

**REGULAR MEETING OF THE PLAN COMMISSION/ZONING BOARD OF APPEALS**  
**Gregory J. Bielawski Municipal Center, Carol Stream, DuPage County, Illinois**

JULY 9, 2007

***ALL MATTERS ON THE AGENDA MAY BE DISCUSSED, AMENDED AND ACTED UPON***

Chairman David Michaelsen called the Regular Meeting of the Combined Plan Commission/Zoning Board of Appeals to order at 7:30 p.m. and directed Recording Secretary Wynne Progar to call the roll.

Present: Chairman Michaelsen, Commissioners Manzullo, Christopher, Smoot, Spink, and Hundhausen  
 Absent: Commissioner Vora  
 Also Present: Village Planner John Svalenka and Recording Secretary Progar

**MINUTES:**

Commissioner Christopher moved and Commissioner Spink made the second to approve the Minutes of the Meeting of June 25, 2007 as presented. The results of the roll call vote were:

Ayes:	5	Commissioner Manzullo, Christopher, Spink, Hundhausen & Michaelsen
Nays:	0	
Abstain:	1	Commissioner Smoot
Absent:	1	Commissioner Vora

**PUBLIC HEARING:**

Commissioner Smoot moved and Commissioner Spink made the second to open the public hearing. The motion passed by unanimous voice vote.

**#06307: Parkview Development Partners II, LLC – Lot 2 at Southeast Corner of Gary Avenue and Lies Road  
 Special Use Permit – Drive-up Service Window  
 Final Planned Unit Development Plan Amendment  
 Variation – Zoning Code  
 CONTINUED FROM 5-14-07 MEETING**

Matthew Klein, Attorney for Parkview Development, and Michael Lindsey were sworn in as witnesses in this matter. Mr. Klein said that he reviewed the Staff's recommendation and noted that they have filed an additional revision to the plan today for which there is no determination as to whether the revised plan is now in substantial conformance with the previously approved final plan. He said that the 60-day continuance for that determination is probably appropriate. Mr. Klein said that other request is for a drive-thru request and at this point it is a mute request and he will give staff a letter to that effect. The request for a variance to allow on-site equipment for a dry cleaning business and since there has been a recent change in the Village Code, that special use is not now required. He said that their engineer will be submitting a Plat of Subdivision, which should be before this Board in August, as it will proceed independently from the development plans for both Parkview and CVS. Mr. Klein said that they were proceeding actively on the project, specifically in regard to the wetland and detention areas on the outlot on the property, the sidewalk designs and the signage determinations for the tenants.

Mr. Svalenka said that Matthew M. Klein, representing Parkview Development Partners II LLC, has submitted an application for the property located at the southeast corner of Gary Avenue and Lies Road for a Special Use Permit for Drive-up Window Service and an amended Final

PUD Plan for minor site changes to accommodate the drive-up. As a separate issue, the applicant is also requesting a Zoning Variation to allow a dry cleaner with processing done on site.

This matter was originally scheduled for Plan Commission review at the December 11, 2006, meeting and was continued to January 8, 2007, February 12, 2007, April 9, 2007, May 14, 2007, and July 9, 2007. The applicant has made several plan submittals, to which Village staff has responded with detailed commentary letters. Staff had been working with the applicant to revise the plans to accommodate the list of issues from the commentary letters. However, staff has not met with the applicant since April 11, 2007. The Plan Commission has continued the case two times since that meeting.

Based on past practice as recommended by the Village Attorney with respect to cases that have been continued several times without action by the applicant, staff recommends that the Plan Commission continue this matter one more time, for a period of no less than 60 days, which corresponds with the September 10, 2007, Plan Commission agenda. Therefore, staff recommends that this matter be continued to the September 10, 2007, Plan Commission agenda. The applicant will be notified that if his request is not ready for consideration by the Plan Commission at that time, the application will be considered "stale". The effect is that the Village will officially consider the application to no longer be active. In this way, the applicant will be required to file a new application with the Village, and staff will not publish a new notice for public hearing until such time as the plans are ready for consideration by the Plan Commission.

Staff recommends that this matter be continued one last time, to the September 10, 2007, agenda.

There were no comments or questions from those in attendance at the call for public hearing. Commissioner Hundhausen asked if the petitioners were in agreement with the September 10<sup>th</sup> date and Mr. Klein said that it was acceptable. Commissioner Hundhausen asked how the Final Subdivision Plat would be ready before that date and Mr. Svalenka explained that the subdivision of the property and the development of the properties of the subdivided land were two separate issues.

Commissioner Hundhausen moved and Commissioner Spink made the second to continue this matter to the meeting of September 10, 2007. The results of the roll call vote were:

Ayes:	6	Commissioners Manzzullo, Christopher, Smoot, Spink, Hundhausen and Michaelson
Nays:	0	
Absent:	1	Commissioner Vora

**#7166: Village of Carol Stream, 500 N. Gary Avenue  
Text Amendment - Zoning Code Article 15 - Regarding Variations**

Mr. Svalenka said that recently, staff has discussed the issue of Zoning Code variation requests for nonconforming buildings or structures whose nonconformities are the result of the failure of previous owners to follow then-applicable ordinances or regulations. Under the current decision-making criteria as found in §16-15-6, there is no recognition of the hardship imposed on current owners by the actions of a previous owner as being a valid reason for approval of a variation request, and so staff is unable to recommend approval of such requests. While staff might have been sympathetic with the plight of certain petitioners, the best that could be done was to make neither a positive or negative recommendation, but offer suggestions for conditions of approval in the event the PC/ZBA and Village Board desired to approve the request.

Staff proposes a solution whereby an additional decision-making standard is made available to the PC/ZBA for consideration during the variation request process. The proposed standard addresses those situations in which the plight of the property owner is due to the failure of a

previous owner to follow then-applicable ordinances or regulations, and where the benefit to health, safety or appearance to be derived from correcting the nonconformity would not justify the cost or difficulty of the correction. The evidence must show that the current owner had no role in the creation of the nonconformity. Such variation, if granted, would permit the legal nonconforming status of a building or structure subject to the requirements of §16-14-3, which deals with the correction of nonconformities.

The Village Attorney reviewed staff's proposed text and made suggestions, which were then incorporated into the final proposed text amendments. In addition, the Village Attorney suggested a minor, unrelated text amendment that would remove the difficulty of applying the "cannot yield a reasonable return" standard to single-family residences.

The recommended text amendments are contained in §16-15-6(D)(1)(a), §16-15-6(D)(1)(d) and §16-15-6(E)(8) of the *Zoning Code*. As always, current Code language that is proposed to remain is presented in standard text, while current text that is proposed for deletion is presented using ~~strikethrough~~. New text that is being recommended by staff is presented as underlined text. In this report, each proposed text amendment is preceded by an introduction that will discuss the justification for the text amendment. Staff encourages PC/ZBA discussion and questions during the review of the proposed text amendments.

#### **PROPOSED TEXT AMENDMENT 1 – THE "REASONABLE RETURN" STANDARD**

The following opinion is offered by the Village Attorney:

"Section 16-15-6(D)(1)(a) indicates that one of the standards which must be found is 'that the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located.' The phrase 'a reasonable return' is really not a standard that can easily be proven, especially with regard to a variation requested on an individual single-family residential lot. That standard makes sense with regard to commercial and industrial properties, and with regard to variations relating to multi-family buildings or even an entire single-family subdivision. Where, however, a property owner is merely seeking a one- or two-foot yard variation, how can that applicant prove an unreasonable economic return if the variation were to be denied? The phrase 'cannot yield a reasonable return' actually comes out of 65 ILCS 5/11-13-4, which governs the City of Chicago. Section 5/11-13-5, which relates to municipalities of less than 500,000 population, only requires that there must be 'practical difficulties or particular hardship in the way of carrying out the strict letter of any of those regulations...' If the ZBA itself is given the power to grant variations, it is required to exercise its authority with the conditions prescribed in Section 11-13-4. That is not the case in Carol Stream.

"The inclusion of the words 'a reasonable return' has not generally caused much difficulty in Carol Stream, but in other communities, applicants must twist themselves into a knot to make some illogical arguments relating to the economic implications of their request, when they are really only asking for a small yard side-yard variation that no one objects to."

The text amendment proposed by the Village Attorney to remove the necessity for proving the need to apply the "reasonable return" standard to single-family residential properties is as follows:

#### **§ 16-15-6 VARIATIONS**

(D) *Standards.*

(1) The Zoning Board of Appeals shall not recommend a variation unless it shall make findings based upon evidence presented to it in the following cases:

(a) That the property in question, other than a single-family residential lot, cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located.

**PROPOSED TEXT AMENDMENT 2 – STANDARDS FOR VARIATION**

As discussed above, the intent of this proposed text amendment is to provide an additional decision-making standard for consideration during the variation request process. The proposed standard addresses those situations in which the plight of the property owner is due to the failure of a previous owner to follow then-applicable ordinances or regulations.

The proposed text amendment to revise the Village’s standards with respect to variation requests is as follows:

**§ 16-15-6 VARIATIONS**

(D) *Standards.*

(1) The Zoning Board of Appeals shall not recommend a variation unless it shall make findings based upon evidence presented to it in the following cases:

...

(d) That the plight of the owner is due to the failure of a previous owner of the property in question to follow then-applicable ordinances or regulations, and where the benefit to health, safety or appearance to be derived from correcting the nonconformity would not justify the cost or difficulty of the correction. The evidence must show that the current owner had no role in the creation of the nonconformity. Such variation, if granted, will permit the legal nonconforming status of a building or structure subject to the requirements of §16-14-3.

**PROPOSED TEXT AMENDMENT 3 – TYPES OF VARIATIONS**

Along with proposed Text Amendment 2, this proposed text amendment addresses those situations in which the plight of the property owner is due to the failure of a previous owner to follow then-applicable ordinances or regulations. Proposed Text Amendment 3 identifies the continuation of such nonconforming buildings or structures as a type of variation that can be approved by the PC/ZBA.

The proposed text amendment to identify the continuation of a nonconforming building or structure as a type of variation is as follows:

**§ 16-15-6 VARIATIONS**

...

(E) *Types of variations.* The Zoning Board of Appeals shall hear and recommend and the Board of Trustees shall decide only such variations to the regulations of this Chapter as follows:

...

(7) To permit, as in the case of other variations, the full or partial continuation of a nonconforming building or structure whose nonconformity is the result of the failure of a previous owner of the property in question to follow then-applicable ordinances or regulations. Such continuation shall be in accordance with the requirements of §16-14-3.

(8) To permit any variation other than those allowable above, where such variation would better carry out the intention of the Zoning Code and where no harm would be caused by the granting of the variation.

There were no comments or questions from those in attendance at the call for public hearing. Commissioner Manzullo asked Mr. Svalenka to explain the difference between the first and the second amendments. Mr. Svalenka said that text amendment # 2 amends the standards that you review variations by, so it would allow the PC/ZBA to approve a variation request simply because there is a hardship based on the previous property owner. But then once that is done, there is now a non-conforming structure that a variation was granted to so the third text amendment allows the PC/ZBA to allow a non-conforming structure to continue.

Commissioner Manzullo commented that it is a progression type of thing, where you couldn't have one without the other. Mr. Svalenka said that this is made to include in the Code what has been done individually. Commissioner Manzullo asked if these are done on a case-by-case basis and was told that is true. Commissioner Manzullo then asked if a variance is granted in one case, is it grandfathered to other similar cases? Mr. Svalenka said that each is an isolated case and the Village Board approves an ordinance specific to that property, but he stated that it must be kept in mind that each decision does set precedent going forward. Commissioner Hundhausen asked if it will still be case by case even with the text amendment and Mr. Svalenka said that any type of location where an existing structure was found to not comply with Code the owner would still have to come forward for a variation or remove the structure. This would just allow staff to recommend approval and allow the PC/ZBA to recommend approval without having to have the applicant try to figure out how they might comply with other standards that don't really apply to them.

Commissioner Spink asked that if these amendments are adopted, if there was a case that was denied due to previous owner hardship, can they come back and asked to be grandfathered in rather than be denied. Mr. Svalenka said that if a petitioner was denied for that specific reason, that, simply because staff did not feel that it was not a hardship, that the situation was caused by the previous owner, and that was the only reason it was denied by the Plan Commission, they would have a good case to re-apply, but they would not grand-fathered. Based on past experience, usually the Plan Commission recommends denial, not for that specific reason only, it is because the structure actually does cause health and safety problems to the surrounding neighbors.

Commissioner Spink moved and Commissioner Hundhausen made the second to recommend approval of the proposed text amendment. The results of the roll call vote were:

Ayes:	6	Commissioners Manzullo, Christopher, Smoot, Spink, Hundhausen and Michaelson
Nays:	0	
Absent:	1	Commissioner Vora

This matter will be heard by the Village Board at their meeting on July 16, 2007.

Commissioner Smoot moved and Commissioner Hundhausen made the second to close the public hearing. The results of the roll call vote were:

Ayes:	6	Commissioners Manzzullo, Christopher, Smoot, Spink, Hundhausen and Michaelsen
Nays:	0	
Absent:	1	Commissioner Vora

Mr. Svalenka stated that there are no cases to be heard at the meeting of July 23<sup>rd</sup> and suggested that the meeting be cancelled.

**Commissioner Christopher moved and Commissioner Smoot made the second to cancel the meeting of July 23, 2007.** The results of the roll call vote were:

Ayes:	6	Commissioners Manzzullo, Christopher, Smoot, Spink, Hundhausen and Michaelsen
Nays:	0	
Absent:	1	Commissioner Vora

All the Commissioners congratulated Dave Michaelsen on his appointment as Chairman of the Commission. Chairman Michaelsen thanked everyone for their support and asked for their continued support by attending every meeting if at all possible. He stated that we all owe it to the residents to give them a fair hearing of their requests and attendance is the key issue to do that. It was determined that the selection of the Pro-Tem Chairman will be put on the agenda for the first meeting in August.

At 7:50 p.m. Commissioner Hundhausen moved and Commissioner Spink made the second to adjourn. The motion passed by unanimous voice vote.

FOR THE COMBINED BOARD

IV. Report of Officers:

V. Adjournment: