

REGULAR MEETING OF THE COMBINED PLAN COMMISSION/ZONING BOARD OF APPEALS

Gregory J. Bielawski Municipal Center, Carol Stream, DuPage County, Illinois

July 27, 2009

Chairman David Michaelson called the Regular Meeting of the Combined Plan Commission/ Zoning Board of Appeals to order on July 27, 2009 and directed the Recording Secretary to call the roll.

- Present: Commissioners David Hennessey, Frank Petella, Angelo Christopher, Dee Spink and David Michaelson
- Absent: Commissioners Timothy McNally and Ralph Smoot
- Also Present: Assistant Community Development Director Don Bastian and Wynne Progar, Recording Secretary

MINUTES:

Commissioner Spink moved and Commissioner Christopher made the second to approve the Minutes of the Meeting of June 8, 2008 as presented. The results of the roll call vote were:

- Ayes: 4 Commissioners Petella, Christopher, Spink and Michaelson
- Nays: 0
- Abstain: 1 Commissioner Hennessey
- Absent: 2 Commissioners McNally and Smoot

PUBLIC HEARING:

Commissioner Spink moved and Commissioner Petella made the second to open the Public Hearing. The motion passed by unanimous voice vote.

**09135: Village of Carol Stream/Matt York, Public Works – 1182 Evergreen Dr
Variation – Fence Code
(Continued from June 8, 2009)**

Matt York, Assistant Public Works Director, 124 Gerzevske Drive, Carol Stream, IL was sworn in as a witness in this matter. Mr. York presented a power point program showing the location of the Lift Station and its surroundings as well as other Lift Stations around the Village and explained how they function, what can go wrong if their service is interrupted and the deterrent factor of an eight foot fence is. He also explained that there will be additional landscaping around the south and east sides of the fence.

Mr. Bastian said that this memorandum serves as an addendum to the staff report and supporting documentation that was transmitted to the Plan Commission/Zoning Board of Appeals for the Public Works Department's Fence Code variation application in advance of the June 8, 2009, meeting. At that meeting, by a 6-0 vote, the Plan Commission continued the matter to allow the Public Works Department to consider the feasibility of other design options for securing the lift station property, and to prepare additional information for consideration by the Plan Commission.

Community Development Department staff's analysis of this request is unchanged from that provided in our report for the June 8 meeting. At this time, staff only wishes to reiterate that this request is consistent with other requests that the Plan Commission has approved over the past several years and also that we believe that there are public

safety and Village liability concerns that would most appropriately be addressed with an eight foot tall chain link fence.

Staff recommends approval of the Fence Code variation to allow an eight foot tall chain link fence at the Evergreen Drive lift station subject to the following conditions:

1. That landscape materials shall be added around the south and east sides of the fence once construction activities are complete. Installation of such landscape materials shall be complete by October 1, 2009; and
2. That a fence permit shall be obtained prior to the construction of the fence.

Commissioner Spink asked if anyone had looked into an alarm system for the shorter fence and Mr. York said that it is the feeling of the Public Works Department that the alarm systems for the pumps and electrical panels would be faster for response than an alarm on the fence which would be reactionary to many disturbances other than the safety of the inner area.

Commissioner Petella asked if the eight foot fence was enough of a deterrent and it was stated that the fence meets the standards of engineering for this application of a barrier.

Commissioner Hennessey asked about the barbed wire and was told that that request was removed from the application for a variance. He commented that the plans for landscaping does improve the esthetics and still leaves a clear zone for visual checking of the area. In response to the question on installing inserts or slats, Mr. York said that the inserts or slats would make the fence harder to climb, but it would greatly hinder the being able to see if anyone was trying or is into the area.

Chairman Michaelsen asked if any of the other Lift Stations have slats and was told that all the other stations are see through.

Commissioner Petella moved and Commissioner Hennessey made the second to approve the request for a variation to the fence Code to allow an eight foot chain link fence at the Evergreen Drive Lift Station in accordance with Staff recommendation. The results of the roll call vote were:

Ayes:	4	Commissioners Hennessey, Petella, Christopher & Michaelsen
Nays:	1	Commissioner Spink
Absent:	2	Commissioner McNally and Smoot

The Village Board reserves the right to review this decision and act within ten days of its passage.

**09189: Village of Carol Stream
Text Amendments – Zoning Code and Fence Code**

Mr. Don Bastian, Assistant Community Development Director, represented the Village of Carol Stream in this matter.

He noted that these are just housekeeping items and stated that;

A person shall not be permitted to conduct more than three garage sales a year, nor to participate in more than five multi-home garage sales per year without first being required to procure a second hand dealer's license.

The above language could be taken to mean that a residential property owner could hold an unlimited number of garage sales as long as they obtained a second hand dealer's license. In practice, the Village does not issue second hand dealer's licenses to residential property owners to allow for unlimited garage sales, as §10-7 specifies that a second hand dealer is a business use similar to a salvage store or salvage yard, and salvage stores or yards are not synonymous with garage sales. We note that salvage stores and salvage yards are not permitted uses in the residential districts. Also, no Village business license or permit is required for a property owner to hold a garage sale. As such, staff believes that the Village regulations pertaining to garage sales are out of place in the *Business Licensing and Regulation* chapter of the Village Code.

In evaluating whether garage sales should be considered home occupations, we note that typical garage sales would not comply with some of the home occupation performance standards, since home occupations must:

- Be conducted within the dwelling;
- Not involve the outdoor storage of materials or equipment;
- Not generate significantly more traffic volume than normally expected in a residential area; and
- Not generate safety hazards or unusual congestion resulting from customer parking.

Staff believes that the number of garage sales allowed annually should be limited due to the character of garage sale events and the potential negative impacts that unlimited garage sales could have on a neighborhood. From a regulatory standpoint, however, staff does not believe that garage sales should be considered home occupations, because home occupations are intended to be ongoing business operations, while garage sales are expected to be temporary events that are not permanent business operations. Further, staff does not believe that garage sales should require a license, as do home occupations.

As a point of information, the need for this proposed text amendment became apparent earlier this year after the Village was contacted about a resident who had several recurring garage sales. In working to resolve this matter, Village staff felt that the regulations addressing garage sales could be clearer, to avoid confusion as to the number of garage sales allowed annually, and also to avoid confusion as to the purpose of second hand dealer's licenses. Staff does not recommend any changes to the number of garage sales that can be held annually, but we do suggest that the regulations would be more appropriately contained in the Zoning Code, since garage sales involve the use of property and require some degree of regulation.

To clarify the Village's garage sale regulations, staff recommends that the following language be added to the performance standards section of the Home Occupation regulations, contained in §16-12-6(B) of the Zoning Code:

(13) For the purpose of this Section, garage sales are not considered a home occupation and are not required to comply with the performance standards contained herein, provided that a residential property may conduct a maximum of three individual garage sales per calendar year, and may participate in a maximum of five multi-home garage sales per calendar year. An individual or multi-home garage sale may not exceed three days in duration.

The Plan Commission is encouraged to ask questions and provide comments regarding the proposed text amendment. Once again, this amendment would not change the number of garage sales that could be held annually, but rather, it would simply insert the applicable regulations into the Zoning Code. Finally, staff also recommends that §10-7-2 be deleted in its entirety from the *Business Licensing and Regulation* chapter of the Village Code, and that the text, "nor garage sales, except as outlined in §10-7-2" also be deleted from §10-7-1. Plan Commission action is not necessary with respect to the recommended text deletions from §10-7-1 and §10-7-2, as the Village Board has the sole authority to amend Chapter 10 of the Village Code.

Commissioner Hennessey asked how garage sales are regulated now and Mr. Bastian replied that there are no permits required and regulation is complaint driven, which is how this matter came up. Commissioner Hennessey asked if there are hours of operation and could/should they be included in a text amendment. Mr. Bastian said that the Code does not set any hours since any other types of activity are allowed between 6 AM and 10PM.

Commissioner Petella said that he feels that if a resident is allowed 3 single garage sales and a participant in 5 multi-family family garage sales that it is a very generous allowance.

Proposed Text Amendment #2 – Allowable Yard Locations for Fences

The purpose of the second proposed text amendment is to achieve consistency between the Zoning Code and Fence Code with respect to the yard areas in which accessory structures, or obstructions, may be located.

Last fall, the Village Board adopted Ordinance 2008-10-49, which approved a Zoning Code text amendment stipulating that, "*obstructions not permitted in a particular **required yard** are also not permitted in the corresponding **actual yard**.*" To understand the effect of this text amendment, it is necessary to understand the difference between a required yard and an actual yard. A required yard is the minimum yard area mandated by the Zoning Code for a particular setback. For example, if the required front setback in a subdivision is 25 feet, then the required front yard is the yard area located between the front property line and 25 foot building setback line. In Carol Stream, homes are usually built very close to the front building setback line. In cases in which a home is set back further on the property than the minimum 25 foot front setback, the entire yard area between the front of the home and the front property line is considered the actual front yard. Exhibits A and B, attached, show the difference between the required front yard and the actual front yard.

To illustrate the need for the text amendment that was approved last fall, consider the case of a property that has a significant distance between the front of the home and the front building line, as shown on Exhibit B. In these cases, without the language stipulating that obstructions not permitted in a particular required yard are also not permitted in the corresponding actual yard, an accessory structure such as a shed or swimming pool could be built between the front of the home and the front building line. The placement of these sorts of structures in front of the home but behind the required front building line is certainly not the intent of the Zoning Code, and would not be consistent with the developed character of typical residential neighborhoods. As a point of information, prior to the Zoning Code text amendment last fall, staff typically took the position that it was the intent of the Code that obstructions not permitted in a required

yard were also not permitted in the corresponding actual yard. We recommended the text amendment, however, to strengthen the Code language on this matter and eliminate any possible confusion as to the allowable yard locations for accessory structures.

The Village Fence Code is contained in the Building Code (Chapter 6) and not the Zoning Code. As such, the text amendment approved last fall regarding required and actual yards does not apply to fences. §6-12-8(A) of the Fence Code currently reads as follows:

No structural fence shall be allowed on any part of a required front yard or side yard adjoining a street, except as provided in this article.

The same issue that was addressed with the Zoning Code text amendment approved last fall needs to be addressed in the Fence Code. Under a strict interpretation of the Fence Code, as an example, a five foot tall solid wooden fence could be built in the configuration shown with the orange X's on Exhibit C. Staff does not believe it is the intent of the Fence Code to allow fences to be built in this configuration (in front of the home), nor would it be consistent with the character of typical neighborhoods in Carol Stream. Staff believes that the intent is for structural fences not to extend further forward on a property than the front of the principal building. To resolve this inconsistency, staff believes that language similar to that which was added to the Zoning Code last fall needs to be added to the Fence Code, to clarify that fences that are not allowed on a required front or side yard are also not allowed on the corresponding actual yard. As such, staff recommends that the bold, underlined text be added to the existing text in §6-12-8(A) of the Fence Code:

*No structural fence shall be allowed on any part of a required **or actual** front yard or side yard adjoining a street, except as provided in this article.*

Staff recommends approval of the text amendment to §16-12-6(B) of the Zoning Code to insert the Village's garage sale regulations into the home occupation provisions into the Zoning Code, and staff also recommends approval of the text amendment to §6-12-8(A) of the Fence Code to clarify the allowable yard locations for fences and to achieve consistency between the Fence Code and Zoning Code.

There were no comments or questions from the Commission. Commissioner Petella moved and Commissioner Christopher made the second to recommend approval of the text amendment to § 16-12-6(B) of the Zoning Code to insert the Village's garage sale regulations into the home occupation provisions into the Zoning Code, and recommends approval of the text amendment to §6-12—8(A) of the Fence Code to clarify the allowable yard locations for fences and to achieve consistency between the Fence Code and Zoning Code. The results of the roll call vote were:

Ayes:	5	Commissioners Hennessey, Petella, Christopher, Spink & Michaelson
Nays:	0	
Absent:	2	Commissioners McNally and Smoot

This matter will be heard by the Village Board at their meeting on August 3, 2009.

Commissioner Spink moved and Commissioner Christopher made the second to close the Public Hearing. The results of the roll call vote were:

Ayes:	5	Commissioners Hennessey, Petella, Christopher, Spink & Michaelsen
Nays:	0	
Absent:	2	Commissioners McNally and Smoot

NEW BUSINESS:

Mr. Bastian welcomed Commissioner David Hennessey to the Commission and thanked him for his service.

Mr. Bastian said that there are petitions ready for the Plan Commission hearing on August 10th and suggested that the Commissioners may wish to cancel that meeting. Commissioner Spink moved and Commissioner Petella made the second to cancel the meeting of August 10, 2009 due to a lack of petitions to be heard. The results of the roll call vote were:

Ayes:	5	Commissioners Hennessey, Petella, Christopher, Spink & Michaelsen
Nays:	0	
Absent:	2	Commissioners McNally and Smoot

At 8:07 p.m. Commissioner Spink moved and Commissioner Petella made the second to adjourn. The motion passed by unanimous voice vote.

FOR THE COMBINED BOARD