

CITY OF BURTON
REGULAR PLANNING COMMISSION MEETING MINUTES
MARCH 12, 2002, 6:00 P.M., COUNCIL CHAMBERS

Jerry Grantner, Chairman, called the Regular Meeting to order at 6:00 P.M.

MEMBERS PRESENT: Bertram, Grantner, Hohloch, Perez, Walls, White and Young.

MEMBERS ABSENT: Bement and Mayor Smiley.

OTHERS PRESENT: J. Major, DPW Director; T. Strasser, Deputy Planning Official and C. Ladd, Deputy Clerk.

A. APPROVAL AND AUTHORIZE THE MINUTES OF THE FOLLOWING MEETINGS:

Moved by Young, seconded by Bertram to approve the minutes of the Regular Meeting of February 12, 2002 at 6:00 P.M. and the Special Meeting of March 5, 2002 at 6:00 P.M., as printed. Motion carried 6-0.

B. SCHEDULE PUBLIC HEARING FOR APRIL 9, 2002 AT 6:00 P.M.:

1. LS #02-06

BY: Genesys Regional Medical Center
3935 Beecher Rd.
Flint, MI 48532

RE: 1086 S. Belsay Rd.
Lot 41 Cardinal Gardens
Section 14
Zoned C-2

FOR: Commercial Use.

Moved by Young, seconded by White to schedule Lot Split #02-06 for public hearing on April 9, 2002 at 6:00 P.M. Motion carried 6-0.

C. PUBLIC HEARINGS:

1. ZC #267

BY: Claro Recto (for an entity to be formed)
46500 Maidstone
Canton, MI 48187

RE: Genesee Rd. south of Bristol Rd.
Parcel #59-34-200-027, #59-34-200-028,
#59-34-200-029 and #59-34-200-030
Zoned SE to R-1B

FOR: Residential Development

There was no one present to speak regarding the zoning case.

Moved by Young, seconded by Hohloch to postpone Zoning Case #267 to the end of the meeting. Motion carried 7-0.

2. ZC #269

BY: Direction of Burton City Council at their
Regular Meeting of February 4, 2002

RE: Between 2239 & 2267 Covert Rd.
Parcel #59-03-100-010 incl. Former Lot 13 of
Covert West Acres
Section #3

27 acres west of Covert Rd., south of Leith St. and north of Risedorph Ave. w/outlot size frontage on Covert Rd. (61.53')

FOR: Single Family Development

Mr. Major said he would be representing the zoning case. He explained that the Planning Commission has four options in handling this zoning case. They are as follows: Recommend approval to City Council; Recommend denial to City Council; Postpone the zoning case until we review the zoning map and text or Table the zoning case until you have an opportunity to review the site plan. We have an application on file by the developer, requesting a site plan review for multi-family use. The application has been signed and a check is on file. During the past few weeks, the DPW staff and Mr. Major met with their engineering firm. He made it very clear that the developer needed to get his site plan in as soon as possible. The site plan is scheduled for the April 9th meeting. He knows he must get his various county approvals and get his land checked out from the DEQ standpoint. Mr. Major said the Planning Commission would have to make the decision as to what action to take.

Audience Participation:

Penelope Marsa, 4297 Risedorph, stated that her concerns include very little green area available for the children to play, the sewer system, roads and accessibility to the roads. She objects to the rezoning.

Diana Dumler, 4231 Leith St., said she is concerned about not having enough police officers, firefighters and roads to serve the number of people who would be living in this area. The taxes would go up if more of the public safety people had to be hired and there are many senior citizens who live in this area on a fixed income. She noted that the majority of the year the area is under water.

Jerry Grantner commented that this is a zoning case and some of the concerns being addressed are ones that are usually raised during a site plan. The Planning Commission must look at this as a zoning case and the desire of the City Council was to review this and change this to single-family zoning. Please keep this in mind when speaking.

Pauline Dargel, 6119 Hugh St., spoke concerning the city obtaining a planning analysis from the county, as the people on this Planning Commission are not professional planners. She also spoke concerning the master plan and that land use should be considered when rezoning is being requested.

Paul Hall, 2291 Cover Rd., said he would like to see the property zoned single-family rather than multiple-family dwelling. He has water on his property now and is concerned about having more water if the property is developed as multiple-family.

Duane Burnash, 2239 Covert Rd., spoke regarding the increased traffic and how this could affect the children in the area. He also spoke concerning the density of the multiple family and would rather have single-family R-1B or R-1A homes. Mr. Burnash noted that in 1969 Mr. Gutterman purchased the property under another name and changed the property to his name in 1991. His previous proposal in 1978 was never developed.

Phillip Howell, 2172 Covert Rd., noted that his in-laws purchased property that abuts the proposed site to be developed. It is wet in that area through August. He asked that consideration be given to rezone the property to R-1A or R-1B, which would match the outlying area.

Matt Roda, 2349 Covert Rd., asked that when the Planning Commission considers the rezoning of the area, keep in mind what the development means to Burton and the local schools. The development should be consistent with what is currently in the area. He supported R-1A or R-1B development.

Lionel Lindsay, 4175 Leith St., spoke about the heavy traffic on Leith Street and said the multiple family development would increase the traffic greatly. He is also concerned about the impact that the multiple family development would have on the school district. He would support the single-family homes.

REGULAR PLANNING COMMISSION MINUTES

MARCH 12, 2002/6:00 P.M.

PAGE -3-

Mr. Grantner read a letter from Mr. Robert Gutterman to the audience. The letter was addressed to the Covert Road residents. (A copy of this letter is on file in the Clerk's Office).

Mr. Grantner then reviewed the options for the Planning Commission to base their actions on: recommend approval, recommend denial, postpone until after the land use map and zoning text have been reviewed or table until after the site plan is heard.

Mr. Hohloch asked if a motion is made to rezone the property to a single-family development, is it necessary to stipulate whether it is to be zoned R-1A or R-1B?

Mr. Hamilton replied yes, the type of zoning must be stipulated in the motion.

Moved by Hohloch, seconded by Young to recommend that property be rezoned from R-M to R-1A for Zoning Case #269.

Mr. Hohloch then commented that during one of the last master plan workshops, discussion was held and there was a consensus to change this property to single-family low-density zoning. He doesn't know how it fell through the cracks. We are waiting for the map to come back to us and it could be shown as single family on the map.

Mr. Hamilton said the activities were related to the master plan, not the zoning ordinance.

Mr. Hohloch said discussion was in reference to changing the future land use plan from R-M to single family and the Planning Commission recommended making this change to the planning consultants.

Mr. Hamilton said this is in fact what occurred. However, that did not affect the zoning. Mr. Hamilton said it would be appropriate to indicate the reason behind your recommending the R-1A zoning.

Mr. Hohloch said his reason for recommending to rezoning R-1A, is because Covert Road would not be able to handle an apartment complex and all the additional traffic with one point of ingress and egress.

Mr. Perez said because of the site plan on file or in the making, he suggested that the rezoning be tabled until the developer fulfills his obligation for the site plan review requirements.

Mr. Young commented that it would be unfair to the developer to leave the property zoned R-1A and him go through the expense of preparing for a site plan review. If we are going to rezone the property, we should do it now and inform the gentleman that the property is no longer zoned for multiple housing.

Mr. Hamilton noted that it is important for everybody to understand a few basic zoning principles. No one has any vested rights whatsoever, in an existing zoning ordinance. A zoning ordinance may be amended at any point in time. However, the state law does provide that a use, which is lawful at the time it came into existence, may be continued lawful, notwithstanding an amendment of the zoning ordinance which would possibly change the permitted uses on the property. This is called a non-conforming use. Mr. Hamilton explained the courts have indicated that when the non-conforming use lawfully begins is when the property owner has commenced substantial physical construction of the facilities necessary for that use on the site. It does not have to be completed, it only has to be started according to a plan that is lawful pursuant to the permits that have been issued under the appropriate zoning or building codes that are lawful at the time. To his understanding, this has not taken place at this particular site. He also stated that the Board should be mindful of the way the court would determine the validity of a zoning ordinance should it be amended. Under the terms of the requirements of the ordinance, it must be determined if the property can be reasonably used on an economic basis for purposes for which the zoning classification permits. If it cannot, then the zoning ordinance is unconstitutional and the City, has in effect, taken the persons property away from him without compensating him for it. We have to balance the concerns of the adjoining property owners with the rights of the property owner. It is the function of the Planning Commission to make some independent judgment and to do that balancing that our actions will preclude any reasonable use of this property under the zoning classification that

REGULAR PLANNING COMMISSION MINUTES

MARCH 12, 2002/6:00 P.M.

PAGE -4-

we have proposed to attach to it. Should the court at some time determine the property could not be used for that purpose, the City may have some kind of responsibility in taking someone's property. However, if the court determined that someone could use the property for a R-1A purpose, then we haven't violated the property owner's rights.

Mr. Hamilton reviewed the reasons for the public hearing and said there is nothing that requires action to be taken this evening. Action could be taken at this meeting or it could be tabled to a date certain to continue this hearing for the purposes of making that decision. If the property were not rezoned and a project was presented to the City and complied with all of the City Ordinances and was a lawfully commenced project, then non-conforming use rights would attach to the extent that physical construction began.

Mr. Hohloch commented that the longer we wait, the better chance there is for someone to come in and establish non-conforming rights to the property. As of tonight, there are no non-conforming rights.

Mr. Strasser said if the site plan is approved in April, the developer must also submit architecturally signed and sealed prints for the project itself. Those have to be reviewed by the building inspector.

Mr. Hohloch asked if this process could be done prior to the site plan. He was advised yes. Mr. Hohloch contended that the longer no action is taken, the more chance there is of non-conforming rights being established.

Mr. Young said he sees no point in delaying any action on the zoning case. Also, the Planning Commission doesn't have final say on this case. The City Council must give their approval or denial.

Moved by Hohloch, seconded by Young to recommend approval of Zoning Case #269 to change the zoning from R-M to R-1A for the purpose of residential development. Motion carried 6-1 with Perez voting no.

Mr. Hamilton commented that anyone interested in Zoning Case #269 should contact the Clerk's Office to find out when the public hearing would be held before the City Council.

D. AUDIENCE PARTICIPATION:

Pauline Dargel, 6119 Hugh St., spoke about the action taken on the master plan on February 8, 2002. She also noted that in regards to zoning cases, the board should be giving their reasons for the way they vote on an issue. Another issue she addressed was the need for the applicant to provide traffic studies for various projects.

Matt Roda, 2349 Covert Rd., said he appreciates the task before the Planning Commission and the fact that they recommended approval of R-1A zoning for Zoning Case #269. He doesn't see how changing the zoning to R-1A would have a negative impact in this area.

E. SITE PLAN REVIEW:

1. SPR #02-07

BY: Genesys Health System
3935 Beecher Rd.
Flint, MI 48532

RE: Genesys Medical Building
1096 S. Belsay Rd.
Part of Lots 41 & 42 Cardinal Gardens
Section 14
Zoned C-2

FOR: Addition to existing medical building.

REGULAR PLANNING COMMISSION MINUTES

MARCH 12, 2002/6:00 P.M.

PAGE -5-

Rick Swiehart, Creekwood Architects, 1046 S. Belay Rd., Burton, MI, said they are proposing an addition to the building of approximately 2700 sq. feet. They are planning one additional doctor's office to the building that now houses six doctors, a diagnostic center and a physical therapy center. The addition is proposed to go on the west end of the building. There will be additional parking at the rear of the building with additional lighting. We far exceed the ordinance requirements for parking. We will have 181 parking spaces at that location.

There was no one in the audience who wished to speak.

Mr. Strasser asked if this addition would be built simultaneously with the addition that was previously approved through site plan review.

Mr. Swiehart replied that the two additions would be done at the same time.

Mr. Strasser commented that the sidewalk issue was addressed at the previous site plan and that it is going to be taken care of with these two additions. We do have a letter on file from the Road and Drain Commissions regarding the water run-off from the additional building and the additional parking area. It is going to be built with their approval. The DPW staff has no problem with the request.

Moved by Young, seconded by White to approve Site Plan Review #020-07 contingent upon DPW recommendations. Motion carried 7-0.

F. PRELIMINARY SITE PLAN REVIEW:

1. SPR #02-10

BY: Discount Tire Company
14631 N. Scottsdale Rd.
Scottsdale, AZ 85254

RE: 4210 E. Court St.
Parcel #59-15-100-025
Zoned C-4

FOR: Preliminary Site Plan Review.

Greg Smith, 3108 Pepper Ridge TR., Brighton, MI and Darwin Madaras, 5625 Muller Rd., Saginaw, MI, presented the preliminary plan for Discount Tire.

There was no one in the audience who wished to speak.

Mr. Strasser explained that this is a preliminary site plan review. We need to review whether the proposed use meets the zoning, which it does. The property is zoned C-4 and will be located at the northwest corner of the Lowe's property. It is an independent outlot and no additional curb cuts would be constructed onto Court Street. This site would be accessed from the existing access road going into Lowe's or from the Courtland Center parking area. They are looking for preliminary approval from this body so they can commence financing. It must be understood that permits or anything on site cannot take place until the final site plan approval is done with a full-scale site plan.

Mr. Young asked if questions should be directed now or when the project comes before the board for final site plan approval.

Mr. Major replied that the questions should be delegated to whether they have the appropriate use at that location. Discussion should include whether this is the best use for the land at that location.

Mr. Smith stated that this store would be a relocation from the Court Street site.

Mrs. White said she just returned from Phoenix, AZ and the home base has a beautiful site.

REGULAR PLANNING COMMISSION MINUTES

MARCH 12, 2002/6:00 P.M.

PAGE -6-

Moved by Bertram, seconded by Hohloch to approve Site Plan Review #02-10 contingent upon DPW recommendations. Motion carried 7-0.

C. PUBLIC HEARINGS:

1. ZC #267

BY: Claro Recto (for an entity to be formed)
46500 Maidstone
Canton, MI 48187

RE: Genesee Rd. south of Bristol Rd.
Parcel #59-34-200-027, #59-34-200-028,
#59-34-200-029 and #59-34-200-030
Zoned SE to R-1B

FOR: Residential Development

Jess Anais, Engineer for the developer, said he and Mr. Recto have met with Mayor Smiley and his staff on two occasions and they are proposing a residential development for the property. Mr. Anais presented a drawing of the types of home they want to put in the subdivision. The homes would be developed on a 40-acre parcel with a nice retention pond and a clubhouse. There would be a boulevard entrance and an emergency entrance for the fire trucks. A greenbelt would be at the west side to give privacy to the existing larger parcels to the west. For the residents there will be walkways with benches and lighting. We are proposing a unique development with a small shopping center and party store that would service the community.

Audience Participation:

Pauline Dargel, 6119 Hugh St., asked if there is a provision for a small party store in R-1B zoning. She spoke about the legality of zoning case #267 being heard this evening because it had been postponed to a date certain and was not heard at the February meeting. She suggested that another notice be published for this zoning case.

Mr. Major said the developer has met with the Mayor and staff and we think the concept is workable. The party store/shopping center is a conceptual idea and needs some type of zoning at some point in time. We are not aware that we are off-track in regards to another public notice but he would check with the City Attorney. We would suggest this not be postponed any further. Mr. Hamilton reviewed the agenda previous to the meeting and he didn't seem to think there was a problem in hearing this zoning case. We still need to work out some water extensions and the developer is more than willing to work with the city in making certain all of the utilities are put in. We will have to review what the road commission is going to require as we do in the platting of site condos. At this time, the staff recommendation is to proceed as requested by the applicant.

Moved by Walls, seconded by Hohloch to recommend approval of Zoning Case #267 to rezone property from SE to R-1B, as requested.

Mr. Young asked how many homes would be constructed on that site.

Mr. Anais replied that approximately 120 lots would be used for homes.

Mr. Young commented that when the developers are coming into the City to develop these lots, they are trying to crowd as many homes as they possibly can into these small sites. He questioned whether we are becoming a city that is developing small lots and rather dense housing or are we a city that has open spaces and use that open space to allow people to have room and breathe. Let's look down the road and see what is happening with our city.

Moved by Young, seconded by Bertram to amend the motion to change the zoning from R-1B to R-1A.

REGULAR PLANNING COMMISSION MINUTES

MARCH 12, 2002/6:00 P.M.

PAGE -7-

Mr. Hohloch said he appreciates what Mr. Young said, but in this particular area there have been other endeavors tried on a more ambitious scale and failed. The problem boils down to be the school district involved. Several other developments have had difficulty in completing their projects. This is why I concur with the R-1B zoning in this area.

Mr. Major said you never discussed the issue of the development or sales scheme.

Mr. Hohloch said this is also a senior complex in which maintenance is an issue. It is not the young starter home, but the converse of that.

Mr. Young asked if it was their job to look at what is most expedient today or to look at what could happen in the future? We are slowly becoming a city of small lots where we have open space that could be used as such for larger homes.

Mr. Hohloch said at the last meeting, 26 acres were approved for Mr. Rizzo and these developments are close to one another and offers the market place a choice for larger lots or smaller lots. If the senior's fixed means don't provide for them to have a larger lot and home, then this development is something they could consider. What we are here to do is to look at the land and try to do what is best for the city.

Roll Call Vote for Amendment to change the zoning from R-1B to R-1A: Walls, no; Young, yes; Bertram, yes; Hohloch, no; Grantner, no; White, no and Perez, no. Motion failed 2-5.

Roll Call for Main Motion to change the zoning from SE to R-1B: Walls, yes; Young, no; Bertram, no; Hohloch, yes; Grantner, yes; White, yes and Perez, yes. Motion carried 5-2.

G. BOARD DISCUSSION:

Mr. Hohloch suggested having the site plan reviews handled by independent professional planners and also require that traffic and environmental impact studies be done and the results given to the board. Some of the other communities handle these as part of the permitting process, in which the money is put into an escrow account with the city and then the city administers it and when everything is completed and all the reports are in to the city, if there is any money left it is refunded back to the applicant. He said he strongly feels that this should be done when a major development is being proposed to the city. He said Grand Blanc Township has a very good package and so do several other cities. The burden is placed upon the developer when using this process.

Mr. Major said he is not in disagreement with Mr. Hohloch. He likes what is being done in Grand Blanc and maybe this would make sense to those people in Burton who keep saying no every time a development is proposed. Mr. Major said the fees would be paid by the developer and whatever fees the City is charged, would be passed on to the developer.

Further discussion continued regarding how to proceed with the site plans being reviewed by an independent professional planner. It was suggested that a workshop be held to discuss the criteria for the independent reviews.

Mr. Grantner asked Mr. Major to make contact with Grand Blanc Township as to what their process is and get information if he could.

Mr. Major said he would get the information and give it to the board at the April meeting and then a workshop could be set to discuss the material.

The next regularly scheduled meeting will be held on Tuesday, April 9, 2002, at 6:00 P.M.

Meeting Adjourned at 7:35 P.M.

REGULAR PLANNING COMMISSION MINUTES
MARCH 12, 2002/6:00 P.M.
PAGE -8-

Cheryl M. Ladd, CMC
Deputy City Clerk

CML