

**MINUTES OF A PLANNING COMMISSION MEETING HELD,
MONDAY, JUNE 9, 2009 – 6:30 P.M. – ROCKVILLE CITY HALL**

The meeting was called to order by Chair Toni Honer. Roll call was taken and the following members were found to be present: Chair Toni Honer, Jerry Bechtold, Dale Borgmann, Jerry Tippelt & Dan Hansen. Absent Steve Dietman. Liaison Duane Willenbring arrived @ 6:35 p.m.

Staff members present were: Zoning Administrator Rena Weber & Billing Clerk/Administrative Assistant Judy Neu.

Others present: Council Jerry Schmitt & Don Simon.

APPROVAL OF AGENDA/AMENDMENTS – Motion by Member Borgmann, second by Member Tippelt, to approve the agenda as presented. Motion carried unanimously.

APPROVAL OF MINUTES 05/11/09 – Motion by Member Bechtold, second by Member Borgmann, to approve the minutes of 05/11/09 as presented. Motion carried unanimously.

NEW BUSINESS

REVIEW FINDING OF FACT-SUPPORTING/DENYING A VARIANCE:

Zoning Administrator Rena Weber explained that the League of Minnesota Cities provided us with sample of City Code Variance Standards.

This is what the City of Rockville is currently using for Finding of Facts:

1. Will the issuance of the requested variance maintain the essential character of the locality? Why or Why not?
2. Will the issuance of the requested variance be in keeping with the spirit and intent of the Ordinance and/or the comprehensive plan? Why or Why not?
3. Are there circumstances created by someone or something other than the property owner that make compliance with the ordinance difficult or not possible? Why or Why not?
4. Are there circumstances unique to the property that makes compliance with the ordinance difficult or not possible? Why or Why not?
5. Without a variance, is the owner deprived of a reasonable use of the property as that use relates to the Ordinance? Why or Why not?
6. Does the proposal involve more than economic considerations? Why or Why not?

The League of Minnesota Cities sample:

1. Because of the particular physical surrounding, shape or topographic conditions of the specific parcel of land involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out;
2. The conditions upon which the petition for a variance is based are unique to the parcel of land for which the variance is sought;
3. The purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the parcel of land;
4. The grant of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the vicinity in which the parcel of land is located;
5. The proposed variance will not impair and adequate supply of light and air to adjacent property, or substantially increase congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values with the vicinity;
6. The granting of the proposed variance will not be contrary to the intent of this Code and the City's Comprehensive Plan.

Zoning Administrator Rena Weber read the memo from the League of Minnesota Cities on example of a variance consideration.

Under Minnesota law, a municipality may grant a variance where unique circumstances of the individual property create an undue hardship. Minn. Stat. Sec. 462.357, subd. 6. "Undue hardship" generally means:

The property in question cannot be put to a reasonable use in used under conditions allowed by the official controls, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance will not alter the essential character of the locality.

The "undue hardship" requirement does not mean a property owner must show that the land cannot be put to any reasonable use without the variance. Instead, the undue hardship standard requires a showing that the property owner would like to use their property in a reasonable manner that is prohibited by ordinance. Minnesota courts have explained there are three requirements for granting a variance under the "undue hardship" standard. The requirements are: (1) reasonableness; (2) unique circumstances; and (3) the essential character of the locality.

Member Borgmann explained at a Land Use Planning Workshop they provided samples:

1. Does the zoning ordinance lead to practical difficulties or undue hardship on the part of the property owner in the use of his property?
2. Is the physical hardship unique to the property?
3. Is the hardship caused by any actions on the part of the landowner?
4. Is the landowner unable to acquire adjacent land so as to meet the dimensional standards of the ordinance?
5. Will the proposal alter the essential character of the area?
6. Is the proposal in conformance with the spirit and intent of the zoning ordinance?

After further discussion the Planning Commission members would like to change the Finding of Facts to:

1. Will the issuance of the requested variance maintain the essential character of the locality? Why or Why not?
2. Will the issuance of the requested variance be in keeping with the spirit and intent of the Ordinance and/or the comprehensive plan? Why or Why not?
3. Are there circumstances created by someone or something other that the property owner that make compliance with the ordinance difficult or not possible? Why or Why not?
4. The grant of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the vicinity in which the parcel of land is located? Why or Why not?
5. Without a variance, is the owner deprived of a reasonable use of the property as that use relates to the Ordinance? Why or Why not?

REVIEW WIND TOWER ORDINANCE:

Zoning Administrator Rena Weber explained that the Council made a few changes to the Wind Tower Ordinance and added:

1. Pg 3. - Under Shoreland Residential management R1 & Community Residence R1, R2, R3 not permitted unless of 5 acres or more CUP.
2. Pg 4. - The setback from any residential district shall not be less than 500 feet.

Liaison Member Willenbring explained that the 500 feet is referring to the abutting of a different zoning district.

Chair Honer stated that she has concerns allowing towers within the shore impact zone. The towers should be located outside of the 1000 foot (shoreland district) impact zone.

Chair Honer stated that she would be okay with allowing it in the Community Residence R1, R2 and R3 just as long as the property is 5 acres or more.

Member Tippelt stated to leave the ordinance the way it was and see if any issues occur. You can always amend the ordinance if there is enough pressure from the public.

Liaison Member Willenbring questioned what is the intent of the Shoreland Ordinance? Is it to protect the lake? Then what would a generator do to the lake if it is within the 1000 feet?

Member Tippelt explained his concern would be that sound carries across water.

Liaison Member Willenbring explained that he doesn't have a problem with noise pollution.

Member Borgmann questioned does the current Shoreland Ordinance have rules against it and/or does any other City's Shoreland Ordinance have rules against it.

Zoning Administrator Rena Weber will verify if the Shoreland Ordinance has any specific rules against towers.

Motion by Member Borgmann, second by Member Tippelt to recommend adopting the Wind Energy Conversion Systems Ordinance with the amendments except for not allowing Wind Energy Conversion System within the Shoreland District. Motion carried unanimously.

PLANNING COMMISSION MEMBER/STAFF REPORT:

Discussion was held on generators and storage of batteries in the wind towers.

BUSINESS FOR NEXT MEETING:

- ◆ Voigts Minor Subdivision
- ◆ Shannon Wicker Variance
- ◆ Storage of batteries in Wind Towers

ADJOURNMENT – Motion by Member Bechtold, second by Member Borgmann, to adjourn the meeting at 7:27 p.m. Motion carried unanimously.

**JUDY NEU
BILLING CLERK/ADMINISTRATIVE ASST**

**TONI HONER
CHAIR**