

Meeting Minutes
New Prague Planning Commission
Wednesday, August 24, 2011

1. Call Meeting to Order

The meeting was called to order at 6:31 p.m. by Planning Commission Chair Bob Gilman with the following members present: Council Representative David Bruzek, John Roos and Jay Nuhring. Absent: Ryan Peltier.

City Staff Present: Ken Ondich – Planning Director

2. Approval of July 27, 2011 Regular Meeting Minutes

It was moved by Roos seconded by Nuhring to approve the July 27, 2011 regular meeting minutes as submitted. Motion carried (3-0, Bruzek arrived during Agenda Item 4A).

3. Old Business

None

4. New Business

**A. Conditional Use Permit C1-2011 – Automotive Repair (Major) at 500 4th Ave. SW
Dann Kirschman - applicant**

Planning Director Ondich presented the staff report. He stated that Dann Kirschman, owner of D.N.K. Auto Repair, Inc. has an agreement with Jim Heckenlaible, the owner of the former H&W Implement building at 500 4th Ave. SW to rent the south 3 garage stalls and a portion of the office space (about 4,000 sq. ft.) for an automobile repair (major) business pending approval of the conditional use permit application. He stated that Mr. Kirschman was previously granted CUP's in 2007 for two other locations (one of which was revoked) for automobile repair. He stated that Mr. Kirschman intends to be the only employee at the beginning and that operating hours expect to be Monday through Friday 8AM to 6PM and some Saturdays from 9AM to noon. He stated that the property is zoned B-3 Highway Commercial and that the proposed use as automobile repair (major) is specifically listed as a conditional use in the B-3 district. He stated that the site is accessed to TH13/21 from an existing curb cut which will not be changed in size and which is acceptable to MnDOT for the proposed use. He stated that the proposed use requires a minimum of 4 parking spaces, one ADA accessible, to be provided for on the site. He stated that the existing paved parking area can be striped appropriately. He stated that staff suggests a condition that cars waiting for repair or pick up after repair be parked in striped and paved parking stalls. He stated that no specific signage or lighting changes are proposed at this time and that the building appearance is not proposed to change in any way. He stated that the city provides municipal water and electric to the

building, but sanitary sewer is provided by a private septic system. He stated that the building official has not reviewed the building at this time but that a condition for approval will be that the building must meet all requirements of the state building code. He stated that staff recommends approval of the conditional use permit with the findings and conditions listed in the staff report.

The public hearing was opened at 6:43 PM.

No public comments were received from those in attendance.

Planning Director Ondich indicated that he had received one letter in the mail concerning the request from an anonymous person. He read the letter which stated:

“In Consideration of Permit #C1-2011. That Building is not hooked up to City Sewer. And the ditch on the S.W. corner of the building was always wet with sewer water, year around. Dann Kirschmann is another Tony Schatz. Good Luck!”

Commissioner Bruzek asked why the building was not hooked up to the city sanitary sewer system if it was within City Limits.

Planning Director Ondich stated that the building was not connected to sanitary sewer because up until the reconstruction of 5th Street SW there was not any city sanitary line anywhere near the property. He stated that with the reconstruction of 5th Street SW the line was extended closer to the property than ever before, but still not close enough to trigger a connection. He also noted that due to topography on the site, a private grinder/pump would be needed to pump the sewage from the site up to the public line if it were even extended to the site. He added that should the system fail, connection to the City sanitary sewer is the only option.

Commissioner Nuhring asked when the system was last inspected.

Planning Director Ondich stated that he did not know, but had a call into LeSueur County. He stated that staff had no reason to believe it was not functioning as the property owner would be aware of the failure.

Commissioner Roos asked if a condition should be added regarding the septic system.

Planning Director Ondich stated that the City Code adequately addresses the sewer from the property and that it would not need to be included as a condition for approval of the CUP.

The public hearing was closed at 6:47 PM.

Commissioner Bruzek stated that he believed Lonsdale and New Prague have had issues with the applicant. He stated that the previous conditional use permit was not followed. He suggested that a condition be added that would be worded similar to “The City shall have the right to enter the premises at 500 4th Ave. SW and the applicant’s home address, at the City’s discretion for the purpose of verifying the conditions stated in this CUP are being complied with.”

Planning Director Ondich stated that he had spoken with City Attorney Scott Riggs about the proposed condition and agreed that it was acceptable other than the provision about the applicant's home address which is not directly related to the CUP which is property specific.

Commissioner Bruzek stated that the applicant has operated a business out of his home in violation of City Ordinance.

Dann Kirschman, applicant, stated that Commissioner Bruzek was assuming what was taking place and that there is no proof of that. He stated that one person in the City has it against him. He stated that he is going back to court on the matter again this fall. He stated that he has a shop in prior lake that he has been working at. He stated that he is tired of going to court because of calls by Gary Kohoutek.

Commissioner Bruzek stated that he is simply going by what he has heard from other people.

Commissioner Nuhring asked about the history of the past CUP.

Planning Director Ondich noted that the City and Mr. Kirschman had been to court last July and again is scheduled to go to court this coming October. He reiterated that the request at hand was specific to the new property and to alleviate potential issues staff suggested that conditions be completed prior to the business operating this time around. He asked that the Planning Commission try to separate the two issues.

Commissioner Bruzek asked that condition #10 be added similar to what he had read before, but excluding mention of the applicant's home.

Commissioner Gilman asked why the property owner is not making the request.

Planning Director Ondich stated that Mr. Heckenlaible had signed the application request form permitting Mr. Kirschman to make the request for the use of the property. He stated that it was not unusual for requests to occur in this fashion.

Commissioner Gilman asked what would happen in 6 months if Mr. Kirschman is no longer using the property and if the CUP would expire.

Planning Director Ondich stated that the CUP runs with the land and as long as the conditions are complied with, the CUP would be valid indefinitely.

A motion was made by Bruzek, seconded by Roos to approve Conditional Use Permit #C1-2011 to allow an automobile repair (major) business to locate within the southerly three stall garage area and a portion of the existing office area of the existing principal building at 500 4th Avenue SW, with the following conditions:

1. The 4 minimum 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 paved surface, as required by Section 717 of the New Prague Zoning Ordinance prior to operation of the automobile repair business. One of the 4

- required spaces must be an ADA accessible space. The striping for the required spaces must be done before the business can begin operation.
2. All vehicles on the site either waiting repair or pickup after repair must be parked in paved and striped parking spaces.
 3. All signs must conform to Section 718 of the Zoning Ordinance which require a permit under a separate permit process.
 4. All lighting must conform to Section 704 of the Zoning Ordinance.
 5. All dumpsters, garbage containers or refuse bins provided on the site outside of a building shall be screened from view in accordance with Section 703 of the Zoning Ordinance.
 6. All waste oil and other hazardous materials generated at the site shall be disposed of in accordance with applicable state and federal laws, and the applicant shall obtain any permits required by the county, state or federal government.
 7. There shall be no exterior storage allowed on the site other than vehicles waiting for repair or pickup which are parked in paved and striped parking stalls.
 8. The repair of vehicles shall only take place within the garage stalls, and shall be prohibited outside of the building.
 9. The building must meet all requirements of the Minnesota State Building Code for the proposed automobile repair business.
 10. The City shall have the right to enter the premises at 500 4th Ave. SW at the City's discretion for the purpose of verifying the conditions stated in this CUP are being complied with.

And making the following findings to approve the conditional use permit:

- A. The proposed use of the property as an automobile repair (major) business will not create an excessive burden on existing parks, schools, streets and other public facilities which serve the area because the site will generate little traffic on a daily basis and have very few employees.
- B. The property is not directly adjacent to any residentially used or zoned land and therefore will not be deterrence to development of vacant land.
- C. The use is reasonably related to the overall needs of the City and to existing land use, as it will provide an automobile repair business for area residents within an appropriate commercial zoning district.
- D. The proposed automobile repair (major) business is consistent with the purposes of the Zoning Ordinance and the purposes of the B-3 Highway Commercial Zoning District as the proposed use is specially listed and guided to the B-3 district.
- E. The proposed automobile repair (major) 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.
- F. The proposed automobile repair (major) business will generate very little traffic and therefore will not cause traffic hazard or congestion.
- G. Adequate utilities such as water (provided by the City) and sewer (private septic system) 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 use.

Motion carried 4-0.

**B. Variance V1-2011 – Front Yard Setback for Addition to Scott Equipment
Lucas Properties – New Prague, LLC. - applicant**

Planning Director Ondich presented the staff report. He stated that Scott Equipment is looking to complete an office addition to their existing building at 605 4th Ave. NW in the I-1 Light Industrial Zoning District. He stated that during the recent realignment of the intersection of 6th Street/TH21/CR37 that additional right of way was obtained on the project and even more right of way was obtained during the recent platting of Lucas Addition, all the land being obtained at the NW corner of the lot. He stated that had the land not been acquired for right of way there would be no need for a variance. He stated that the proposed office addition would encroach into the required 40' front yard setback by 18' 2" because of the right of way that was obtained pushed the property line closer to the existing building at an angle. He stated that either a one story or two story building addition was being considered and that the building code only allows 40' of the new addition to be adjacent to the perimeter wall of the existing building – which causes the additional space to be pushed into the required front yard setback. He stated that the existing shop portion of Scott Equipment meets the 40' setback along TH21 and that the proposed addition would actually be no closer to TH21 than the existing building. He also noted that Al's Carwash was about 10' further back than any portion of Scott Equipment, but that the two buildings further south were actually closer to TH12 than the proposed office building addition. He stated that staff recommends approval of the variance with the findings contained in the staff report.

Commissioner Bruzek asked about parking that would be removed for the addition.

Planning Director Ondich indicated that maybe 6-7 spaces would be lost on the site and that there was room for additional parking on the south side of the site in the existing gravel parking lot.

Commissioner Nuhring asked if there were building elevations provided and how the roof to the addition would tie into the existing building.

Planning Director Ondich stated that building elevations were not provided as the applicants were not settled on a one story or two story design at this point.

Commissioner Gilman asked if easements had been obtained instead of right of way if the variance would have been needed.

Planning Director Ondich stated that easements would not have moved the property lines and therefore the variance would not have been needed.

A motion was made by Nuhring, seconded by Roos to approve the variance from the required 40' front yard setback along TH21 to 21' 10" to allow construction of an office building addition in the I-1 Light Industrial Zoning District for the following reasons:

- A. The variance is in harmony with the general purposes and intent of this Ordinance because the proposed office building addition will not be any closer to the

existing road than the shop portion of the existing building which does meet the required 40' front yard setback.

- B. The variance is consistent with the comprehensive plan in that the proposed office building is a permitted use in the I-1 Light Industrial Zoning District.
- C. The applicant proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance because while the front yard setback is not being met due to right of way obtained by MnDOT and Scott County in the NW corner of the property, the office building addition is a permitted use in the I-1 Light Industrial Zoning District.
- D. Unique circumstances apply to this property which do not generally apply to other properties in the vicinity because during the re-alignment of the intersection of TH21/CR37/6th Street NW MnDOT obtained right of way from the property now known as Lucas Addition for the installation of a future traffic signal and further right of way for a sight triangle was required by Scott County during the platting of Lucas Addition while the physical location of the roadway has not changed. Had the right of way not been obtained, the variance would not be needed.
- E. The variance does not alter the essential character of the neighborhood because the proposed office building addition will not be any closer to TH21 than the existing shop portion of the building and because other buildings to the south are actually closer to TH21 than the proposed addition.
- F. The variance requested is the minimum variance which would alleviate the practical difficulties because Minnesota State Building Code Chapter 1305 dictates that the building addition is limited to 40' perimeter along the existing building by their design which forces the addition to extend towards the west property line along TH21 and away from existing building wall perimeter area. Should an exception be found in the code to allow more than 40' to be used, a one story design will be used in order to achieve the same square footage for the addition.

5. Miscellaneous

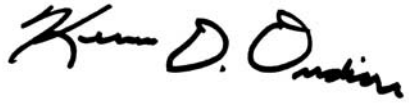
The following miscellaneous items were reviewed as information only:

- A. New Prague Business Park – Phase 2 – Preliminary Engineering Report – Planning Director Ondich presented two concept alternative drawings which were provided to City Staff to comment on to develop a final design for the completion of a feasibility for the future industrial park. He stated that the feasibility report would be presented to the EDA and City Council in August and provided to the Planning Commission as information in August as well.
- B. Business Updates – Planning Director Ondich gave business updates about the remodel and addition to Pizza Ranch, Pauly's Pub moving into the former Miller's Tap location and Edward Jones moving into the former Allstate site downtown.

6. Adjournment

A motion was made by Nuhring, seconded by Bruzek to adjourn the meeting at 7:52 PM.
Motion carried (4-0).

Respectfully submitted,

A handwritten signature in black ink that reads "Kenneth D. Ondich". The signature is written in a cursive style with a large initial 'K' and a distinct 'D'.

Kenneth D. Ondich
Planning Director