

BLUE ASH PLANNING COMMISSION

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ITEM 1. - MEETING CALLED TO ORDER

Chairman Schafer called the special meeting of the Blue Ash Planning Commission to order at 7:02 p.m. on Thursday, December 20, 2007.

MEMBERS PRESENT: Raymond Schafer, Beverley Gill, John Moores,
William Sikute and James Sumner

ALSO PRESENT: City Manager David Waltz, Assistant to City Manager
Kelly Osler, Administrative Clerk Traci Smith,
Council Member Lee Czerwonka and interested
citizens

ITEM 2. - OPENING CEREMONY

Pledge of Allegiance

ITEM 3. - APPROVAL OF THE MINUTES

Commission Members waived the reading of the minutes.

DECISION: Jim Sumner moved, Bill Sikute seconded, to approve the regular meeting minutes of December 6, 2007 as submitted. A voice vote was taken. All members present voted aye. Motion carried.

ITEM 4 – Blue Ash Road & Alpine Avenue, Zoning Map Amendment – Merrill, Price, Novick, Knuckles and Casada (tabled December 6, 2007)

Recommendation to City Council to amend the Zoning Map from R-3 to C-1 for certain land addressed 4615 Alpine Avenue, 9092 Blue Ash Road, 9084 Blue Ash Road, 9076 Blue Ash Road and 9110 Blue Ash Road

DECISION: Bev Gill moved, John Moores seconded, to remove item from table. A roll call vote was taken. All members present voted aye. Motion carried

PRESENT: Philip Novick, Applicant

David Waltz said the Planning Commission received additional information provided by Dan Johnson, who was not in attendance due to illness. Mr. Waltz reviewed the items that were brought up at last meeting.

The first item he spoke about was notification to adjacent property owners. He said that Dan Johnson double checked the Blue Ash Code and the Ohio statute and confirmed that there is no property notification requirement. At this stage, the role of the Planning Commission is to make a recommendation based upon the merit of the application and Council will consider more in-depth the public issue and notification. He said a notification could be sent; however, legal council suggests that if it is not a requirement then it would be best to avoid setting a precedent or possibly creating a perception of unequal treatment under the law. Mr. Waltz suggested following legal council advice.

The second item was the benefit of rezoning to C-1 versus C-2. Mr. Waltz said he and Dan Johnson reviewed and thought there was no discernable benefit over doing one or

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the other. He did say there was one slight advantage if there is concern regarding the impact to neighboring residents as the C-2 buffer is significantly less than C-1. He also said C-1 would seem to be more consistent with the C-1 zoned land to the south.

The third item was buffering and not knowing the specifics of the project. Mr. Waltz said that regardless of the project, the Code contains fairly significant buffer standards that the Board of Site Arrangement would require of any commercial development. In addition to the buffer setback, there are planting materials required in the buffer area. Also, legal council did make a general comment that, while the specifics to the project are unknown, it is preferable to make a decision that you either like or do not like the proposed zone based on an assumption that any of the permitted uses could happen.

The fourth item was whether there is a logical dividing line between districts on Alpine Avenue. Mr. Waltz said he and Dan Johnson visited the area and determined there was no clear cut line. However, there was a feeling that the way the applicant has proposed could work, but if the Commission was inclined to be a little more aggressive they could suggest also rezoning lots 4622 and 4633 which would "square-off" the Alpine Avenue dividing line. The lot at 4633 would be a buffer and not actually be a part of a future development. He said it would basically be buying a house for buffer purposes, but would line up nicely with the required buffer on the north side of Alpine and possibly allow some sort of entry way point into the neighborhood in the buffer area, which does not currently exist. Mr. Waltz said that was the thought process he and Dan Johnson had if the Commission was so inclined.

David Waltz said there were also questions regarding whether the entire area would be demolished for development of a commercial use or if it is possible that existing individual houses would be converted into commercial uses. Looking at the buffer requirements, Mr. Waltz and Dan Johnson felt that, with the exception of maybe the house on the north, none of the units would meet the required setbacks for a commercial use in the C-1 district. Typically, a non-conforming use does not have to meet required setbacks as long as the use or facility does not change. If this application is approved, the motion could include a condition making it clear that each property would have to be brought entirely up to compliance on any new project. As long as they continue to be used in a "grandfathered" status, they do not have to be updated. However, if turned from residential to commercial, the City would enforce full compliance.

At this point, Mr. Waltz said he would answer any additional questions. John Moores said he wanted to thank Dan Johnson for doing his homework for him. He said he is pretty well satisfied as his big hang up last time was the difference between C-1 and C-2; he is now leaning more toward C-1. He said he is ambivalent about including the two additional lots. In his opinion, he does not feel that they add anything.

Bev Gill said he was in agreement with Mr. Moores and asked if any additional conditions needed to be included in the motion regarding buffering or mounding if voting for C-1. Mr. Waltz said the information provided is the minimum amount of buffer and mounding required, so nothing needs to be added to the motion in regards to that. Mr. Waltz said the only thing that he would recommend adding is a point of clarification that even though the property is being rezoned the applicant needs to understand they will not be able to do what they want simply by converting those units because Staff is being directed to strongly adhere to the updated C-1 standards and not treat a converted structure as a "grandfathered" situation. Ray Schafer commented that by not adding anything on C-1 it gives the Board of Site Arrangement greater

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flexibility. Mr. Gill also asked about the northern lot where there is a 50-foot buffer and if a building were put there facing south, would the 50-foot buffer still be in effect because it would then be considered a side yard. David Waltz said the 50-foot requirement is not a side or a rear yard requirement; it is a buffer when a commercial zone is next to a residential zone.

Bill Sikute said he mentioned at the last meeting, but wanted to mention again, that the applicants need to understand that this change would instantly make their properties non-conforming, which permanently restricts their ability to build additions or make other residential improvements. David Waltz noted that the configuration of the land and its area would mean that a developer would not be able to move forward unless all of the neighbors were willing to sell. Mr. Sikute said he also appreciated the additional information from Mr. Johnson and felt it provided a lot of clarification.

Jim Sumner asked if the property to the north was county property. David Waltz said he believes it is state property as it is part of the on-ramp to the highway. Mr. Sumner commented that he had spoken with Mr. Waltz since the last meeting and said he still remains a little uncomfortable. He is worried about the non-conforming use and, should a project not materialize, feels the residential properties will deteriorate more rapidly since they would not be able to improve. He recognizes that at some point it might be appropriate, but does not feel that way at this time.

Ray Schafer said he has also struggled with this and that they are being asked to recommend when they do not have input from the other residents. With regard to adding the two lots, Mr. Schafer said he does not feel strongly either way. He thought it might provide more room to maneuver a development, but did not feel it was critical. Mr. Schafer emphasized that it needs to be clear to the applicants that if the zone is changed, they will have restrictions that they did not have before. Should the property be sold and the new owner wants to use for commercial properties, the property would have to be brought up to Code. He said this needs to be stated somewhere. Bill Sikute asked how a new buyer would be made aware of the non-conforming use. David Waltz said this is usually done through the lending industry or the realtor, but not by the City.

Bill Sikute asked for confirmation that adjacent property owners would be notified before the Council public hearing. David Waltz confirmed.

Ray Schafer said that since the individual property owners were coming forth requesting the change from residential to commercial, he did not see the harm in making this change so long as the current residents and future buyers are aware of the unique restrictions. Jim Sumner commented that additional residents may want to realize a better margin on their property and questioned where to draw the line. Ray Schafer said we have done this in the past, but have usually had a major street to separate the zones. He feels this situation is more unique considering all the different zones surrounding it and does not recall any similar request. Jim Sumner said a request had been made before by residents directly adjacent from the tool rental and he suspects the next most likely request would be to draw a line across Belleview. It was agreed that a clear, firm line needs to be drawn. Jim Sumner said this rezoning is probably appropriate and probably inevitable, but that it was not the right time for him and he respects the rest of the Commission being comfortable with this.

John Moores asked about including the two properties along Alpine Avenue and how those property owners would be inhibited from improving their properties. It was

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agreed that those properties could not be included at this time. David Waltz said the original request should either be approved or rejected. Assuming it is approved, in a separate comment or motion state that there might be some logic to consider including the two additional lots, then let Council carry that out with the notification process. Jim Sumner said he did not feel those should be considered since those property owners were not in attendance and were not aware that this was being considered. Mr. Waltz reiterated that the original request should be voted on and if they felt compelled to do more, it would simply be letting Council know that this had been considered and something they could add if it became a part of that process.

Jim Sumner suggested that Council should revisit the lines drawn on the Master Plan and see if there is a logical and consistent way to divide the commercial land along Blue Ash Road from the residential land on Alpine Avenue and Belleview Avenue.

Ray Schafer agreed that the whole area needs to be reviewed. He suggested adding a point to make sure the owners recognize the non-conforming nature that exists with a change in zoning to C-1 or for anyone purchasing that would have to adhere to C-1 guidelines. Mr. Schafer feels it is critical to make this known to Council. David Waltz confirmed that it should be brought to the attention of Council that there is some line clarification that they might want to consider. If Council says they would like to look at it, the role of the Planning Commission in our Charter is that Council will defer back to Planning Commission to help generate another recommendation to them and they will either follow or not. Jim Sumner pointed out that adding a footnote will help clarify where they may be willing to tolerate the dividing line. Not that they are saying to rezone that area today, but to be consistent with the Master Plan it might be appropriate to draw a clear line; however, not add a specific recommendation, just simply that Council should look at it and take under consideration.

Bev Gill asked David Waltz if Planning Commission has the authority to set the dividing line or who actually has the authority. David Waltz said the Comprehensive Plan would need to be amended. Planning Commission would have to make a recommendation to City Council to amend and Council would need to approve.

Bill Gill asked about residential homes that are not occupied and what situation does that put the landlord in with their renters. David Waltz said his understanding is that all the owners were involved in the petition. Jim Sumner suggested that it would be a private contract matter between the owner and tenant.

At this point, Ray Schafer opened the meeting to the public for questions or comments.

Larry Bergman of NAI Bergman in Blue Ash said he is a developer and they are always interested in commercial opportunities. He said he does not have any ties to these properties, but hearing what is being said he gets the feeling these homeowners just want to maximize their investment and one way to do this is to take a residence and make it commercial. He feels it makes better sense to go with a planned development so each use comes before the Commission. Being limited by C-1 buffers would not allow a development to be able to maximize parking ratios. He also does not want to see the residents get hurt by the ability to put apartments on this site and there may even be the possibility that the City might need this property for access to the highway. He heard the concern about putting out a plaque to turn into an insurance company and said economically this would not happen as the rent they would command would not be

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close to what they would get as a residence. He commented that these are just his observations and is not involved with any of these properties, just an interested party.

David Waltz said in the long run he feels it would be ideal if these properties and Johnny Knuckles were part of C-2, but would not recommend doing that now. If this were rezoned to C-1 then in a couple of years someone buys all of that area and wants to rezone to C-2, it would make sense to support at that time. C-1 is pretty standard and is handled mainly through administrative right where C-2 is more of an interactive process. For now, he stands by the initial recommendation of C-1 as it is a continuation of the existing C-1 and gives a little more protection. Ray Schafer agreed that C-1 is more attractive at this time.

Phil Novick addressed the Commission and said that Mr. Waltz resolved most of his concerns. However, he thought it would be better to go with C-2 initially since that would give more control of what could be put in those properties and feels that C-1 would restrict marketability. Ray Schafer said that at this time, it is the general feeling that it makes better sense to go with C-1.

Mr. Novick also asked about the non-conforming use and if nothing happens with these properties in a few years if these properties could be sold as residential with a legal non-conforming use in the C-1 district. Jim Sumner wanted to make sure everyone understands that if the zone is changed, it is no longer residential and will never be residential again. If this does not get developed, these properties will be labeled non-conforming indefinitely and most probably will never attract a residential buyer. Ray Schafer said that is why it is important to impress this on Council as well should this go forward. If changed, the residents are restricted and a commercial purchaser is also restricted to the requirements of C-1. David Waltz reiterated that property owners at 4615, 9092, 9084 and 9076 would most likely have to sell their property together and cooperate with each other. Property owner 9110 has enough land and could possibly sell by themselves. Jim Sumner pointed out that this is why it is important to come forward with a project and urges caution to the residents. Phil Novick said all five property owners were in attendance and agreement. David Waltz said whether or not they agree right now does not matter, but the residents need to be advised and need to make sure they understand the situation.

DECISION: Bill Sikute moved, John Moores seconded, to recommend approval to City Council for the request by the applicants to rezone the referenced properties from R-3 to C-1 and, in order to assure the appropriate development of these properties, the City Administration is encouraged to aggressively enforce all building codes and regulations related to C-1 zoning and, in addition, all owners of the included properties be made aware of non-conforming land use restrictions. A roll call vote was taken. Four members present voted aye and one member present voted nay. Motion carried.

Ray Schafer asked when this item would be before Council. David Waltz said at the January 10, 2008 meeting they will set a motion to schedule the public hearing and it will most likely go before Council at the February meeting.

Bill Sikute asked if it would be appropriate for the Chairman to make a statement to Council or provide a written communication with what was discussed during the meeting regarding the Master Plan and looking at the broader picture. David Waltz

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offered to put together a brief statement to Council on the Commission's behalf. Ray Schafer asked that it get routed to all the members for comment.

ITEM 5 – MISCELLANEOUS BUSINESS

There was no miscellaneous business.

ITEM 6 – ADJOURNMENT

DECISION: There being no further business to be discussed, John Moores moved, Bill Sikute seconded, to adjourn the meeting. A voice vote was taken. All members present voted aye. Motion carried. The meeting was adjourned at 8:07 p.m.

Raymond Schafer, Chairman

MINUTES RECORDED BY:

Traci Smith, Administrative Clerk