

**Special Meeting Minutes**  
**New Prague Planning Commission**  
**Wednesday, July 5, 2006**

**1. Call Meeting to Order**

The meeting was called to order at 6:05 p.m. by Planning Commission Chairperson Grant Gengel with the following members present: Pat Remfert, Kay Wilcox and Grant Gengel. Absent were Michael LaDuke and Bob Gilman (Gilman arrived during the fourth agenda item).

City Staff Present: Renee Christianson - City Planner and Ken Ondich – City Planner.

**2. Approval of May 24, 2006 Meeting Minutes**

It was moved by Wilcox, seconded by Remfert to accept the May 24, 2006 meeting minutes as submitted. Motion carried (3-0, LaDuke and Gilman absent).

**3. Request for Variance #V3-2006 – Front, Rear and Side Yard Setback for Deck  
Robert and Marcia Sammons, applicants**

Planner Ondich presented the staff report. He stated that the proposed deck was 13' by 18' in size with a 5' wide portion along the home for wheelchair access from a new door. He stated that it does not meet the front setback, rear setback or side setback and added that a slanted roof is proposed over the 5' wide portion of the deck. He stated that the home was built before zoning was enacted in the City and that the lot was of a substandard size of 5,010 sq. ft. versus the currently required 8,400 sq. ft. He stated that there is a 20' by 22' buildable area for a deck within all setbacks, but that a very large tree was located in that area. He stated that a variance was granted by the City in 1993 for the deck and a garage, but the deck was never built so its variance was voided. He stated that the buildable area for the deck would require the removal of the large tree and that the tree is a valuable asset for the lot and would rather keep the tree there. He stated that the buildable deck area is very visible from Central Ave. N and is not as private as the proposed location. He stated that the buildable deck area also does not accommodate as easily the wheelchair access because the new door would be very close to the front edge of the deck. He stated that the variance being sought currently is less of a variance than what was approved back in 1993 in that the deck would be 4' further from the rear property line. He stated that the new court case standard for approving variances is the "reasonable" test instead of the hardship standards and that the planning commission would have to find that the variance is reasonable and is not self created or will not alter the essential character of the area. He read through the findings to approve the variance as listed in the staff report. He stated that staff supports the approval of the variance for the deck to be 27.5' from the front (east) property line along Central Ave. N., to be 5.5' from the rear property line, and to be 4' from the side property line with the findings already listed and the condition that the variance be used within 1 year after being issued or it will be come null and void.

Commissioner Gengel asked staff to comment further on the reasonableness standard used by courts in the review of variances.

Planner Ondich stated that courts have recently ignored the typical hardship standard found in state statute in favor of what they call a reasonableness standard. He stated that it is much more subjective than the hardship standard but is the basis for courts in determining whether a variance was granted appropriately.

Commissioner Gengel stated that he was in favor of the variance even with the hardship standard.

Commissioner Remfert stated that the variance request was reasonable.

It was moved by Remfert, seconded by Wilcox to recommend approval of Variance #V3-2006 with the following findings:

1. Exceptional or extraordinary circumstances apply to the property which does not apply generally to other properties in the area because the lot is only 5,010 sq. ft. which is 3,390 sq. ft. smaller than the current minimum lot area required today, because the lot does not provide ample depth for a rear yard behind the home, and because a very large tree is located in the buildable area for a deck on the property. There is also a jog in the lot at the southwest corner which makes the side lot setback necessary.
2. The literal interpretation of the provisions of this ordinance would deprive the applicants of rights commonly enjoyed by other properties in the same area under the terms of this ordinance because the only possible location for a deck on this property is technically on the side of the home because the rear yard setback for decks and the location of an attached garage do not allow the deck to be placed in a typical "backyard" of the home and to compensate for this the proposed deck location would keep the deck behind the home as much as possible for privacy.
3. Special conditions and circumstances do not result from the actions of the applicants because the applicants did not plant the large tree located within the buildable area for the deck and also because the applicants did not create the small lot size or irregular dimensions of the lot that led to the absence of a typical backyard in which to locate a deck on the property.
4. The granting of the variances requested will not confer on the applicant any special privilege that is denied by this ordinance to owners of other lands, structures or buildings in the same district because most other lots in the area have an adequately sized back yard in which to locate a deck on their homes because they have a greater lot depth than the applicant's lot.
5. The variances requested are the minimum variances which would alleviate the hardship because the deck would be placed west of the tree and would be setback further from the rear property line than the existing attached garage and would not extend closer to Central Ave. N. than the home while still providing for wheelchair access to a proposed door into the home onto the deck surface. It would also allow the applicants to keep their large tree.
6. The variance would not be materially detrimental to the purpose of this ordinance or to other property in the same area and will also not adversely affect the neighborhood because the deck will be in a private location on the lot where without the variance the deck would be 30' from Central Ave. N. which would provide for little privacy and would also put a deck in a location on the property where one would not normally be found in the immediate vicinity.

7. The granting of the variances for the deck setbacks would be reasonable and would provide the applicants reasonable use of their property.

And with the following condition:

1. Unless the variance is used within one (1) year after being issued, it shall become null and void.

Motion carried: Ayes 3 Nays 0

#### **4. Request for Conditional Use Permit #C5-2006 – Shop/Garage in B-3 District Greg Saylor, applicant**

Planner Ondich presented the staff report. He stated that the concept plan for the site was reviewed at the April Planning Commission meeting and that since that time the property has been platted and is eligible for development. He stated that a shop/garage building is proposed on the site and further stated that the Planning Commission supported the use at the concept review meeting if the building were made to look like a typical business. He stated that a new 44' x 54' building is proposed but that it encroaches upon the buffer edge setback area. He stated that the garage portion of the old building would be kept on the site and updated. He stated that the building is located in the B-3 Highway Commercial Zoning District. He stated that the old existing building is a nonconforming structure and that a 14' by 26' part of the building would remain on site and be updated to look like the new building on the site. He noted that on May 20<sup>th</sup>, 2006 a provision of the eminent domain law went into effect which states that if a city requires removal of a nonconformity as a condition of approval it would be a taking if the city does not compensate the applicant for the removal of the building. He stated that staff would prefer the entire old building to be removed from the site, but the law prohibits that requirement. He stated that the lot does not meet the minimum lot size or width requirements but variances were granted during the platting. He added that the proposed building coverage on the site met the 40% maximum requirement. He stated that the new building meets all setbacks except for the wetland buffer setback. He stated that the use was considered a warehouse for parking requirements and that three spaces would be required. He added that spaces could be accounted for within the buildings on the site. He stated that staff supports putting two spaces out front along with a tree for landscaping to meet the ordinance requirement that 25% of the land be shaded. He stated that staff supports a variance from the requirement that 3% of the parking area be landscaped. He stated that the property is near the Zone AE flood plain but that the building is at a much higher elevation than the flood elevation. He noted that the DNR says the 40' buffer is adequate from the edge of the creek. He stated that public water and sewer is available to the building and will at minimum be stubbed in for a bathroom. He stated that the B-3 Highway Commercial District has no design criteria like the B-1 or B-2 Districts and cautioned against requiring design elements not listed in the ordinance. He added that it would be permissible to condition the appearance of the building to look like a typical business by adding windows to the front. He stated that the front door should be moved to the south end by the parking lot. He stated that the old garage building must be re-roofed and re-sided to match the new building in terms of color. He stated that staff does not support the 9' variance from the 10' setback to the buffer edge because a 36' deep building fits fine on the lot within all setbacks. He read though the findings to deny the setback variance as well as the findings to approve the

conditional use permit for the proposed shop/garage use. He stated that staff recommends approval of the conditional use permit.

The public hearing was opened at 6:43 PM.

With no public comments received the public hearing was closed at 6:44 PM.

Commissioner Gengel asked the applicant why they are asking for a variance for the building within the wetland buffer setback.

Greg Sayler, applicant, stated that the building that would fit on the site at 36' in depth would not allow two vehicles to be parked end to end in the building. He stated that he thought there was only a floodplain regulation to deal with on the site and not a wetland setback. He stated that a bump-out could be added to the northwest side of the building, but that it would not look attractive to vehicles driving by. He stated that it would also require the cars to swerve up to that point in the building to park in that area. He stated that the building would be more useful if it were squared off.

Commissioner Gengel stated that it seemed like Mr. Sayler was looking to change the wetland setback ordinance.

Mr. Sayler stated that other buildings in the same vicinity do not meet the front setback such as the oil change place on the east side of Highway 13.

Commissioner Gengel stated that in 1993 the land in question was inundated by flood waters.

Commissioner Remfert asked what the planned use for the old portion of the building on the site would be.

Commissioner Gengel asked if either building would be insulated.

Mr. Sayler stated that it would be for cold storage. He added that he would add at least three windows on the front of the building, 3 windows on the south side and some more windows on the rear of the building for light in the building. He stated that he does not like the brick look on the building and instead would put a different color wanes coating along the bottom up about 4'. He stated that he would move the door to the south or maybe have two doors on the front elevation to have one for the entrance to the workshop and one to the cold storage area.

Commissioner Gengel stated that he does not support the variance for aesthetic reasons so that the building can be square.

Commissioner Wilcox stated that new residential homes have to fit within the wetland setbacks and that she does not support the variance. She added that the Comprehensive Plan for the City discourages the continuation of blighted structures in the City.

Mr. Sayler stated that the old building on the property would not have any windows for security purposes and would match the new building in color only.

Commissioner Gilman stated that he would rather see the building move forward on the site than to grant the variance for the wetland setback. He added that there is no prevailing setback on that side of the road.

Commissioner Remfert asked if the building could be moved forward and in conjunction remove the old garage.

Mr. Saylor stated that moving it forward 9' would work just fine. He added that the structure would be more than just a storage building. He stated that he builds homes and that it is more than just a hobby because it is his personal business. He stated he wants it to look like other businesses in the area.

Commissioner Remfert stated that it was a good site and building for a small business.

Commissioner Gengel stated that the Delrose building has been an eyesore for a very long time and that not much could be done with the lot because of the creek and the right of way.

Commissioner Wilcox stated that she would like to see it look better than an oversized garage on the site.

Mr. Saylor stated that he wants a saleable property for the future.

Commissioner Remfert stated that he was in favor of moving the garage forward 9' and removing the old garage on the site completely.

Commissioner Gilman stated that he was in favor of moving it forward because there are no other buildings to line up with. He added that moving the garage forward is reasonable as a variance in order to avoid a variance with the wetland setback.

Commissioner Gengel stated that the request is reasonable.

It was moved by Remfert, seconded by Wilcox to recommend approval of Conditional Use Permit #C5-2006 with the following findings:

1. The use as a shop/garage will not create an excessive burden on existing parks, schools, streets and other public facilities which serve the area because there will be no employees on the site and the site will generate little traffic on a daily basis.
2. The use as a shop garage will be adequately screened to the north by a row of large evergreen trees from the adjacent residentially used land to the north so that the existing home will not be depreciated in value and there will be no deterrence to development of vacant land.
3. The use is reasonably related to the overall needs of the City and to existing land use in that the new building and use replaces a dilapidated structure which had not been actively used for any commercial purpose for the past few years and the new building is also one which will provide viable space for future tenants of the site.
4. The proposed shop/garage use is consistent with the purposes of the zoning ordinance and the purposes of the B-3 Highway Commercial Zoning District in that the shop/garage

is a use that is suited to a location oriented to the traveling public and a viable location for other for future users of the new building.

5. The proposed shop/garage use is not in conflict with the comprehensive plan of the City because the Comprehensive Plan designates this property as being located within the B-3 Highway Commercial Zoning District.
6. The proposed shop/garage use will not cause traffic hazard or congestion because it will mainly be used for equipment storage and some minor shop related activities inside the building.
7. Adequate utilities such as water and sewer have been provided at the site and the existing curb cut to the property from Highway 21/13 is more than adequate for the proposed and future uses.

And with the following conditions:

1. The conditional use permit is issued for a period of one year, and shall become null and void without further action from the Planning Commission unless used within one year of the date granting the permit.
2. The Conditional Use Permit is issued in accordance with the site plan dated 6/15/06 on file with the New Prague Planning Department, noting the building size of 44' x 54' and noting that the building will be 9' closer to the front property line.
3. The applicant, Greg Saylor, must comply with all recommendations of the City Engineer and Public Works Director.
4. There shall be no outside storage or garbage on the 4<sup>th</sup> Ave. SW (Highway 21/13) side of the building.
5. The three required parking stalls shall be striped with white or yellow paint lines not less than 4" wide providing for parking spaces at a size of 9' x 20' on a concrete or bituminous paved surface with a perimeter curb located outside of any drainage and utility easement while noting that one or more of these spaces will be provided for within a building.
6. The front door to the new building must be adjacent to the parking area on the south side of the front (east facing) elevation so that it is visible from the road right of way.
7. A minimum of 3 windows shall be installed on the front of the building to give the building an appearance of a "typical business".
8. One deciduous tree must be planted adjacent to the parking spaces outside of any drainage and utility easement to meet the requirement of Zoning Ordinance Section 717.7 that 25% of the parking lot shall be shaded at full tree maturity.
9. All signs must conform to Section 718 of the Zoning Ordinance.
10. All lighting must conform to Section 704 of the Zoning Ordinance.

And making the following findings to approve a variance for the 9' encroachment into the required 40' front setback:

1. Exceptional or extraordinary circumstances apply to the property because of its unusually small lot size and the location of the creek, and for these reasons the applicant is not able to fully utilize the typical building area on the lot.
2. The special conditions and circumstances do not result from the actions of the applicant because the applicant did not create the small lot size or locate the creek adjacent to the lot.

3. The variance would not be materially detrimental to the purpose of the Zoning Ordinance because many existing structures within the B3 zoning district encroach upon the front setback requirement, so there is not a prevailing setback with adjacent buildings which should be maintained for aesthetic purposes. Furthermore, the building will be over 80' from the edge of Highway 13/21 even with the 9' variance into the required 40' front yard setback.

And noting the following variance:

1. A variance is being granted from the requirement that 3% of the gross parking area lying more than 20' from the street right of way shall be improved and maintained with landscaping in accordance with Section 717 (2)(A)(3) because parking lot on the site is only for two parking spaces and the landscaped area would not be reasonable to require in such a small space.

With the Planning Commission accepting the applicant's proposal to entirely remove the old building on the site.

Motion carried: Ayes 4 Nays 0

#### **5. Request to Reopen Conditional Use Permit #C8-2004 – Bldg Addition / Amend Site Plan Extreme Investors of New Prague, applicant**

Planner Christianson presented the staff report. She provided background information regarding the initial CUP approval for the restaurant in 2004. She stated that the applicants are proposing a 21' x 36'4" addition and a 14' x 20' addition onto the south side of the building to enlarge the bar area and allow for the addition of two pool tables and darts as well as freezer space and enclosure of the garbage and recycling area. She stated that 63 spaces are required for the restaurant and that the applicant indicated that seating capacity will not change with the addition. She reviewed the design regulations and noted that the building addition will match the existing building and that the south façade could be improved by adding an additional window and awning similar to what exists today. She presented the proposed building elevations and the overall site. She stated that staff recommends approval of the conditional use permit amendment with the findings and conditions listed in the staff report.

The public hearing was opened at 7:25 PM.

Vern Oraskovich, 713 1<sup>st</sup> Street SE, stated that he lives at the east end of the 4 unit townhouse adjacent to the strip mall. He stated that he's been at public hearings for the strip mall and restaurant before and that the changes in the past have been favorable. He stated that he is in attendance to be informed because he had heard rumors that live music would be taking place in the restaurant which they are against. He stated that when the area was first proposed for development they were going to have a Champs across the street from them but that since Marv Deutsch took over the project he has come to personally discuss the development with them which moved the restaurant to the east end of the site. He stated that the restaurant was initially proposed as fine dining and they are now expanding the bar area and not expanding the fine dining portion. He stated he wants to know if live music will take place in the bar and is concerned about setting precedence. He stated that conditional use permits and variances can

affect the future of the entire strip mall. He stated that they are residents that live nearby because they like the location and patronize the establishments and that they just want the facts on the proposal. He stated that he would like clarification on whether it's an expansion of the bar or the restaurant. He stated that the neighborhood has changed already because of the traffic. He stated that he wants the businesses to be successful at the development but is worried most about noise and disruption.

Planner Christianson stated that the noise ordinance would apply to the live music at the restaurant, but that it is based on decibel level which is hard to measure.

Commissioner Gengel encouraged the council to look into limiting live music at the restaurant.

Mr. Oraskovich stated that it was just a rumor he heard that they would have live music there from Joel Wollin who had heard it from a bar tender at the restaurant.

Jeff Weiers - part owner, and Bob Rataj - manager, stated that the restaurant business is very competitive and they need to attract more business. They stated that the establishment is not a downtown watering hole and that it is still a family establishment. They stated that the addition is needed to bring in more patrons so that more people come to eat food in the restaurant. They stated that Charlie Hartman attended the last meeting. They stated that there would be no karaoke live music and that if they did have live music it would only be for special events such as Dozinky Days. They reiterated that it would not be a regular event. They stated that they would talk to the neighbors about live music times before the events. They stated that it would possibly take place one or two times a year.

Gordon Carlson, 717 1<sup>st</sup> Street SE, asked if there are plans for a new patio outside now that the old patio is being enclosed.

Mr. Rataj indicated that they have discussed adding a deck to the east side of the building by the pond.

Mr. Carlson stated that the restaurant was a family establishment and bar when built. He asked if the proposal would increase the noise factor at the restaurant. He stated that noise has doubled in the area since the strip mall was constructed. He stated that trucks have been using better routes for delivery. He stated that live music is his concern and stated that he thought they should have to get permits for live music on special occasions.

Commissioner Gengel asked the audience if garbage is still an issue in the area from the commercial area.

Mr. Carlson stated that it has been a lot better than it was before. He added that he would like to continue to see a decrease in the truck traffic by their home.

Cynthia Oraskovich, 713 1<sup>st</sup> Street SE, stated that she knew why the truck traffic routes had changed. She stated that the street work by the Golf Course and Ballroom had forced the trucks to take a different route to the strip mall and restaurant area.



Mr. Rataj stated that he received the letter from the City regarding truck routes and informed all of his truck drivers to go east on 1<sup>st</sup> Street SE to 10<sup>th</sup> Ave. SE.

The public hearing was closed at 7:44 PM.

Commissioner Gengel stated that he thought the request was pretty narrow and that the business just needs to adapt in order to survive. He stated that it was reasonable to add a fridge and pool tables.

Commissioner Wilcox stated that this was not a variance request and that it was an amendment to a conditional use permit. She stated that it was a viable request and that the sales of food and alcohol are monitored to fit within the state guidelines for the liquor license they have. She stated that pool and dart leagues could be an issue but that she did not have a problem with the request.

Commissioner Gilman stated that he is not buying into the statement that they will not be increasing the seating capacity with the addition of the pool tables because those people need a place to sit. He stated that parking is already congested there and that pool tables could be replaced by tables very easily.

Mr. Rataj stated that 15 people are allowed on the patio currently with the City's permission and that now it would just be enclosed and put inside the building and enclosing the garbage area for a more attractive building overall.

Commissioner Gengel stated that he would not like to see any additional seats over what was initially approved.

Commissioner Gilman stated that they should not exceed the 159 seats.

It was moved by Remfert, seconded by Wilcox to recommend approval of the Amendment to Conditional Use Permit #C8-2004 for a building addition with the following findings:

- A. The proposed addition to the restaurant will not create an excessive burden on existing parks, schools, streets or other public facilities which serve or are proposed to serve the area, as the proposed expansion will only accommodate an area for pool tables, cooler space, and refuse area.
- B. The restaurant is adjacent to business uses on its east and west side, and business zoned land to the south. The proposed building addition will not be visible from the existing residential properties to the north. Therefore, the proposed building expansion will be sufficiently compatible with residential homes in the area.
- C. The proposed building addition and site will have a similar appearance to the existing restaurant building and site, the appearance of which has not had an adverse impact on adjacent residential property.
- D. The restaurant use has already been established on the site and no new uses, as defined by the Zoning Ordinance, will be established as a result of the proposed building expansion.
- E. The use is consistent with the zoning ordinance because restaurants are specifically listed as a conditional use within the B2 zoning district, and the proposed building expansion conforms to performance standards identified in the zoning ordinance.

- F. The use is not in conflict with the comprehensive plan because restaurants are specifically listed as a conditional use within the B2 district, the land use which the property is guided to in the Comprehensive Plan.
- G. The proposed building expansion will not create additional seats within the restaurant and for this reason staff finds that the proposed building addition will not create unreasonable traffic hazard or congestion.
- H. Adequate utilities have been or will be provided.

And with the following conditions:

1. The conditional use permit amendment is granted in accordance with the site plan and building elevations dated 5/23/06 on file with the New Prague Planning Department.
2. A window and awning must be added to the south facing building elevation.
3. The door proposed on the south side of the building could be relocated to the west side of the building if the building inspector determines it necessary to meet the building code.
4. The number of seats allowed at the restaurant shall remain at no more than 159. This has been determined based on the 63 parking spaces that have been identified for the restaurant, allowing 1 parking space for every 3 seats in the restaurant and 1 parking space for 10 possible employees on the largest shift.
5. The appearance of the south elevation must match the existing south building elevation in terms of windows and awnings, and that the proposed door shall be for exit only.

Motion carried: Ayes 4 Nays 0

Planner Christianson stated that according to the restaurant's financial statement, they have sales of 80% food and 20% alcohol.

## **6. Review / discuss Vision for B-3 Highway Commercial District**

Planner Christianson asked the Planning Commission for their vision of the B-3 Highway Commercial Zoning District. She asked if the 40' setback was necessary. She also asked for opinions on if the design standards should apply to this area because it is a semi-industrial/service type of area.

Commissioner Gilman stated that the 40' front setback is quite large considering the large right of way in that area.

Commissioner Wilcox stated that the B-3 District starts west of the railroad currently and that she would instead like to see it start south of the alley called Mill Street and to have the B-1 District run up to Highway 21/13 along Main Street by the Kamish Building.

Commissioner Gengel stated that this is the "all other" district.

Commissioner Gilman stated that he'd like to see the setback revised to make the district more viable.

Planner Christianson stated that she has heard from the Planning Commission that they could reduce the setback to 30' and that they don't want design regulations.

Commissioner Wilcox stated that she would like to see some kind of simple design regulations similar to staff's recommendations for the Saylor Building to add windows and a front door.

## **7. Miscellaneous**

**A.** Planner Christianson included a year to date summary of the building permits in the packet.

**B.** Planner Christianson stated that Doug Witt owns a building and business on Main Street and he is considering closing his Montgomery location to consolidate in New Prague but that the location in town needs more storage space. She stated that he asked about putting up a storage shed in the B-1 district of 10' x 12' in size, but that the zoning ordinance does not address accessory buildings.

Commissioner Remfert stated that the storage shed is not too large. He stated that in areas like this they would get beat up and tend to stay around for a long time.

Commissioner Gengel stated that Mr. Witt should talk to Randy Kubes about his building in close proximity for storage.

Commissioners Gilman, Wilcox and Remfert stated they did not support the shed in the B-1 District.

Commissioner Gengel stated that he would favor the shed in order to help a business stay in New Prague.

**C.** Planner Christianson stated that the City has received inquiries about the Rick Kratochvil lot on the corner of Highway 19/21 where cars and other items are always for sale. She stated that at some point a conditional use permit should be required for the outdoor sales there. She stated that the sales on the lot has been going on longer than she has worked for the City and predates the requirement for a conditional use permit for the sales so that it is probably grandfathered.

The Planning Commission stated that the sales have been going on for years.

Planner Christianson stated that staff will monitor the site for right of way violations and other problems.

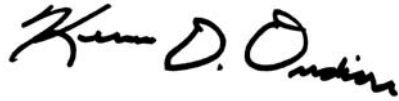
**D.** Commissioner Remfert asked about the traffic counters on Main Street and the results. Planner Christianson stated that she didn't know those traffic results but that she did receive traffic results for County Road 15 and County Road 37.

**E.** Commissioner Wilcox stated that she recently went on a walk and noticed that sidewalks are a big issue on the north side of town with missing segments and poor conditions. Planner Christianson stated that most of those streets would be targeting for reconstruction in the next five years and that the sidewalks could be addressed at that time.

## 8. Adjournment

A motion was made to adjourn the meeting by Commissioner Remfert. Commissioner Gengel ordered the meeting adjourned at 8:26 PM.

Respectfully submitted,

A handwritten signature in black ink that reads "Kenneth D. Ondich". The signature is written in a cursive style with a large, stylized "K" and "O".

Kenneth D. Ondich  
City Planner