

**PLANNING COMMISSION
OF THE CITY OF CHESTERFIELD
AT CHESTERFIELD CITY HALL
SEPTEMBER 30, 2015**

The meeting was called to order at 7:05 p.m.

I. ROLL CALL

PRESENT

ABSENT

Ms. Wendy Geckeler
Ms. Merrell Hansen
Ms. Allison Harris
Ms. Laura Lueking
Ms. Debbie Midgley
Ms. Amy Nolan
Mr. Guy Tilman
Mr. Steven Wuennenberg
Chair Stanley Proctor

Councilmember Connie Fults, Council Liaison
Interim City Attorney Harry O'Rourke
Ms. Aimee Nassif, Planning & Development Services Director
Mr. Jonathan Raiche, Senior Planner
Ms. Mary Ann Madden, Recording Secretary

Chair Proctor acknowledged the attendance of Councilmember Connie Fults, Council Liaison; Councilmember Bridget Nations, Ward II; and Councilmember Elliot Grissom, Ward II.

II. PLEDGE OF ALLEGIANCE

III. SILENT PRAYER

IV. PUBLIC HEARINGS – None

V. APPROVAL OF MEETING SUMMARY

Commissioner Nolan made a motion to approve the Meeting Summary of the September 16, 2015 Planning Commission Meeting. The motion was seconded by Commissioner Wuennenberg and **passed** by a voice vote of 9 to 0.

VI. PUBLIC COMMENT

A. Highland on Conway (Delmar Gardens III) SDP

Speakers in Opposition:

1. Mr. Roger Berent, 7 Upper Conway Lane, Chesterfield, MO.

Mr. Berent asked for clarification as to when the lighting would be on for the office building and parking garage. He stated his preference for the utilization of motion detectors that would turn the lights off and on in the garage area after normal operating hours. He noted his concern about lights spilling onto Upper Conway Lane. He also stated that he is “not happy about the building and garage” as he feels they will dramatically affect the values of the homes in the August Hill on Conway subdivision. He then added that the residents are depending on the City to make sure all the regulations and agreements are upheld.

Discussion

Ms. Aimee Nassif, Planning and Development Services Director stated that Staff has reviewed the Light Plan against the City’s Lighting Ordinance and there is no light spill onto any residential properties. Lighting is permitted to be on during normal operating hours with security lighting allowed after operating hours; all lighting is downcast and fully-shielded as required by City Code.

Mr. Howard Oppenheimer, Delmar Gardens, 14805 North Outer Forty Road, Chesterfield MO – Mr. Oppenheimer confirmed that lights will be on during the hours of operation and shortly after that, the lighting will be reduced down to security lighting. He also noted the lighting is all down-lighting because the City requirements do not allow for any light flow beyond the property boundary.

2. Mr. Greg Wittenbrink, 31 Upper Conway Lane, Chesterfield, MO.

Mr. Wittenbrink stated that his property is adjacent to part of the northern boundary of the subject project. The front corner of his residence is 53.5 feet from the garage’s retaining wall and he expressed his concerns about this close proximity. He stated that an additional 20 feet to the existing 30-foot berm would “make a phenomenal difference” as this would allow preservation of many of the large 80-100 year-old monarch trees that are currently scheduled for removal.

Mr. Wittenbrink stated that Delmar Gardens has worked with the subdivision Trustees and has listened to the residents’ concerns and fears, but he feels an additional 20 feet is preferable. He also expressed concern that the “individual homeowner really has no advocate during this entire process” other than three minutes per resident during the Public Comment portion of the meeting, while the Developer has regular communication with City Staff.

3. Mr. George Shuert, 19 Upper Conway Lane, Chesterfield, MO.

Mr. Shuert stated that Ordinance 2651, which was approved in May 2011, includes an attachment that states *the developer shall adhere to the Landscape and Tree Preservation requirements of the City of Chesterfield code*. He noted that this would require 30% preservation of the existing tree canopy but the preserved tree canopy has been reduced significantly. He also stated that within the 30-foot setback area, there are approximately 18 large trees that are 80-100 years old. If the residents were given an additional 25 feet, he feels the trees could be saved.

Speakers in Favor:

1. Mr. Scott Starling, 14 Upper Conway Lane, Chesterfield, MO

Mr. Starling stated he is representing the Board of Trustees of August Hill on Conway. He noted that while there is not 100% agreement among the residents, there have been many meetings with the design team of Delmar Gardens. The Trustees have tried to make sure that all required rules, regulations, and laws are being met for this project and it appears that this project is in compliance with all applicable zoning regulations and ordinances. On that basis, the Trustees have written a letter to the City of Chesterfield dated September 24, 2015 which was submitted for the record. Mr. Starling read the letter which states in part that:

Delmar Gardens ... has demonstrated a willingness to provide a substantial landscape buffer at our shared boundary that exceeds the City of Chesterfield regulations and ordinances governing the development of this property. ... We have reviewed the revised site plan exhibits dated September 15, 2015 that were recently submitted to the City of Chesterfield and acknowledge that the buffer area refinements requested by us ... have been incorporated. Pending approval by all governing agencies and authorities, we now support the development of the proposed Highland on Conway (Delmar Gardens III) SDP office building project as submitted.

VII. SITE PLANS, BUILDING ELEVATIONS AND PLATS

A. Spirit Valley Business Park II (P.Z. 42-2007 Time Extension Request):

A request for a one (1) year extension of time to commence construction for a 27.4 acre tract of land zoned "PI" Planned Industrial District located south of Olive Street Road and west of Wardenburg Road (17W420024).

Commissioner Wuennenberg, representing the Site Plan Committee, made a motion recommending approval of a one-year extension of time to commence construction for Spirit Valley Business Park II. The motion was seconded by Commissioner Lueking and passed by a voice vote of 9 to 0.

- B. **Highland on Conway (Delmar Gardens III) SDP**: A Site Development Plan, Tree Stand Delineation, Tree Preservation Plan, Landscape Plan, Lighting Plan, and Architectural Elevations for a 5.292 acre tract of land zoned "PC" Planned Commercial District located on the north side of North Outer 40 Road, east of Chesterfield Parkway East.

Commissioner Wuennenberg, representing the Site Plan Committee, made a motion recommending approval of the Site Development Plan, Tree Stand Delineation, Tree Preservation Plan, Landscape Plan, Lighting Plan, and Architectural Elevations for **Highland on Conway (Delmar Gardens III)**. The motion was seconded by Commissioner Tilman.

Discussion

Tree Preservation

In response to earlier comments regarding tree preservation, Ms. Nassif pointed out that the tree preservation for this project meets City Code. She noted the Code states that 30% tree canopy coverage shall be provided on the site *unless special conditions and mitigation is approved*. Special conditions for this site were approved with the zoning entitlements in 2002. Based on this, Ms. Nassif administratively approved this site for special conditions again this year. The canopy coverage required to be preserved is 2.9%.

Commissioner Lueking referred to the April 11, 2011 Planning Commission meeting summary which states: *Currently, the petitioner is unaware of the exact number of trees or percentage of tree canopy that they will be able to preserve, but they are aware of the 30% requirement*. Ms. Nassif stated that during this meeting it was also noted that there would be tree preservation loss, but the numbers would not be known until the site development plan was submitted.

Commissioner Lueking stated that in 1998, 1999, 2001, 2002, 2003, and 2011 the removal of trees was discussed, along with how they would be preserved and mitigated, but it was never clear that the tree preservation could be reduced so much - from 30% to the current 2.9%.

Ms. Nassif then explained that when the Preliminary Plan was submitted in 2002 with the Tree Stand Delineation, there was considerable discussion about what could, and could not, be preserved. With the zoning entitlements approved in 2002, the applicant was granted the ability to build a 126,700 sq. ft. office building with a multi-story parking garage.

With the 2011 ordinance amendment, some structure setbacks were changed and *medical office* was added as a permitted use. The 2011 Preliminary Plan substantially conformed to the 2002 plan but showed a slightly different footprint design for the front building. This ordinance amendment also maintained that the applicant would be entitled to 126,700 sq. ft. of office plus a multi-story parking garage.

If the special conditions had not been administratively approved and the applicant was required to preserve 30% tree canopy, they would only be able to build approximately

80,000 square feet and half the size of the parking. Because of the location of the trees and the entitlements being requested, it was clear in 2002 that there would be significant tree loss in order to achieve this.

Discussion then followed about future zonings. It was explained that the City no longer includes square footage on the zoning as was done on the subject project. In addition, the Preliminary Plan is attached to the zoning legislation so there is a clear understanding of what the Site Plan must conform to. Commissioner Lueking stated she wants the Commission to be very aware of those instances where legislation indicates “per code” for landscaping and preservation, as it does not necessarily mean 30% will be preserved.

Hours of Operation and Lighting

Commissioner Lueking asked for clarification on the hours of operation and when the lights will be on and off.

Ms. Nassif replied that there are no restrictions on the hours of operation within the ordinance passed by City Council in 2002 or 2011. The Lighting Plan meets all City Code requirements and, as such, there is no light spill-over and no light trespassing on adjacent properties. The Lighting Code states that lighting shall be on during business hours only.

Since there are no restrictions on the hours of operation, Commissioner Lueking again asked for clarification. Mr. Oppenheimer of Delmar Gardens stated the current 10-year lease agreement with their tenants stipulates hours of operation for the building are from 7:00 a.m. to 6:00 p.m. and that lighting would be diminished shortly after 6:00 p.m. with security lighting on 24 hours per day.

Councilmember Fults noted that the hours of operation could change in the future since they are not specified in the ordinance. She went on to say that if the lighting is tied to the hours of operation, then specific hours need to be included in the ordinance as she does not want to give the residents a false impression that the hours are permanently fixed.

In order to address this concern, Ms. Nassif suggested that a note be added to the Site Plan indicating the hours of operation. Once the plan is recorded, it would be used for any zoning or code enforcement activity. She also noted that hours of operation are included on the Business License.

Councilmember Fults recalled that normal business hours were established in the past for office building use along Outer Forty and asked for clarification as to what those hours were. Ms. Nassif stated that all planned district ordinances now address hours of operation.

Mr. Harry O'Rourke, interim City Attorney, acknowledged Councilmember Fults' point of not wanting to mislead the residents regarding hours of operation. He noted that the Lighting Plan meets City Code and is tied to the business hours of 7:00 a.m. to 6:00 p.m. as noted above by Mr. Oppenheimer. If the site were to change ownership with different business hours, the City would have to review the code as it pertains to normal business hours. At this time, the Commission is not reviewing a zoning ordinance in which business hours could be specified.

Councilmember Fults asked if the Commission has a right to specify when the lights must be dimmed. Ms. Nassif replied that the Lighting Code states that, other than security lights, lighting cannot be on past the hours of operation. So if the Site Plan includes a note indicating hours of operation are from 7:00 a.m. to 6:00 p.m., then the lights would have to be turned off around 6:30 p.m. Mr. O'Rourke added that if in the future, a different use is requested with different hours, then the ordinance would be opened for review at that point.

Site Design

Commissioner Midgley asked if pushing the parking garage at least ten feet forward would still allow room for an attractive water feature and entrance driveway, along with providing ten feet extra behind the building.

Larry Milles of Gray Design Group, 9 Sunnen Drive, Maplewood, MO indicated that because of the tall height of the office building and the parking structure, the area between the two has to be a workable proportion in order to prevent a canyon effect, which is why the site was designed as proposed. Site design also had to take into consideration the required setbacks and Monarch Fire District requirements for a large driveway.

Mr. Berent then addressed the Commission again stating that there is 100 feet between the two structures with a water fountain in the middle. He would like an additional ten feet behind the structures to minimize the loss in property value to the residences, which he feels will occur without it.

During additional discussion, the following points were clarified:

- *Hours of operation* is defined as the time when the building is open to the public. It does not prevent cleaning crews or office employees from working past 6:00 p.m.
- The lighting on the site will be turned down after normal business hours. Normally, there are quite a few lights that turn off inside an office building after business hours. Lights within the parking garage would also be dimmed with security lighting allowed.
- The plan under consideration complies with City code.

Upon roll call, the vote to approve was as follows:

**Aye: Commissioner Harris, Commissioner Tilman,
Commissioner Wuennenberg, Chair Proctor**

**Nay: Commissioner Geckeler, Commissioner Hansen,
Commissioner Lueking, Commissioner Midgley,
Commissioner Nolan**

The motion failed by a vote of 4 to 5.

Mr. John King, Attorney for the Petitioner, 7701 Forsythe, Clayton, MO addressed the Commission stating that he does not believe the Commission has the discretion to turn this plan down as it meets all City requirements and regulations. If the Commission feels the plan does not meet all requirements, Mr. King asked that they be pointed out.

Chair Proctor stated that a vote has been taken and cannot be changed unless there is a vote to reconsider.

Commissioner Wuennenberg then made a motion to reconsider the vote.
Commissioner Tilman seconded the motion.

Discussion

Chair Proctor noted his agreement with the comments made by Mr. King that all requirements have been met and which is why he voted in favor of the project.

If the vote is retaken, Commissioner Hansen asked for clarification about amending the site plan to add hours of operation and how that would affect future requests for different hours of operation. Ms. Nassif explained that the hours of operation could be added as a note to the Site Plan. Any future requests for different operating hours would require an amended site development plan, which typically is an administrative approval per City code. However, if a request pertains to something specifically approved by the Commission, then it would go back to the Planning Commission for review and vote.

With respect to the hours of operation, Mr. King stated that the lights would go on no earlier than 6:30 a.m. for the 7:00 a.m. opening, and would go off by 8:00 p.m. They are in agreement with noting the hours on the Site Plan.

In response to Commissioner Geckeler's inquiry, Ms. Nassif stated that if Power of Review is called by the Mayor or a Ward II Councilmember, the project would be reviewed by the Planning and Public Works Committee and then by City Council.

Commissioner Lueking asked for clarification that a motion to reconsider must be made by one of the persons voting against the project. City Attorney O'Rourke confirmed this procedure. Chair Proctor then ruled the motion to reconsider as out of order and entertained a motion to reconsider being made by a person who voted against the project. No motion was forthcoming so the failed motion to approve stands at this time.

VIII. OLD BUSINESS - None

IX. NEW BUSINESS

A. Planning Commission Liaison Assignments to Architectural Review Board

Chair Proctor stated that the sign-up sheet for liaison assignments to the Architectural Review Board has not been completed and reminded the Commissioners that they may attend more than one meeting.

X. COMMITTEE REPORTS - None

XI. ADJOURNMENT

The meeting adjourned at 8:00 p.m.

Steve Wuennenberg, Secretary