

Present: Chairperson Jensen; Members: Abboud, Borowski, Freedman, Peddie, Westerlund

Absent: Ostrowski, Ruprich, Stempien

Also Present: Village Manager, Chris Wilson
Planning Consultant, Brian Borden
Council Liaison, Jon Oen
Council Member, Rosanne Koss
Village Attorney, Tom Ryan

Chairperson Jensen called the meeting to order at 7:30 p.m. in the Village of Beverly Hills municipal building at 18500 W. Thirteen Mile Road.

APPROVE/AMEND AGENDA

Jensen proposed adding item 7A, “Review Planning & Zoning News Article regarding granting of variances”.

Motion by Borowski, second by Peddie, to approve the agenda as amended.

Motion passed (5 – 0).

PUBLIC COMMENTS

None

CONSIDER APPROVAL OF MINUTES OF A PLANNING BOARD MEETING HELD JUNE 22, 2011

Abboud proposed a correction on page 3 under “LSL Draft of an Updated Amendment...”, last sentence in the last paragraph. The sentence should read: “The Planning Board will review the draft ordinance and by-laws for discussion at *an upcoming meeting.*” since it is not on the agenda at this meeting.

Motion by Peddie, second by Abboud, that the minutes of a regular Planning Board meeting held on June 22, 2011 be approved as amended.

Motion passed (5 – 0).

Freedman entered the meeting at 7:38 p.m.

RE-ADDRESS TACO BELL (SUNDANCE) MONUMENT SIGN REQUEST FOR 31305 SOUTHFIELD ROAD

Jensen stated that the Planning Board has been asked to consider a new proposal for a monument sign at the Taco Bell building at 31305 Southfield Road. The Board did not approve the ground sign proposed by Taco Bell at its June 22, 2011 meeting.

Eric Rauch with Desine Engineers was present on behalf of Sundance Inc., franchisee for Taco Bell. The ground sign proposed is 48 sq. ft. in size. It has been lowered from the previous submittal by one foot, bringing the overall height of the sign to 9'-10". Rauch distributed a drawing including details of the proposed sign.

Jensen said that, while Planning Board members have expressed concern with several items related to the sign, the applicant has met the size requirements of the ordinance. The issues relate to the current sign ordinance language. Taco Bell has made a concession with respect to the submittal although not to the extent requested by the Board. Jensen believed that it was in the best interests of all parties to move this forward.

Board discussion on the sign proposal included the size of the sign, proximity to the street and sidewalk, and the front yard setback variance received by the applicant. The concern has been that, while the sign meets the language of the ordinance, it is oversized for the site. It was stated that signage for the site should have been reviewed in more detail prior to approval of the site plan for rebuilding Taco Bell. The Board relaxed ordinance requirements for parking lot trees and green space between parking and adjacent projects as part of the site plan review. The Planning Board had been seeking some "give and take" with Taco Bell representatives.

Borowski expressed the view that the Taco Bell building and the sign will be too close to the road. He believed that the applicant has disregarded safety issues.

Freedman questioned whether there was any liability on the part of the Village in the event of an accident determined to be caused by the location of the sign. Attorney Ryan remarked that members are entitled to their opinions, but it has not been determined that the proposed sign is dangerous. The Planning Board speaks through its decisions. Board members discussed details of the sign location with the applicant.

Members of the Planning Board concurred that the Board should be able to look at a project in its entirety. The site plan for the Taco Bell reconstruction should have been referred to the Planning Board prior to the Zoning Board of Appeals hearing, at which time the applicant was granted variances for parking spaces and the front yard setback.

Motion by Westerlund, second by Peddie, that the Planning Board approve the Taco Bell (Sundance) monument sign request for the building at 31305 Southfield Road showing a reduction in the base of the sign from 2 ft. to 1 foot.

Roll Call Vote:

Freedman	- yes
Jensen	- yes
Peddie	- yes
Westerlund	- yes
Abboud	- yes
Borowski	- no

Motion passed (5 – 1).

REVIEW REVISED LANDSCAPE PLAN FROM MARKET FRESH, 31201 SOUTHFIELD ROAD

Manager Wilson related that administration has had discussions with Market Fresh and had anticipated receiving a revised landscape plan for Planning Board review at this meeting. This agenda item will be deferred to the August Planning Board meeting.

Wilson outlined the Market Fresh proposal that will come before the Board. The landscape plan approved by the Village proposed a hedge row off the edge of the parking lot in the area along Southfield Road between the two main entrances. The landscape designer has indicated that a hedge row could be planted, but it would most likely die after about two years because of the pressure of the snow load. They propose installation of a block landscaping wall along Southfield Road that is approximately 38' long and 32" high with 36" high pillars. The plan calls for planting perennial flowers on both sides of the wall.

Wilson has informed the applicant that this change in the plan will require Planning Board approval. He will ask the applicant to stake out the wall for review by the Board.

CONTINUE DISCUSSION REGARDING THE MEDICAL MARIJUANA ACT AND THE POTENTIAL RAMIFICATIONS FOR BEVERLY HILLS

Freedman reported that there are 15 bills pending but no action by the State Legislature to clarify issues with the Michigan Medical Marijuana Act. She spoke with someone at the Oakland County Prosecutor's office who said that there will be no change in how the prosecutor is viewing enforcement of the Act until the Legislature makes some changes.

Wilson stated that the Village's medical marijuana moratorium will expire on July 30, 2011. Council took action at its July 19 meeting to extend the Village's moratorium for 90 days with the specific purpose of amending its Zoning Ordinance to target any use of medical marijuana that does not comport with federal or state law. Council would like the Planning Board to consider a proposed zoning ordinance amendment and to set a public hearing date.

Attorney Tom Ryan concurred that the municipalities are not going to receive help from the Legislature any time soon. The problem, in his opinion, is that the Legislature did not translate the ballot initiative of 2008 into appropriate language for the State of Michigan because there is no distribution network set up in the statute. The language talks about the medical marijuana registry, cards, and caregivers, but there are no standards set up for commercial farmers who want to grow marijuana to state specifications. There is no distribution system similar to what exists for packaged liquor.

Ryan related that there has been some clarity from a number of sources in the last six weeks. There was a Circuit Court Case in Midland County where a judge ruled that the ballot initiative was unconstitutional under the Federal Supremacy Clause. States have authority and power, but state law cannot conflict with federal regulations. Marijuana is a Schedule 1 narcotic and cannot be prescribed by a doctor; it is illegal. This case will go to the Michigan Court of Appeals for a decision on that issue. Ryan said that the Midland County case will have state-wide application once the Court of Appeals rules.

There have also been three Court of Appeals decisions relative to medical marijuana that have been accepted by the Michigan Supreme Court. Those decisions will be heard in the next nine months and decided in the next year. Attorney General William Schuette has issued an opinion relative to medical marijuana dispensaries saying that there is no distribution method for marijuana in the state of Michigan. Further, the Department of Justice has indicated that the possession of marijuana is still a federal offense and that it reserves the right to prosecute.

Ryan has discussed recent activity on the Medical Marijuana Act with Chris Wilson and Brian Borden. Without targeting a specific use, it was suggested that the Village consider an ordinance amendment stating that “Any use that would constitute a violation of Federal, State or local law or regulation shall be prohibited”. Ryan clarified that this ordinance section would not affect personal issues that could be protected under that statute in terms of people who are registered patients and have an identification card. Administration is asking the Planning Board to consider holding a public hearing on the one-sentence Zoning Ordinance Section 22.01.060, Conflicting Regulations.

Freedman had concerns regarding how the Village would proceed on the medical marijuana issue. There were Board members who wanted to make sure that the Village protected residents who are permitted to use medical marijuana within their homes if that is allowed under state statute.

Questions and comments from Board members were addressed by Ryan. Ryan emphasized that a person with a medical marijuana card and a caregiver can smoke in their home or go to the caregiver’s house. The Village will allow people to do what is legal according to the ballot issue. Places for congregating and smoking marijuana are not allowed in the statute, and dispensaries are an illegal use at this time.

Borden affirmed that the Village would have a basis on which to change its ordinance if a new court ruling or legislation were adopted that addressed medical marijuana issues.

The Planning Board set a public hearing date of August 24, 2011 at 7:30 p.m. on a proposed ordinance amendment to Chapter 22 of the Zoning Ordinance, 22.01.060 Conflicting Regulations.

REVIEW PLANNING & ZONING NEWS ARTICLE REGARDING VARIANCES

Jensen referred to an article he distributed to Board members regarding variance requests that come before the Zoning Board of Appeals and tests for unnecessary hardship. He would like to discuss this in greater depth at next month’s meeting after members review the material.

Jensen expressed the opinion that the Village is out of sync in terms of sending applicants who want to redevelop or build in the Village to the Zoning Board of Appeals before coming to the Planning Board for site plan review. He maintained that the ZBA grants the majority of the variances that it hears without giving consideration to the tests for determining unnecessary hardship standards.

Attorney Ryan instructed the Board that unnecessary hardship standards are the test for a use variance, i.e. when one use is not allowed and you seek a test for a new use. He estimated that

99% of the variance requests that come before the Village’s Zoning Board of Appeals are dimensional variances, which require a practical difficulty test. They are not the same standards. Ryan suggested that Board members review the National Boatland v. Farmington Hills case, which establishes the test for determining practical difficulty.

Freedman stated that the Planning Board would like a development request to come before the Planning Board first for review. If the request is turned down at the Planning Board level, the applicant would go before the Zoning Board of Appeals to request a variance. Ryan responded that the order of referring a development request is a matter to discuss between Village administration and the Board.

Board members discussed the order of the process for reviewing site plan submittals. A related issue had to do with the need to revise sections of the sign and parking ordinances with consideration to long range goals for developing an overlay district for the Southfield Road corridor. There was agreement that the Planning Board should proceed with refining those ordinances.

Borden said that he has started roughing out sign ordinance amendment language. The Board will be able to discuss business district regulations in the sign ordinance next month. He will provide ordinance revision information on ground sign sizes and heights along with some other language that needs changing.

PLANNING BOARD MEMBER COMMENTS

Abboud referred to his handout entitled “Dangerous Signs and Dangerous Sign Codes: Avoiding Five Common Errors in Sign Regulation”. It addresses errors in terms of drafting a sign ordinance. Another article distributed by Abboud was from www.conservationtools.org. He cautioned the Board to take everything into consideration when amending the sign ordinance.

Jensen thanked everyone for the constructive way in which they resolved the Taco Bell Sign issue.

ADMINISTRATION COMMENTS

None

PUBLIC COMMENTS

Council President Koss thanked the Planning Board for all the work they do for the Village.

Motion by Borowski, second by Westerlund, to adjourn the meeting at 9:08 p.m.

Motion passed (6 – 0).

David Jensen, Chair
Planning Board

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary