

OATH OF OFFICE

Administrator Carswell administered the Oath of Office to commissioner Buoy. Buoy's term is from January 2011 to December 31, 2013.

Chair Buoy called the special meeting of the City of Rockford Planning and Zoning Commission to order on January 20, 2011 at 7:00 p.m. The meeting was held in the Council Chambers of City Hall, 6031 Main Street, Rockford, MN.

ROLL CALL

Roll call was taken. The following members were present: Buoy, Pederson, Werman and Waletich. The following members were absent: none. Also in attendance were Administrator Carswell and Planner Licht.

ELECTION OF OFFICERS FOR 2011

MOTION was made by Waletich seconded by Pederson to elect Deb Buoy Chair of the Planning and Zoning Commission for 2011.

MOTION CARRIED – VOTING IN FAVOR – Buoy, Peterson, Waletich, and Werman.

MOTION was made by Waletich, seconded by Buoy to elect Werman as Deputy Chair of the Planning and Zoning Commission for 2011.

MOTION CARRIED – VOTING IN FAVOR – BUOY, PETERSON, WALETICH and WERMAN.

PUBLIC HEARING

Staff has scheduled a public hearing for January 20, 2011 at 7:00 p.m. Notice was published in the South Crow River News as required. Chair Buoy opened the hearing at 7:03 p.m.

Planner Dan Licht reviewed recommended updates to provisions regarding variances, non-conforming uses/buildings and allowance of residential care facilities and day cares to be consistent with recent court decisions and changes in State Statutes. Language is also recommended regarding expiration of conditional use permits for non use. A modification to the Sign Ordinance is also being considered to address signs that the City may allow within the public right-of-way.

Variances. The Minnesota Supreme Court recently issued a decision that effectively requires cities to implement a very strict interpretation of hardship when considering variance applications. Under this decision, unless a property is prevented from a use allowed by the Zoning Ordinance because of too restrictive provisions a variance should not be approved. This interpretation is consistent with the intent of the variance procedure to provide relief to property owners to allow use of property where otherwise a taking of property rights would occur. Request for a variance to allow a reduced setback to accommodate a third stall garage onto an existing single family dwelling would not be allowed under the Supreme Court's decision as the property owner already has reasonable use of the property under the Zoning Ordinance and the additional garage space is simply a convenience. If the City encounters situations where relief from a provision of the Zoning Ordinance seems reasonable and would apply to multiple properties in similar situations, then the appropriate action is to either amend the provision to address the issue or provide the option of relief as some type of administrative permit, conditional use permit or interim use permit whereby criteria can be established for when such requests should be approved or conditions of approval imposed. The amendments to the Zoning Ordinance to respond to the Minnesota Supreme Court decisions include:

- Including a definition of "undue hardship" consistent with State Statutes.
- Revising the definition of variance to reference and reflect language in State Statutes.

- Revising the criteria upon which variance applications are to be reviewed to reduce the number of factors and make the language more consistent with that in State Statutes.

Non-Conforming Uses. There have been modifications to State Statutes regarding non-conforming uses that effect the City's ability to require their elimination:

- Amortization of a non-conforming use or building cannot be required to establish a deadline for termination of a non-conforming use or removal of a non-conforming building. Non-conforming uses and buildings that were legally established may essentially continue indefinitely in a like manner and condition under which they were originally approved.
- A non-conforming use that is discontinued may be reestablished within one year of that date.
- A non-conforming building that the City determines to have been destroyed may be reconstructed in the same manner provided that a building permit is requested within 180 days from the date it was damaged.
- Additional language expanding the provisions regarding alteration of non-conforming buildings and provisions dealing with non-conforming lots are also proposed.

Conditional Use Permits. Conditional use permits approved by the City Council run with the property indefinitely allowing a use to continue under the same conditions in the same matter. Unless language is included in the Zoning Ordinance to state that the conditional use permit expires after a period of time after a use is stopped, another use can be reestablished on the same property without further review. As such, City staff is recommending that language be included in the Zoning Ordinance that conditional use permits expired after a period of 18 months due to non use. A similar use could reoccupy a property but would be required to apply for a new conditional use permit. This process allows the City the opportunity to make sure that all applicable performance standards, including those that may have been updated, are complied with.

Election Signs. The State modified the Statute specifying the allowed period before and after an election during which the City may not regulate any non-commercial sign. The proposed language updates this section of the Sign Ordinance.

Signs in the Public Right-of-Way. The City is the owner of the public right-of-way and administers it in the public interest which gives it the right to determine what may or may not be located within its property the same as any other property owner. The City is also responsible for adopting and administering a Sign Ordinance to protect the public interest including that of the travelers upon public streets. As such, it is within the City's discretion to determine what signs may be allowed in the public right-of-way. These signs may include official traffic signs, other public signs or signs that the City Council finds serves the public's interest including business identification and/or directional signs. Language is outlined as part of the draft Zoning Ordinance amendment that would leave such decisions to the discretion of the City Council on a case-by-case basis.

Day Care/Residential Care Facilities. State Statute requires that the City make allowance for day care uses serving 14 or fewer persons in single family homes as a permitted use. State Statute also requires the City to make allowance for 24 hour residential care facilities within single family districts that serve 6 or fewer persons and within multiple family districts serving 16 or fewer people as a permitted uses. Language compliant with State Statutes is proposed as amendments to the R-1, R-2 and R-3 Districts.

There were no comments received in the mail or in person. Chair Buoy closed the public hearing at 7:08 p.m.

Administrator Carswell asked about variances for garages in the old part of the city that do not meet the ordinance. Planner Licht suggested that the city may allow them as a conditional use permit with reduced setbacks if needed. In order to approve a variance the state law states that there is no use for the property so you cannot give a variance for a setback for a garage because the owner already has a home on the property is shows they have full use of the land.

Waletich asked about variances for other things and Dan Licht stated that unless the parcel of land cannot be used then a variance shall not be granted. When there is a PUD in a neighborhood such as Hurst Woods then the setbacks are allowed some flexibility and a variance not needed.

There were some questions about non-conforming uses and how staff would know when the use ceases. Administrator Carswell noted that sewer and water would be turned off, or Dan Licht suggested that a staff may notice when a business or residence that is non conforming no longer exists by visual inspection or from neighbors. Licht suggested we make note of the date a non conforming use ceases in the address file and on the computer so when it has been over 12 months it can be documented further.

Administrator Carswell asked that the Conditional Use Permit become null and void after twelve months instead of 18 months so that it is the same as the non conforming use time line.

There was a brief discussion about signs in the right of way and it was noted that there are few around the city and staff noted that this is only for a city owned right of way not a county or state right of way.

Changing the residential zones to allow for day care and residential care facilities was discussed and Waletich asked if there were limits on the hours a day care can operate. Dan Licht stated that those types of uses are licensed by the state and county, not the city.

MOTION was made by Waletich, seconded by Werman to recommend council approve Ordinance #11-02 with changes in the time frame for CUP's to twelve months after the use ceases.

MOTION CARRIED – VOTING IN FAVOR – BUOY, PETERSON, WALETICH and WERMAN.

The planning commission recommendation will be submitted to the City Council for review on February 8, 2011 at 7:00 p.m.

***CONSENT AGENDA/SET AGENDA**

Motion was made by Buoy, seconded by Pederson to approve all items on the consent agenda.

MOTION CARRIED – VOTING IN FAVOR – BUOY, PETERSON, WALETICH and WERMAN.

***Approve Regular Council Minutes/September 30, 2010**

Motion was made by Buoy, seconded by Pederson to approve the minutes of the September 30, 2010 Regular Planning and Zoning Meeting.

MOTION CARRIED – VOTING IN FAVOR – BUOY, PETERSON, WALETICH and WERMAN.

***Approve Building Permits**

Motion was made by Buoy, seconded by Pederson to approve the building permits #10-141 to #10-143.

MOTION CARRIED – VOTING IN FAVOR – BUOY, PETERSON, WALETICH and WERMAN.

REVIEW ZONING OF MARSH RUN LOTS #29 & #30

The owner of Marsh Run Lots #29 and #30 is considering rezoning the lots from commercial to R2 or R3 and wanted input from Planning Commission regarding the possible change.

Planning Commission felt the rezoning would work, but would also like to see Marsh Run Lot #28 zoned.

The property owner is aware a public hearing is required to rezone the property.

REVIEW ORDINANCE #1001.05 Off Street Parking and Loading Requirements

Planning Commission is in the process of reviewing all zoning ordinances at the direction of City Council.

The Planning Commission and Planner Licht reviewed Ordinance #1001.05 and felt no changes were needed.

2011 PLANNING AND ZONING GOALS

The goals included: senior housing project, future of downtown and reviewing the zoning ordinances.

HRA UPDATE

The report included: chamber of commerce development/meetings, grocer, business development/assistance program, a grant for the Building Better Businesses Program, marketing available sites, assisted living facility and Manufacturers Week.

ADJOURNMENT

MOTION TO ADJOURN was made by Waletich, seconded by Buoy.

MOTION CARRIED – VOTING IN FAVOR – BUOY, PETERSON, WALETICH and WERMAN.

Chair Buoy adjourned the meeting at 7:53 p.m.

Submitted by, Nancy Carswell, Administrator