



PLANNING COMMISSION MEETING MINUTES MARCH 1, 2017

CALL TO ORDER:

Vice Chair called the meeting to order at 6:03 PM in the Council Chambers at 9611 SE 36th Street, Mercer Island, Washington.

ROLL CALL:

Chair Suzanne Skone, Vice-Chair Richard Weinman, Commissioners Daniel Hubbell, Lucia Pirzio-Biroli, Bryan Cairns, and Tiffin Goodman were present. City staff was represented by Ellie Hooman, Deputy City Clerk, Ali Spietz, City Clerk, Scott Greenberg, Development Services Group Director, and Evan Maxim, Planning Manager.

Kim Adams Pratt, outside Counsel, was present representing the Planning Commission.

Commissioner Jennifer Mechem was absent.

SPECIAL BUSINESS:

Agenda Item #1: APL17-001: Appeal of an Impervious Surface Deviation Land Use Decision – Open Record Public Hearing

Commissioner Skone opened the public hearing at 6:04 p.m.

Kim Adams Pratt explained the appearance of fairness doctrine and asked if any Commissioner had a personal or financial interest in the project. Kim Adams Pratt asked if any Commissioner had any known conflicts of interest in the project. The Commissioners all indicated that they have no personal or financial interests in the project and were not aware of any conflicts of interest.

Direct Presentation:

Nicole Gaudette provided an introduction and overview of the proposed impervious surface deviation (DEV16-029), which was denied by the City, and is the subject of the appeal. Nicole Gaudette reviewed the criteria for an impervious surface deviation, and summarized why the project did not meet the criteria for approval.

Grant Degginger, Counsel for Appellant, introduced Jeremy Lott and Jessica Abramson, the property owners. Jeremy Lott provided a brief personal history of his family. Jeremy Lott explained why they believe the project meets the criteria. Chris Haddad, Architect for Appellant, provided an overview of the site and the existing improvements and the benefits of the proposed home. Chris Haddad indicated that 9,377 square feet of impervious surface area will be removed from the site as a result of this proposed project.

Grant Degginger described why the Appellant believes the proposed project met the criteria for an impervious surface deviation.

Public Comment:

Dan Grausz – 3215 74th Ave SE - Requested the Planning Commission not issue the decision for APL17-001 until after the close of the hearing on APL16-004 and APL16-005.

Dan Thompson – 7265 N. Mercer Way – Expressed a concern about the validity of Administrative Interpretation 14-02, and about applicants vesting to the current city code.

Rebuttal:

Nicole Gaudette addressed the appellant's testimony. Nicole Gaudette indicated that a reduction in impervious surface is not a criteria for approval. The subject site is currently non-conforming due to the amount of impervious surface on the site and must come into conformance with the new application. The driveway that used to provide shared access will only provide access to the house east of the subject site. She explained that critical area mapping is approximate and that Lake Washington is not a critical area.

Kari Sand, City Attorney, provided closing arguments. Kari Sand recommended issuing a decision prior to hearing the next Appeal (APL17-001). She argued that the Administrative Interpretation 14-02 is outside the scope of the hearing, and that staff is responsible for review compliance with set criteria.

Grant Degginger, Counsel for Appellant, provided closing arguments. He argued that "Primary" does not appear in criteria for common access drive, that the proposed project does provide mitigation for geologically hazardous areas, that the project makes reasonable best efforts to comply with preferred practices, and that the lot has a unique shape and proportions under the code criteria.

The Planning Commission asked clarifying questions of all parties.

Chair Suzanne Skone closed the open public hearing at 7:23 p.m. The Planning Commission began deliberation on the appeal.

Vice Chair Richard Weinman made a motion that the Planning Commission remand the DEV16-029 back to the City staff and applicant for further consideration consistent with the Planning Commissions deliberations. Commissioner Pirzio-Biroli seconded the motion. The motion passed 6-0.

Agenda Item #2: APL16-004 & APL16-005: Appeal of two Impervious Surface Deviation Land Use Decision – Open Record Public Hearing

Commissioner Skone opened the public hearing at 8:00 p.m.

Mr. Dan Grausz advised that he is present serving as an assistant to the applicant. He is not serving tonight in the capacity of a City Councilmember. He also stated that he would recuse himself from the re-appointment decision of any of the standing Planning Commissioners to avoid the appearance of a conflict.

Mr. Grausz argued that the City and the Applicant should have to share the same amount of time allotted to Appellant as they were representing the same side in the appeal. Kim Adams Pratt explained the appearance of fairness doctrine and asked if any Commissioner had a personal or financial interest in the project, any known conflicts of interest in the project, or felt that the participation of Mr. Grausz would prevent them from being able to consider the matter in a fair and objective manner. Commissioner Cairns noted that he had served on the Council with Dan Grausz

and that it would not interfere with his ability to consider the appeal. The Commissioners all indicated that they have no interests or conflicts in the project and that Mr. Grausz's participation did not change their ability to consider the matter fairly and objectively.

City's legal representative Samuel Rodabough provided an argument that there is a long standing precedent for having the appellant, applicant, and City having their own separate time allotments as the City is presenting factual history as well as substantive arguments, and the other two parties are allotted the same amount of time to make their case.

Applicant's Attorney Vicki Orrico opposed reallocation of time allotments.

The Commission declined to reallocate the time allotments.

Direct Presentation:

Shanna Restall provided her qualifications for the record and advised she is serving in the capacity of a contract planner for the purposes of this hearing. She advised that the lots in question are rectangular in shape.

She provided a background of the applicable City Codes and the City's interpretation of why the applicant satisfies the criteria for a deviation from the maximum impervious surface.

Mr. Grausz advised that the appellant believes City made four (4) errors in its decision to grant the impervious surface deviation. He argued that MICC 19.15.020(G)(5) should have been applied as criteria for the City's decision. He argued that the project does not satisfy MICC 19.02.020(D)(3) because the shared access drive and shared utility corridor are actually just two separate driveways and utility access points that are running side by side, there is no shared access, so the deviation should not have been applied.

Vicki Orrico provided a background of Jaymarc Properties history of development in the community and argued that Jaymarc's application meet both the MICC 19.15.020(G) (5) and MICC 19.02.020(D) (3) criteria. She called attention to the Administrative Decision in Exhibit 1R, stating that this explains why the criteria were satisfied for the deviation. She stated that the Administrative Decision has existed for several years and if the City Council did not want it to be applied as written, the code should have been amended. She argued that the City must grant the deviation if the application meets the criteria for the deviation.

Public Comment:

Dick Winslow 3761 77th Ave SE, spoke in opposition of the application. He advised that he doesn't believe the project meets the intent of the law.

Ira Appelman, 9039 E. Shorewood Dr, spoke in opposition of the application. He listed a number of decisions and requested that they be admitted to the record. Attorney Rodabough objected to the decisions being admitted into the record. The Commission decided to admit all submitted exhibits and decide for themselves the relevance of the exhibit and weight to be given to the exhibit.

Leigh Sedgwick, 3238 72nd Pl SE, spoke in opposition of the application. He advised that he is a neighbor of the property and there is a history of this developer causing flooding issues to the neighborhood.

Tom Acker, a Mercer Island resident, spoke in opposition of the application. He stated the Planning Commission should be carrying out the will of the people and stay within the spirit of the law.

Carolyn Boatsman, 3210 74th Ave Se, spoke in opposition of the application. She stated that MICC 19.15.020(G) should be meet in its entirety, and this applicant had not done so.

Barbara Shuman, 3434 74th Ave, spoke in opposition of the application. She finds it troubling that these very large homes are being allowed to alter the character of the neighborhood. She stated that there should be some consideration to the impacts these developments will have on the neighborhood.

Sarah Waller, 7301 SE 32nd St, spoke in opposition of the application. She read a poem related to the development in her neighborhood.

Daniel Thompson, 7265 N. Mercer Way, submitted items to the record. He spoke in opposition of the application and commented on the 100% approval rate for deviation applications.

Bob Medved, 7238 SE 32nd St, requested that the letter Tom Acker will be sending in be added to the record. He requested the Commission refer to Exhibit 30 and Exhibit 28 and spoke against the validity of the 2014 Administrative Decision.

Rebuttal:

Mr. Rodabough provided closing arguments on behalf of the City. He explained that the 2014 Administrative Decision had been published pursuant to code, and that appeals were allowed, but none had been received.

Ms. Orrico provided closing arguments on behalf of the applicant. She pointed out that on the application itself, it states that the applicant only has to meet one criteria for City staff to approve a deviation.

Mr. Grausz provided closing arguments on behalf of the appellant. He argued that the applicant did not meet the intent of the code. He argued that the applicant states they saved trees to preserve the character of the neighborhood, but he explained that the City required the applicant to keep the 5 trees they are claiming are the benefit they provided to the community.

The Planning Commission asked clarifying questions regarding the combined driveway, the amount of deviation being requested per lot, the length of the driveway, and permissive wording in the code.

Chair Suzanne Skone closed the open public hearing at 10:09 p.m. After a brief break the Planning Commission reconvened and began deliberation on the appeal.

Commissioner Pirzio-Biroli moved to deny the appeals (APL16-004 & APL16-005), but modify the deviations (DEV16-024 and DEV16-027) to read that the maximum deviation will be 1.3% of lot coverage per lot. Commissioner Hubbell seconded the motion. The vote passed 6-0.

The Commission asked that written Findings, Conclusions, and a Decision be brought to them at the next meeting.

APPEARANCES:

There were no appearances.

APPROVAL OF MINUTES:

The Commission reviewed the minutes from the February 15, 2017 meeting. Commissioner Hubbell made a motion to adopt the minutes. The motion was seconded by Vice-Chair Weinman. The minutes were approved by a vote of 6-0 (Mechem absent).

OTHER BUSINESS:

Evan Maxim, Planning Manager, advised there were no further staff comments.

NEXT MEETING:

The next Planning Commission regular meeting is scheduled for March 15, 2017 at 6:00 p.m. at Mercer Island City Hall.

ADJOURNMENT: Chair Skone adjourned the meeting at 10:50 pm.