They do have a medical prospect right now to take several thousand square feet. There is not a lot of truck traffic to this building because their tenants do not have those kinds of deliveries. She said the changes to the building are things they would have to work through depending on their prospects that come to fruition for them. The neighboring buildings have the same desire to be able to market to medical type uses.

Eddie Rymer with Marketplace Commercial, leasing out the AVR Building, stepped forward to make a comment. He stated that he had called some surrounding cities in the Dakota County area and they did allow light medical use, not a high-foot traffic clinic, in their general business districts.

Commissioner Diekmann asked Mr. Rymer if he had asked them what they allowed in a comprehensive guided industrial planned development.

Mr. Rymer said he only asked where they allow offices and businesses if they would also allow medical uses.

Ms. Grant said that is something the Commission could consider with some limitation for the kind of medical use. They don't want to create a traffic issue for the rest of the tenants either. She said there are some flexibilities that they could work through with the Planning Commission.

Commissioner Schindler apologized that he wasn't at the meeting when this was originally discussed. He asked how the percentage of medical is going to dramatically affect the parking requirements.

Lovelace stated that he doesn't think he can answer that at this time. When the applicant comes in for application, based on the current square footage of the building, they would take the different types of use into calculation and based upon that parking demand requirement, determine if they have uses that

have a high demand of parking. They might not be able to reach the 35%. He said that the petitioner believes that they can. The City's traffic consultant Tom Sohrweide said it was off just a couple of spaces, not totally out of whack.

Commissioner Schindler asked what the current percentages are.

Lovelace said that limited business and retail sales cannot exceed 50%.

Commissioner Schindler said he doesn't see parking issues at all and he doesn't have an issue with this. He said he doesn't see a difference between a credit union and a medical use. He understands conserving this industrial area piece but the Commission is not changing what is allowed.

Community Development Director Bruce Nordquist interjected his opinion from an economic perspective. He said the City is so protective of industrial spaces because the City sees them as job opportunity locations. Twenty-five percent of the Mixed Business Campus has been dedicated to medical uses. This may be a location where jobs may expand in the medical field and they are well paying jobs.

Chair Churchill stated that the applicant can submit an application.

Lovelace said the applicant has been very cooperative, although they did not want to move forward without direction from the Planning Commission.

Chair Churchill said she doesn't have a problem with modifying the existing requirements to strike the prohibition of medical or dental offices and consider that as an acceptable limited business office. She said she doesn't have a problem with that. She said it is worth considering and the petitioner should bring in a formal proposal so that they can consider it. She asked Lovelace if it would go through a public hearing.

Lovelace replied yes.

Chair Churchill said if there are legitimate concerns in the community about adding medical that is the forum to bring them out.

8. OTHER BUSINESS

A. Review of the Upcoming Schedule and other Updates

Bodmer stated that the City received a \$25,000 grant from the Dakota County Department of Health to do a study on the City's sidewalks and trails. She said that staff met earlier this week with the consultant and hope to be in touch with the Planning Commission in the very near future on how the Planning Commission can participate. She stated that the City has a very compressed timeline with this grant. It has to be done by the end of June.

Lovelace stated that over the past few months, planning staff has been assisting students in the Master of Urban and Regional Planning Program at the Institute of Public Affairs at the University

of Minnesota on a semester-long capstone project, which is a requirement of their two-year program. The area of focus of their project is the northwest portion of the South Central Planning Area, which is located along the south side of County Road 42, between Flagstaff Avenue and Pilot Knob Road. The project will use sustainability planning tools to provide an assessment of sustainability opportunities that could be accomplished on the gravel mining site. The assessment will be informed by the following: (1) a review of existing conditions, (2) insights from the Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND) tool, (3) a review of best practices from local and broader contexts, and (4) input from key staff and stakeholders through interviews and a mini-charrette.

During the past couple of months, the students have reviewed and analyzed existing conditions; reviewed best practices in sustainability master planning; interviewed with key staff and stakeholders; conducted a strategic assessment of sustainability opportunities; and drafted sustainability principles. The next step in the process is a mini-charrette, where the students will present the findings from the strategic assessment of sustainability opportunities and relevant background data as well as the draft sustainability principles. The mini-charrette will feature opportunities for feedback and interaction among participants. A key focus will be on allowing participants to use the relevant data and principles to design key systems within the study area. This charrette has been tentatively scheduled for April 21st at 5:30 p.m. before the regularly schedule Planning Commission meeting. The invitation will also be extended to the following:

- City Council
- Ed Kearney, Chamber of Commerce
- Kurt Chatfield, Dakota County Parks and Trails staff
- Jeff McMinniman, HKGI
- Rusty Fifield
- Peter Fischer
- Liza Robson
- Linda Steinbaugh, Corporate Property Manager with CBC Griffin and local resident
- Katherine Farnham-Sonnek, 2005 graduate of Humphrey Planning program and local resident
- A representative from District Energy

Lovelace asked the Planning Commission to review their calendars to see if the date of Wednesday, April 21st prior to the Planning Commission meeting at 5:30 p.m. would work or also April 28th, although there is no meeting that evening. He stated that staff would be in touch for their preference.

Chair Churchill asked for staff to send an email to the Planning Commission for a response.

9. ADJOURNMENT

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

MOTION: Commissioner Schindler moved, seconded by Commissioner Diekmann, to adjourn the meeting at 9:23 p.m. The motion carried 4-0.