

CITY OF APPLE VALLEY
PLANNING COMMISSION MINUTES
JUNE 15, 2011

1. CALL TO ORDER

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

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

Members Absent: Brian Wasserman

Staff Present: Community Development Director Bruce Nordquist, Associate City Planner Kathy Bodmer, City Attorney Sharon Hills, and Department Assistant Barbara Wolff

2. APPROVAL OF AGENDA

Chair Melander asked if there were any changes to the agenda. Hearing none, he called for a motion.

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

3. APPROVAL OF MINUTES OF JUNE 1, 2011

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

MOTION: Commissioner Diekmann moved, seconded by Commissioner Scanlan, to recommend approval of the minutes of the June 1, 2011 meeting. The motion carried 4-0. Commissioner Burke abstained.

Commissioner Schindler arrived at 7:02 p.m.

4. CONSENT ITEMS

--NONE--

5. PUBLIC HEARINGS

- A. Zoning Code Amendment – Consideration of zoning code amendments to Chapter 155 Section 155.397(B), revising the standards for granting a variance by removing the term “hardship” and defining the term “practical difficulties.”**

Associate City Planner Kathy Bodmer stated she is presenting a draft ordinance that amends the zoning chapter of the City Code related to variance requirements, removing the term “particular hardships” and further defining the term “practical difficulties.” This will allow the City of Apple Valley to grant variances (with conditions and safeguards) in cases where an applicant meets the “practical difficulties” standard. “Practical difficulties” means the following:

- The applicant proposes to use the property in a reasonable manner not permitted by the zoning provisions of the Code.
- The plight of the applicant is due to circumstances unique to the property not created by the applicant.

- The variance, if granted, will not alter the essential character of the locality.
- Economic considerations alone do not constitute practical difficulties.

The zoning code amendment is requested in response to recently enacted State Law which revises the requirements which must be met in order to obtain a variance. The new law was initiated in response to the Minnesota Supreme Court decision in *Krummenacher v. City of Minnetonka*, 783 N.W.2d. The Minnesota Supreme Court held that the city of Minnetonka did not have authority to grant the variance if the property owner could put the property to a reasonable use without a variance and noted that the legislature would be required to provide a more flexible variance standard than provided for in existing municipal law.

The new State Law eliminates the term “hardship” and allows the City to issue a variance if there are “practical difficulties” that result from carrying out the strict letter of the provisions of the zoning chapter. The proposed ordinance amendment will update the City Code in accordance with the new State Law provisions.

Bodmer stated that although it is the policy of the Planning Commission to not take action on an item on the night of its public hearing, if all of the questions and issues raised by the public and the Planning Commission are addressed to the Commission’s satisfaction, the Commission may wish to take action this evening.

Commissioner Burke asked if a homeowner wanted to add an additional garage stall to their single garage, would asking for a three foot variance become a practical difficulty.

City Attorney Sharon Hills said it depends on the facts and applying those standards to each case. She said that the Minnesota Supreme Court defined a “hardship” as no reasonable use of the property. Hills stated that in the example of the garage variance, the owner would still have reasonable use of the property without a second stall.

Commissioner Scanlan asked about the Planning Commission’s use of economic considerations.

Bodmer stated that economic consideration should not be taken into account at the Planning Commission level; City Council may take that into consideration. She said the Planning Commission is tasked at looking at land use issues.

Hills stated an applicant cannot say, “It would be cheaper for me to do this as opposed to that, therefore I want the variance”. She said it’s those economic considerations that are not a basis for a variance.

Commissioner Scanlan asked about the change that reduces the time period the Planning Commission must take action on a variance from 90 days to 30 days.

Hills said that the City must comply with the State’s 60 day rule, so the City Council would still need to make a decision on a variance within 60 days.

Commissioner Scanlan asked if the Planning Commission has the option to extend the 30 days.

Hills said it can be extended with notice to extend the deadline.

Community Development Director Bruce Nordquist stated that it is usually the applicant requesting the extension.

Commissioner Alwin asked if the Planning Commission is unable to act within the 30 days, and the applicant is unwilling to extend the application, then the Planning Commission would deny the variance and the applicant would need to reapply.

Bodmer said that is how the 60 day rule works.

Hills said the Planning Commission is expected to make their recommendation within 30 days. She said if the Planning Commission cannot, the City Council could consider the request without the recommendation from the Planning Commission.

Commissioner Diekmann asked if an applicant purchases an existing property with the condition, "as it exists", is that considered known at that time, e.g. they may not have created it, but they purchased it that way.

Hills said if they purchased it knowing the limits, it may be created by their own doing. Hills said the expansion of Cedar Avenue is an example of something created by someone else (Dakota County) and not the land owner's own doing.

Nordquist said the act of buying a property doesn't prevent the homeowner from pursuing a variance in the future and the City considering the application.

Bodmer stated that it is a case by case basis.

Commissioner Melander commented for the public's benefit, that prior to this revision, the Minnesota Supreme Court's decision last year prevented cities from granting variances for anything and this revision will allow the City to grant variances again based on "practical difficulties".

Bodmer said that is correct. She said the Supreme Court stated cities cannot grant a variance unless there is no reasonable use of the property, which in effect eliminated the City's ability to grant a variance. She said this revision will provide a little more flexibility.

Chair Melander opened the discussion for public input. Hearing no public input 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 Title XV, Chapter 155, of the City Code entitled "Zoning" by amending Section 155.397 Regarding Variances. The motion carried 6-0.

6. LAND USE/ACTION ITEMS

--NONE--

7. OTHER BUSINESS

A. Review of upcoming schedule and other updates.

Community Development Director Bruce Nordquist reminded the Commission of the next meeting, which is on July 13, 2011, at 7 p.m.

8. ADJOURNMENT

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

MOTION: Commissioner Burke moved, seconded by Commissioner Diekmann, to adjourn the meeting at 7:18 p.m. The motion carried 6-0.

Respectfully Submitted,

Barbara L. Wolff, Planning Department Assistant

Approved by the Apple Valley Planning Commission on _____.