

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

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

EXCUSED: Commissioner Sonny Ginsberg

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

**Roll Call**

Chair Bolte called the meeting to order at 7:01 p.m. and roll was called.

**Non-Agenda Public Comment**

None.

**Approval of Minutes**

Commissioner Rouse motioned to approve the minutes from January 3, 2013. Commissioner Moran seconded. Minutes were approved as submitted.

**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.

Mr. Failor explained that the text amendment was for use variances in the two overlay districts specified. A use variance is a use that is not permitted in the district versus a special use, which is a permitted use that has to go through a public hearing process and has conditions set forth. Mr. Failor said currently, the Zoning Board of Appeals hears all types of variances. This amendment would require use variances to come to the Plan Commission for two reasons: one, the Plan Commission has dealt with uses more often than the ZBA and would have a better understanding of what uses were appropriate within the different districts within the community; and two, with the ZBA, variances do not go back to the Village Board of Trustees for review and the Board wanted a different process.

Chair Bolte said in the past the Plan Commission had heard applications from the daycare center on Marion Street that was denied by the Board and also on Oak Park Avenue there was a bank that wanted to move onto a first floor. That bank was denied with the Board upholding the denial. She said the rationale was the bank was not a retail-type bank; it was more service-oriented. She said with the retail related overlay district, the goal was to support foot traffic through retail. She said with the perimeter overlay the concern was with how the borders look and what people see when they come into the community.

Chair Bolte said because the Plan Commission was involved with establishing the overlay districts it would make sense that it would decide what were appropriate land-uses going forward.

Commissioner Moran asked if the standards were different than if an applicant would go before the ZBA.

Commissioner Benson asked why wouldn't all uses go before the Plan Commission instead of just the overlay districts. Mr. Failor said the two overlay districts had restrictions on use and are the only districts that have had use variances.

Mr. Failor referred commissioners to the amendment of the zoning code. He explained the amendment would refer use variances to the Plan Commission in the two overlay districts and the Board of Trustees would review the Plan Commission's findings and make a decision on the applications. He said section 2.2.8 would set the process for use variances; the authorization, the application and hearing process and review by the Board. He said in the standards section there would be five standards derived from the current ZBA standards, which currently had seven standards. He said only five applied to use variances. Mr. Failor reviewed each standard.

Commissioner Moran asked if seven standards would be applied under the ZBA. Attorney Karaca agreed, saying under the current ordinance there were seven. Two were removed in the Plan Commission amendment- one referred to material detriment to the neighborhood and one referred to adequate supply of light and air. Attorney Karaca asked staff how they would envision a use variance in the overlay districts when there were two variations- a building variation and a use variation. Mr. Failor said this would deal with only use variances so either the Plan Commission could have a companion variance that came with it - like a special use that would have a bulk variance with it - or it would have to go to two different bodies. Attorney Karaca suggested adding a sentence to clarify where dual variances would go. Mr. Failor asked Attorney Karaca if it was possible to have a bulk variance with a companion use variance. Attorney Karaca indicated he would need to do further research.

Commissioner Moran suggested the two standards would then have to be added back, Attorney Karaca agreed. Commissioner Moran asked why the 'materially detrimental to the neighborhood' standard was not relevant. Chair Bolte agreed, saying even the other standard about air and light was relevant as congestion on streets was part of every issue. Mr. Failor said that issue could be characterized under the 'essential character of the neighborhood' standard. Commissioner Rouse suggested the standards were written so that it was much harder to get a use variation. He said the 'essential character' standard would cover just about anything. Commissioner Rouse said he didn't understand why the Board didn't just keep the process within the ZBA but make it reviewable by the Board. Mr. Failor said the idea was the Plan Commission would have a greater picture of land-use within the Village. Commissioner Rouse said it would create practical problems with companion variances and different standards and if there were two different bodies hearing it, it would make it impossible to have a use variance- if the intent was to never allow use variances then just say there would be no use variances.

Commissioner Gilbert asked why not just change the standards for the ZBA and keep the process within the ZBA. Mr. Failor said they had provided the Village Board with five different options on a new process and one was keeping it within the ZBA with review. Staff supported the chosen option.

Commissioner Rouse asked if there could be different standards for use variances based upon the location in the Village. Attorney Karaca said he believed you could have different standards based upon the zoning of an area.

Commissioner Gilbert asked if the Board wasn't happy with use variances being granted then why not change the guidelines to make it stricter. Commissioner Moran said it wasn't the standards per say, it was the binding authority that the ZBA had. Commissioner Benson suggested the change was a consolidation of authority.

Commissioner Moran said when you add in the transit overlay district, that was something the Plan Commission was part of approving and so that would make sense to have it go before the Plan Commission.

Commissioner Burton asked how much of the Village was in the Perimeter and Transit-Related Retail Overlay districts. Mr. Failor referred commissioners to the overhead screen zoning map of the business districts, indicating most of the business and commercial areas of the Village.

Commissioner Moran asked if the ZBA held public hearings. Mr. Failor agreed.

Commissioner Gilbert asked what other communities do for use variances. Mr. Failor said a lot do not allow use variances as the argument was it was akin to spot zoning. Commissioner Gilbert suggested the Village consider the same. Attorney Karaca said one use variance that recently went through was the Weight Watchers facility going into the Whiteco building- it was approved because across the street on Harlem there was nothing to help bring in a commercial tenant and Trader Joes had further restrictions on what could go there, so that parcel was unlike another parcel in the transit overlay district and the special use met the criteria of the ZBA.

Commissioner Rouse asked staff if the amendment would allow conditions to be set on use variances. Mr. Failor said they could make recommended conditions but the final conditions would be set by the Board. Commissioner Rouse suggested it was unclear. Mr. Failor said if clarification was needed they could add that into the amendment.

Chair Bolte opened public testimony.

Mr. Dan Haley, 327 S. Humphrey also representing the Hemingway District and the Business Association Council. Mr. Haley said their concern was protecting retail spaces. He said over the years they worked with the Village and staff to help create the Transit-Related Retail Overlay District. He said he hoped that the Village understood retail spaces were precious. He said they believed the decision by the ZBA to allow a dentist's office into the former Flybird space was flawed and that it was not a legitimate hardship case because the property was not effectively marketed. He said as an association they were taken aback that that decision was not ultimately reviewed by the Village Board. He said a subsequent review was important and it would seem logical for the Plan Commission to hear the applications since it was responsible for creating the overlay districts, but it was ultimately not a big issue with them where the process lay.

Mr. Haley said he wanted to raise a second issue. He said the Hemingway District would ask the Board to take a look at the martial arts studio that opened on Oak Park Avenue in another key retail location. He said it was an inappropriate use. Commissioner Moran asked how the studio was approved. Mr. Haley said it was approved by staff. Mr. Failor agreed as it was an allowed use in the district. Commissioner Rouse asked how they felt about the Oak Park Township moving in. Mr. Haley said they weren't happy with that but he also had a conflict as he was a partial owner of a building on the same block. He said the association was very worried about retail.

Mr. Dan Finnegan, owner of 6611 North Ave. and a member of the North Avenue Business Association and the Business Association Council. He said he supported the staff recommendation in regard to the use variance process change. He said the issue was retail: if there was a change from retail to something other than retail that change would occur for a long time. He said a decision like that would need a second set of eyes and the review process was important. He said he also believed if a business owner wanted to apply for a use variance that opportunity was important as well.

Chair Bolte closed public comments. She asked staff why they had the authority to make a decision on the martial arts studio. Mr. Failor replied it was an allowed use under two categories; athletic recreational use and also personal use. Mr. Failor said he believed there was a misunderstanding that the overlay districts were retail and restaurant only, which they were not- there were other uses allowed in the districts like personal and recreational use. He said what the districts do was restrict certain uses in the area within the first fifty feet. Commissioner Rouse asked if the amendment would change or impede another martial arts studio going into the district in the future. Mr. Failor said no as it was an allowed use. Commissioner Rouse asked if there was an opportunity to appeal the zoning officer's decision to the Board or to the Plan Commission. Mr. Failor said only an applicant could appeal to the ZBA, not a third party. Attorney Karaca confirmed.

Commissioner Gilbert suggested the restricted uses should be reviewed on an occasional basis by the Plan Commission. He said he was troubled by taking away the use variance from the ZBA when the Plan Commission only dealt with uses from a policy standpoint.

A short discussion ensued about the difference between a special use and a use variance.

Commissioner Moran asked staff why the Board preferred this process over the others presented. Mr. Failor said it was because of the Plan Commission's involvement with use issues. Chair Bolte agreed, saying the overlay districts originated with the Plan Commission. Mr. Failor said it would also follow the Plan Commission's process- referral, hearing and recommendation. Commissioner Rouse said the ZBA also followed the same process for special uses. Commissioner Benson said it wasn't about more eyes it was about who got to make a binding decision.

Commissioner Gilbert said if the real meat of it was certain applications were being approved that were troubling then why weren't the standards changing; make the standards more clear and more difficult rather than vague statements about demonstrable hardship because what does that mean. Chair Bolte agreed, saying it was similar to the discussion regarding the Walgreens marketing plan- how to measure any effort to rent a space, definition was needed. Commissioner Gilbert said the Historic Preservation Commission had criteria for economic hardship that was by purpose nearly impossible to meet.

Chair Bolte suggested either continuing the discussion at a future meeting to allow staff to get more guidance on what the standards should be or the Plan Commission should recommend the process be left with the ZBA with some added clarification on what hardship meant.

Commissioner Moran asked the attorney if it was possible to craft a standard that was impossible to meet. Attorney Karaca said no, you could generalize certain situations and tighten up language. Commissioner Moran said if you tighten up language so tight that no one will be approved you would give a fiction to the public that you might actually get a use variance. Attorney Karaca agreed. Commissioner Gilbert said that was actually the intent of the overlay district. He said with the HPC, what was key was the material submitted to prove a point of view; maybe specifics about evidence was needed to be added.

Commissioner Rouse said there were legal cases that defined undue hardship so it wouldn't be hard to specify it. He said that would always be the heart of the issue on the use variances.

Commissioner Benson said he wasn't sure the Board had showed why they were taking the process away from the experienced eyes of the ZBA. Commissioner Moran said it wasn't the Plan Commission's charge to question that and that the Board had asked them to consider it. Commissioner Benson said the "why" had not been answered. Commissioner Mann said staff had explained it and it could be rejected if they didn't agree.

A discussion ensued about the next steps with three options suggested- voting on the amendment, voting on the amendment with recommendations or deferring action until staff and counsel had a chance to add some language defining what was hardship and demonstrable evidence. Due to time constraints, Chair Bolte asked commissioners if they could attend a special meeting so that staff would be able to craft language in the Findings of Fact on areas that needed more enhancements. Commissioner Gilbert said moving forward on an up or down vote without the language in place concerned him. Staff and counsel agreed that should the Plan Commission provide clear direction on what the issues were, then language could be drafted to address that.

Commissioner Gilbert said a continuance was needed as he would feel more comfortable seeing the language before voting. Commissioners agreed on returning for a special meeting on February 21, 2013 at 7 p.m. in room 101 at Village Hall.

Chair Bolte asked for specific areas that might need further clarification. Commissioner Rouse suggested some changes: Section D on standards- Findings of Facts, recommendations or conditions should be added in; on third sentence take out ZBA and put in Plan Commission; mirror the language on demonstrable and unusual hardship; define reasonable return and demonstrable and unusual hardship.

Commissioner Benson asked what would be the practical impact should number two in the standards not be there. Commissioner Rouse said should number two be removed, it would be a lot easier to get a use variance.

Commissioner Gilbert added that evidence should be presented demonstrating hardship with application materials such as economic data, materials, etc. Commissioner Rouse suggested a burden of proof section. Chair Bolte said she'd like counsel to give some choices on the language. Commissioner Moran reminded staff about the companion variances needed. Commissioner Rouse referred to section F, removing grandfathering.

Commissioner Rouse asked if they should ask the Board to review the current uses allowed to avoid situations like the martial arts studio. Mr. Failor said they could ask the Board to recommend the Plan Commission have a discussion about that.

Commissioner Gilbert motioned to continue the discussion on the amendment in order to get more information on the areas discussed. Commissioner Moran seconded. A verbal vote was taken. The motion passed 8-0.

### **Review exterior building material selections for the Lake and Forest Development**

Mr. Failor explained that the zoning code allows the Village Planner to approve aesthetic design changes without going through any other process, however, since the applicant wanted to change a portion of the building's exterior element it should come back to the Plan Commission for a review. He said he wanted the other elements to be reviewed because there was a short list attached to the planned development while a longer list was attached to the building permit. Mr. Failor said after the Plan Commission had reviewed the materials, he would prepare a report to the Board of the commission's discussion and the Board could ask for a presentation if necessary.

Mr. Brian Vitale, architect from Gensler, gave an overhead presentation of the materials, referring commissioners to the elevations of the building. Mr. Vitale said there have been no changes of consequence for the building materials, just more details on the materials as the building moved forward.

Commissioner Rouse asked if the entry way area on Lake Street had changed. Mr. Vitale replied it was the same. Commissioner Gilbert asked what the articulation of the columns at the corner would be. Mr.

Vitale said it would be glass coming down with an awning using the same materials, opening up a series of columns with the opportunity for public art.

Chair Bolte indicated the south elevation looked different with more stone or brick. Mr. Failor replied there was a change in the combination of glass and brick on the retail façade that was approved through the Board and staff.

Mr. Vitale said originally they were going with an architectural precast, but after talking with the manufacturer they realized the large panels would lose all the delicate details. Mr. Vitale presented three materials as a substitute for the precast: the first was Fibre C, which was similar to a fiberglass concrete. Commissioner Rouse asked how it would be affixed to the building. Mr. Vitale said it's hung like a curtain wall and would work as a rain screen to shield the building from the elements but would also be open so that air could get in. Mr. Vitale said the precast would be on the base of the building where it made sense to have a durable material going up either 20 or 25 feet. Commissioner Rouse asked if the clips to affix were stainless steel, Mr. Vitale agreed.

Mr. Vitale said the next alternative would be a metal panel system. He said the metal system was more efficient from an energy standpoint. Commissioner Mann asked if it would also have the rain screen set up. Mr. Vitale agreed. Commissioner Mann pointed out that there would be a formed corner versus panels where there would be joints. Mr. Vitale agreed.

Mr. Vitale said the last material was synthetic stucco made by Sto, saying it was a barrier system with the highest efficiency of the three. He said it had more texture and an organic feel to it. Commissioner Burton asked if the project was getting LEED certification. Mr. Vitale said they were tracking to be LEED Silver. Commissioner Rouse asked which material was cheaper. Mr. Vitale said he wasn't sure, but he believed the metal and Sto were a bit less than the Fibre C although none would change the finance paradigms. Commissioner Rouse asked if the Fibre C was the one on the plans right now. Mr. Vitale agreed, saying it was in for permit.

Mr. Failor said he'd like commissioners to indicate that the materials were acceptable or unacceptable. Commissioner Burton asked if the metal could dent or if there was danger of paint loss. Mr. Vitale said it would be very difficult to dent and the paint was baked on the panel. Commissioner Rouse asked Mr. Dick Fencl, the technical director from Gensler, which material would last the longest. Mr. Fencl replied all the materials were very good and they wouldn't pick a material that hadn't been tested.

Commissioner Gilbert said he was concerned about the metal system from an aesthetic standpoint as the Plan Commission had approved a precast concrete and this would be an almost all-metal building. Chair Bolte agreed, and said she liked the other two. Mr. Stephen Miller, Project Director from Gensler, explained to commissioners that with the two other systems there would be a small gap between the panels because of the joints and the metal system would not have that gap. He said it was only an aesthetic difference. Commissioner Gilbert said with the Sto system there would be maintenance issues with caulking. Mr. Fencl clarified that you would not need to caulk due to the synthetic nature of the material.

Commissioner Moran said she did not care for the look of the metal and she was concerned about hail damage. Mr. Fencl indicated that the metal was very thick and the risk of hail damage was very rare. Commissioner Gilbert said many high-rise buildings had it.

Commissioner Mann said the Sto on top of precast will catch light differently. Mr. Vitale agreed, saying it would be worked into the design of the building. Commissioner Gilbert said he would object to the use of the metal, but would defer to architects and the developer on the other two options.

Mr. Miller showed commissioners the two brick options that would complement the façade of the 19<sup>th</sup> Century Club and the metal to be used, which was a pewter color. He presented the glass samples as well. A short discussion ensued where commissioners agreed that the bricks were very complementary to the 19<sup>th</sup> Century Club.

Mr. Vitale explained why they made changes to the retail façade— the original design was one long wall which wouldn't encourage lingering, so they broke the building up in a more vertical manner with overhangs and brick zones with the hope that it would encourage more lingering.

Commissioner Gilbert asked if on the east elevation there would still be a green wall. Mr. Vitale agreed that ivy or greenery would be growing on it.

Mr. Vitale reviewed the plans for the north elevation. Mr. Vitale explained the entire façade would be brick. Commissioner Moran asked about the patterning. Mr. Vitale said the patterning would mimic the dimension of the 19<sup>th</sup> Century Club.

Staff clarified with commissioners that they were all in agreement on the materials presented except for the metal façade option. Commissioners indicated they agreed.

#### **Review Plat of Subdivision – Lake and Marion Subdivision**

Mr. Failor explained that the commission would authorize the Chair to sign off on the Plat of Subdivision because it met all the required subdivision codes and had been reviewed by the Village Planner, the Director of Public Works, the Village Engineer, the Zoning Administrator and the Finance Director. It would then go to the Village Board for the approval.

Mr. Failor said there were four lots. The applicant, Lou Malnati's, owned lot one, two and three of the subdivision while lot four was owned by Chase Bank. He said lot three was the parking lot but there were easements for the existing ATM and access easements.

Chair Bolte indicated that a resident had some concerns about ComEd work being done in the area and invited him to speak.

Mr. Greg Marsey, 1107 Holley Court, said he had no issue with the plat of subdivision. He wanted to inform the commissioners that ComEd was installing a new transformer for the Chase Bank building. He said the location was close to one that existed now, but further south and under some residential units. He said the reason it was proposed for this location was because Chase did not own the parking lot and ComEd chose this location because it was on public land. Mr. Marsey said Jim Budrick, the Village Engineer, suggested the Lou Malnati's owners allow the transformer in the parking lot so that it would be closer to the bank building. He said if the new location was chosen they would lose a tree, undergo construction as well as noise, etc.

Chair Bolte asked staff if there was any action the Plan Commission could take or recommend to help in the situation. Mr. Failor said he believed it was a situation where the private property owners and ComEd could have a conversation regarding a possible agreement to place the transformer in the parking lot. Chair Bolte asked staff to give Mr. Marsey some contact information and encourage a conversation between the interested parties. Commissioners and staff agreed.

Commissioner Moran motioned to approve the Plat of Subdivision. Commissioner Benson seconded. A verbal vote was taken. The motion passed 8-0.

Chair Bolte reminded commissioners that the February 20, 2013 Comprehensive Plan meeting was coming up at 7:30-9p at the 19<sup>th</sup> Century Club. She encouraged everyone to attend. She also indicated there was a Nicor Energy Challenge to benefit some Oak Park nonprofits. She encouraged commissioners to go online and vote for one of the groups. Chair Bolte asked staff about the coordination effort between the Plan Commission and the Historic Preservation Commission.

**Adjournment:**

Commissioner Gilbert motioned to adjourn the meeting. Commissioner Rouse seconded. The meeting was adjourned at 9:45 p.m.

Angela Schell,  
Recording Secretary