

MINUTES
OAK PARK PLAN COMMISSION
VILLAGE HALL- COUNCIL CHAMBERS
March 7, 2013
7 p.m.

PRESENT: Chairperson Linda Bolte; Commissioners Mark Benson, Douglas Gilbert, Sonny Ginsberg, David Mann, Gail Moran, Steven Rouse

EXCUSED: Commissioner Jeremy Burton

ALSO PRESENT: Craig Failor, Village Planner; Jacob Karaca, Plan Commission Attorney

Roll Call

Chair Bolte called the meeting to order at 7:02 p.m. and roll was called.

Non-Agenda Public Comment

None.

Approval of Minutes

Commissioner Rouse motioned to approve the minutes from February 7, 2013. Commissioner Benson seconded. Minutes were approved with one spelling correction.

Public Hearing(s)

PC 13-01: Zoning Ordinance Text Amendment; Staff is proposing to modify Plan Commission responsibility with the addition of requiring their review of use variances within the Transit-Related Retail Overlay District and the Perimeter Overlay District. CONTINUED FROM FEBRUARY 7, 2013.

Mr. Failor reviewed the discussion from the last meeting and directed commissioners to the alternate standards memo crafted by Attorney Karaca for review.

Chair Bolte reviewed the email from the Zoning Board of Appeals Chair. Attorney Karaca, who was present at the March 6, 2013 ZBA meeting, explained the ZBA would like more time to review the alternate standards that were crafted.

Commissioner Moran asked staff if it would make a difference to the Board of Trustees to know that the ZBA was not opposed to Board review on use variances. Mr. Failor replied that the Board and staff believe the Plan Commission has a better understanding of the Overlay Districts and the uses in those districts. Commissioner Rouse asked if anything in Chair Quinn's email changed his mind. Mr. Failor disagreed.

Chair Bolte said the Plan Commission was the creator of the Overlay Districts and she disagreed with Chair Quinn that the Plan Commission did not have a better understanding of the implications of approving use variances than the ZBA did. Commissioner Rouse read from Chair Quinn's email noting the Plan Commission had no experience approving bulk variances and the amendment would take away a significant business of the ZBA. Chair Bolte said the bulk variances were not submitted by the Board for review, but that that issue arose from commissioners' discussions, and so she agreed with Chair Quinn on the lack of experience on bulk variances. She said first, the issue was the Board chose between the five options on the hearing process for use variances and it was not in their purview to question the wisdom of

the selection. She said out of the discussion from the previous Plan Commission meeting came the second issue- a need for more explicit standards on how to measure hardship, how to measure burden, and to make it more difficult to get a use variance in the Transit-Related Retail Overlay and Perimeter Districts. Applicants would have to prove it with evidence- which was what the commission directed staff and counsel to prepare. The third issue was combining the two variances for review by one body- the companion variances.

Commissioner Rouse said he believed the ZBA was feeling ineffectual by taking away a lot of what they do- the “good stuff” and the ZBA would be left with porch variances and side yard setbacks. As a past chair of the ZBA, he said he agreed. He said he also agreed that it was not for the Plan Commission to question the Board’s assignment.

Commissioner Gilbert disagreed, saying they should question the wisdom of taking over the variances so that they could talk over the unintended consequences- such as the ZBA being stripped of most of its duties; or that the Plan Commission would be reviewing variances without much experience in them or an applicant may have to split and go to two different commissions for companion variances. He said those concerns needed to be addressed before he voted for it.

Mr. Failor said staff was looking into how many use variances go through the ZBA, but he understood there were very few. He said the ZBA also sees bulk variances and special use applications so it wouldn’t strip the ZBA of everything they do. Plus, he said it was only in the two Overlay Districts that this amendment would be in effect so it would be an even smaller component of what they do.

A short discussion ensued about whether to vote on the amendment before discussing the standards or discussing the standards before voting. Commissioner Ginsberg said it would make sense to do one issue at a time and as long as the Board’s decision was rational to give authority to the Plan Commission they should not second guess the Board. He said as for the companion variances, the Board would have to decide if it was worth it to have economy of scale versus having two bodies review an application. Commissioner Ginsberg said he was concerned about inconsistencies with the definitions in the standards being confusing for applicants and they needed to be careful about setting a bunch of definitions. Chair Bolte agreed, saying the ZBA felt they did not have enough time to review the standards and Trustee Brewer, the Village Board liaison to the ZBA, agreed as well.

Chair Bolte said she believed there were three things on the table- first, the initial request from the Board. Second, what the Plan Commission felt are good new standards that needed to be in place in both ZBA hearings and Plan Commission hearings. She said that would require discussion with the ZBA. Third would be the wisdom of merging the two companion variances into one body for economies of scale- which was not asked by the Board but in conversation came up as an issue. Chair Bolte said if the vote was yes on the first, then the second and third issues should be comments to the Board for the Plan Commission and ZBA to look at these issues specifically.

Commissioner Gilbert agreed, saying in the last discussion it was clear they wanted to make the standards stronger to limit the number of variances but also there were some potential pitfalls identified. He said those issues should be reported back to the Board and he’d like to get the Board into the loop on the discussion.

Commissioner Ginsberg said he didn’t believe further definitions in the standards were necessary to make smart decisions on applications. For example, reasonable return was a phrase used in thousands of hearings across the state, the problem wasn’t the phrase it was the application of the phrase- he said the Board wanted a body that understood uses better to make the decision.

Commissioner Gilbert said it wasn't necessarily the language or definitions rather there were no requirements on documentation or evidence to give the determining body guidance. Commissioner Ginsberg disagreed, saying it was not necessary to be in the amendment as they could ask for the requirements anyway. Attorney Karaca agreed. Commissioner Rouse said if it wasn't in the amendment, applicants would not have the material and the commission would have to ask for it and delay an application. Mr. Failor said from a staff standpoint, if it was codified like planned development requirements it would be easier and clearer for applicants and staff as well. Chair Bolte said a discussion with the ZBA would be helpful as they knew what they've seen in applications and the Plan Commission knew the Overlay District and an agreement could be made for both types of variances so that the standards were the same. Commissioner Ginsberg said he believed that both sections 2.2.4 and 2.2.8 needed to have the same language in order to be less confusing.

Chair Bolte said she believed the findings of fact would be two parts. The first would be directing staff and counsel to prepare findings of fact approving the text amendment transferring use variances to the Plan Commission from the ZBA in the Overlay Districts. Commissioner Ginsberg motioned to approve the text amendment. Commissioner Rouse seconded.

Commissioner Moran asked if they could approve that motion as the text given by the Board had language approving the transfer and also detailing the standards. Commissioner Ginsberg said they could suggest language on the standards. Chair Bolte clarified with Attorney Karaca that a vote could be taken on parts of the amendment and suggestions added to the Board to direct discussion with the ZBA. Attorney Karaca agreed.

Commissioner Mann asked staff to clarify if the process of an applicant coming in for a use variance through the Plan Commission and then a bulk variation through the ZBA was more cumbersome. Mr. Failor said if it was the same applicant, then yes.

Commissioner Gilbert said that was the reason he would vote no as that issue needed to be resolved or the Board needed to be informed of the issue as maybe with the new information the Board would reconsider having the Plan Commission review use variances. He said he didn't want to support something that would create one more hurdle for someone to open a business in Oak Park.

Commissioner Ginsberg said there were many circumstances where an applicant needed to go to more than one commission for different things and the Board would have the option to move the variances to the same board. He said he assumed the Board was aware of the issue beforehand. Mr. Failor said currently, special use variances that go through the ZBA sometimes have companion variances with them so the ZBA looks at different standards as they go through. Commissioner Rouse said the ZBA applies different standards all the time in the same hearing. Attorney Karaca agreed.

Chair Bolte said public art came to her mind, as the Public Art Commission weighs in on all public art in planned development applications and that recommendation must come through before the Plan Commission made a final recommendation. Mr. Failor suggested if a use variance came in with a bulk variance the Plan Commission could send it to the ZBA for review. Chair Bolte agreed and said it would become staff's burden to make sure when an application came in that it would be routed to the right commission(s). Mr. Failor agreed, saying it could be one application and one fee. Commissioner Mann added one notification as well. Commissioner Ginsberg agreed and said the only way to not have an extra hearing would be to take the companion variances away from the ZBA. Attorney Karaca said the ZBA was not opposed to having only one body bundling the companion variances as it would make sense to keep it within one body.

Commissioner Gilbert said he understood what the Board was trying to do but believed it opened up a Pandora's Box of issues that needed to be resolved and he was not comfortable providing the Board with recommendations because of all of those issues.

Commissioner Moran said in looking over the original ordinance from the Board the only areas that could be approved were sections 2.1.3; 2.1.4; and 2.1.5.

Discussion ensued about section 2.2.4 and section 2.2.8 and whether a vote could be taken on the standards before further discussion with the ZBA. Commissioners agreed that they could vote on the original text with the standards as written and then include language recommending some changes to the standards for the Board to decide on.

Staff asked if the evidence checklist of what an applicant needed to submit could be included as it would make the process clearer for an applicant. Discussion ensued about how to include the language so that an applicant was aware what would be required of them. Commissioner Rouse said he believed the Plan Commission had a clear mandate and they had disregarded what the Board asked them to do- they were too wrapped up in other issues that weren't part of the mandate. Commissioner Ginsberg disagreed, saying that looking at the issues was part of the mandate.

Commissioners Ginsberg and Rouse withdrew the motion. Commissioner Ginsberg motioned to direct staff and counsel to prepare findings of fact approving the text amendment changes as submitted by the Board in sections 2.1.3; 2.1.4; 2.1.5 and 2.2.4 (A) - with 2.1.5 (H) revised to standards in 2.2.4(C). Commissioner Moran seconded.

A roll call vote was taken:

Ginsberg- yes
Moran- yes
Gilbert- no
Benson- no
Mann- yes
Rouse- yes
Bolte- yes

The amendment passed 5-2.

Chair Bolte said step two would be offering recommendations to the Board that the standards needed to be revised or enhanced after consulting with the ZBA so that the standards would be compatible. Commissioner Moran said Attorney Karaca's memorandum would be a good starting point. Chair Bolte said adding language about companion variances and engaging the ZBA in an advisory role on bulk variance approvals was important. Commissioners discussed whether the language should be "shall or may" when it came to companion variances and the ZBA's role as an advisor. Commissioners and counsel agreed the language should go to the Board for decision.

Commissioner Ginsberg said it was important for the Board to see all the new suggestions to the Zoning Code that they might not have expected and it would delay the process if the choices were not given for discussion. Commissioner Rouse disagreed, saying it was a simple change that was made much more complicated than it needed to be.

Commissioner Moran motioned to recommend the changes suggested in the amendments submitted by counsel dated on February 27, 2013 and to further amend sections 2.2.8 (H)(1) and 2.2.8.(H)(2) to add at

the last sentence referral language to the ZBA; and that those amendments be discussed jointly between the Plan Commission and the ZBA. Commissioner Ginsberg seconded.

Commissioner Gilbert asked for clarification on Attorney Karaca's memorandum if the motion would address the alternates given. Attorney Karaca said he would attach the entire memo so that it would be clear. Commissioner Rouse said that would be why he would vote no as they weren't giving the Board a clear recommendation back.

A roll call vote was taken:

Moran- yes
Ginsberg- yes
Gilbert- yes
Benson- no
Mann- yes
Rouse- no
Bolte- yes

The motion passed 5-2.

Other Business:

Mr. Failor said for the next Plan Commission special meeting on March 14, 2013 he had five commissioners committed to the meeting, one maybe and two unable to attend. Commissioner Moran asked if it was possible to attend via the phone. Attorney Karaca said he would have to know what policy the Board enacted on phone testimony in the Village Code. Chair Bolte said she believed it was for discussion only and not for voting purposes. Chair Bolte indicated Commissioner Burton would need to listen to the discussion so that he would be able to vote on the findings of fact. Mr. Failor said tonight's meeting would be recorded and he would get a copy to him.

Commissioner Moran asked staff if they could revisit the issue of re-noticing on applications in light of advances in technology. Mr. Failor replied the Village follows the state statute and currently, there was nothing about electronic notification. Commissioner Rouse added it would be difficult to prove receipt without the mail return notice as the statute requires proof of service. Chair Bolte recalled discussion previously being about smaller applications not requiring a re-notice as part of the process. Attorney Karaca said some communities have "de minimis changes" that wouldn't require coming before a board, only staff approval. Mr. Failor said noticing was necessary. Commissioner Rouse agreed with staff.

Chair Bolte thanked commissioners who attended the Envision Community meeting on February 20. She said there will be 11 working groups to further discuss topic areas. She said commissioners should let staff know if any of the targeted topics would be of interest to them.

Adjournment:

Commissioner Rouse motioned to adjourn the meeting. Commissioner Benson seconded. The meeting was adjourned at 8:40 p.m.

Angela Schell,
Recording Secretary