

**MINUTES OF MEETING**  
**SOUTH ST. PAUL PLANNING COMMISISON**  
**March 3, 2021**

MEETING CALLED TO ORDER BY CHAIR ROSS AT 7:00 P.M.

Present: Angela DesMarais (Departed meeting at 8:20 PM)  
Tim Felton  
Geoff Fournier  
Jason Frankot  
Ruth Krueger  
John Ross  
Matthew Thompson  
Michael Healy, City Planner  
Ryan Garcia, Economic Development Director  
Monika Mann, Community Development Support Specialist

Absent: None

- 1) APPROVAL OF AGENDA – Motion to approve as amended- Thompson-Felton (7-0).
- 2) APPROVAL OF MINUTES – February 3, 2021 – Motion to approve the minutes as presented – DesMarais/Thompson (7-0).

3) NEW BUSINESS

A) Rules of Order

Motion to adopt the Planning Commission Rules of Order as presented- Krueger/DesMarais (7-0).

B) Election of Officers

Motion to elect John Ross as Chair of the Planning Commission- (Frankot/Felton) (7-0).

Motion to elect Angela DesMarais as Vice Chair of the Planning Commission- (Thompson/Frankot) (7-0).

4) PUBLIC HEARINGS

A) Public Hearing for Conditional Use Permit Amendment and Setback Variance for Proposed Monument Sign at Saint John Vianney Church.

Mr. Healy shared the staff report. The applicant is Jerry Dezelar on behalf of the Church of Saint John Vianney. The church is located at 840 19<sup>th</sup> Avenue, which is located in the R-2 district. The church received a number of approvals in 2020 for a new monument sign, including the following: a Conditional Use Permit to allow a monument sign in the R-2 district; a Conditional Use Permit to allow a nonelectronic changeable copy signage on a monument sign in the R-2 district; and a size variance to allow the sign to be 32 square feet inside a 66 square foot sign structure. The applicant is now seeking a conditional use permit amendment for a dynamic display changeable copy sign and a sign setback variance.

Previously the City did not allow dynamic display changeable copy signs in residential districts. The city code was amended in 2020 to allow this type of sign for institutional uses (such as churches) located in a residential district with a Conditional Use Permit. The ordinance also amended the code so that the base of a monument sign does not count towards the allowable area of the sign. The ordinance was specifically changed to allow the type of project the applicant has proposed.

The applicant is requesting a setback variance to allow a monument sign to be 2 feet from the property line instead of 5 feet which is what was originally approved in December. The applicant is seeking to move the sign closer to the sidewalk to avoid a buried electric line located underneath the sign's original location. The buried electric line underneath the proposed location appears to pose a legitimate practical difficulty.

Staff recommends approval of the Conditional Use Permit and Variance subject to the conditions found in the Staff report.

The applicant, Jerry Dezelar, came forward to speak about the application. Mr. Dezelar shared that the church has been looking forward to the sign for some time.

Chair Ross opened the public hearing.

No correspondence had been received on the item, nor was anyone present to comment on the item.

Chair Ross closed the public hearing.

Commissioner Felton asked Mr. Healy to make sure that the reasoning for the variance is included in official record of the case. Mr. Healy assured Commissioner Felton that the variance criteria found in the staff report would be included in the resolution for the item and that the resolution would be recorded against the property if it were approved by the City Council.

Motion to recommend approval of the Conditional Use Permit Amendment and Variance to allow the proposed monument sign to have a dynamic display area and be installed with a 2-foot setback from 19<sup>th</sup> Avenue North, subject to the conditions laid out in the Staff report. – DesMarais/Thompson (7-0).

B) Public Hearing for a Fence Height Variance to Allow a 6-foot Privacy Fence in the Front Yard at 1035 Dwane Street.

Mr. Healy presented the staff report. The applicants are Jeff and Carla Mihm. They are seeking a fence height variance to allow a 6-foot fence in the front yard of their property at 1035 Dwane Street. The applicants lived on a ¾ acre lot until they split it in 2000. The applicant received a variance in 2000 to create a new flag lot. This type of lot is not typically allowed without a variance. The applicants then built a new home on the flag lot and left the existing 6-foot privacy fence in place.

The applicants wish to replace their existing wood fence on the east side of the property with a 6-foot opaque fence and build a new 6-foot opaque fence on the west side of the property. Both of these fence sections would be located in the front yard of the property, so these actions require a variance. The City Code does not allow privacy fences greater than 3.5 feet in a property's front yard. Interestingly, the neighbor could build a fence of the proposed height on their side of the property without a variance. Staff is recommending approval of the variance with conditions.

The applicant, Mr. Mihm, was present to speak on the item. The homeowner provided more context on the application and assured the Planning Commissioners that his neighbors were in support of the variance.

Chair Ross opened the public hearing.

No one was present to speak on the item nor had correspondence been received on the item.

Chair Ross closed the public hearing.

Chair Ross cautioned the commissioners that a variance runs with the property, not the owner, so the approval of the neighbors should not be weighed when making the decision.

Commissioner Frankot asked where the proposed fence across the driveway would start. Mr. Healy explained that the proposed fence across the driveway was intended to connect the sections of 6-foot fencing on each side of the property. Commissioner Frankot asked staff to clarify that it would not be near the sidewalk. Mr. Healy confirmed that the fence would be 30+ feet back from the sidewalk.

Motion to recommend approval of the fence height variance for 1035 Dwane Street. – Krueger/Thompson (7-0).

C) Public Hearing for a Conditional Use Permit Amendment for Royal Star Furniture at 245 Concord Exchange North

Mr. Healy presented the Staff report. The applicant is Adrian Peterson on behalf of Adrian R. Peterson Living Trust. He is represented by his attorney, Mark Thieroff. The applicant is requesting an amendment to Royal Star Furniture's 2008 Conditional Use Permit approval. The applicant is seeking to have Conditions "O" and "P" removed from their Conditional Use Permit. The conditions are related to the replatting of the subject property to allow for the future extension of Concord Exchange as a public street.

Concord Exchange was South St. Paul's original downtown main street. Many of the original buildings along Concord Exchange were demolished in the 1970s as part of an urban renewal program. The City originally encouraged suburban-style redevelopment of the area and as a result a suburban-style grocery store was built on the subject property in the 1980s. The proposed suburban-style redevelopment never took off which cause the City to revise their vision for what could be done in the area. The City put forward a vision for the area in the Concord/Grand Avenue Gateway Streetscape and Redevelopment Plan in 2003. This plan rezoned the entire corridor "Concord Gateway Mixed Use" in hopes of rebuilding a downtown main street area. The plans called for buildings to look a certain way, and to street redevelopment to create a new main street. The plan envisions the existing use at 245 Concord Exchange being phased out and extending Concord Exchange to the bowling alley.

Furniture stores are an allowed used in the CGMU district; however, Royal Star Furniture needed a conditional use permit to operate a use that takes up more than 10,000 square feet. Royal Star Furniture's building is 26,000 square feet. The district intentionally limited uses to 10,000 square feet to attempt to prevent monolithic buildings and create a more pedestrian-friendly atmosphere. While the building and the site did not align with the 2003 plan, the City wanted to make an effort to work with the business to repurpose an existing building.

The 2008 Conditional Use Permit allowed Royal Star Furniture to occupy the building and begin retail operations subject to a number of conditions. These conditions included a number of site upgrades to improve the aesthetics of the site such as new windows, doors, and awnings. New landscaping and screening for

mechanical equipment and dumpsters were also required. Finally, the applicant was also required to replat their property so Concord Exchange could be extended (Condition O). The applicant would not be able to receive a Certificate of Occupancy until the final plat was recorded with Dakota County (Condition P).

The applicant was issued a temporary certificate of occupancy which expired in July of 2009. At the time, the applicant requested a 6-month extension to continue negotiating with the City's Housing and Redevelopment Authority. The negotiations went on for a number of months and a platting agreement was eventually finalized in 2010. The agreement stated that the City would take care of vacating the easements and the cost of the replatting. The applicant declined to sign the platting agreement and so the property today is left with a number of easements and no replat has been completed.

In 2020, Economic Development Authority (EDA) staff engaged with the City's EDA about the potential to work with the applicant to further development goals in the area. An informal work session was held about whether or not it would make sense to "trade" the platting requirement for a parcel owned by Royal Star Furniture which is adjacent to the Beard Group's development. Staff was given permission to have a conversation with the applicant about the exchange of their parcel for the platting requirement in the 2009 CUP. The applicant made it clear that he was not interested in having that conversation. Instead, the applicant submitted a petition to have these conditions removed.

Staff recommends approval of the removal of Condition "P" but denial of the request to eliminate Condition "O."

Chair Ross asked Staff if there were plans for Concord Exchange to become a through street in the near future. Mr. Healy explained that the Grand Avenue/Concord Gateway plan was focused on making Concord Exchange a through street. The City was focused on making the through street happen through a replat; however, the applicant was not interested, and the item fell on the backburner. The City likely does still want some type of through-street in this area, especially as Concord Exchange continues to develop.

Mark Thieroff, the applicant's attorney, was present to speak on the application. Mr. Thieroff noted that the 2040 Comprehensive Plan calls for a new small area plan for Concord Exchange and referenced Staff's discussion about the replatting requirement from the EDA work session from 2020. Mr. Thieroff explained that the applicant was working with the Beard Group to give them a construction easement across part of their parcel to be used during construction.

Chair Ross clarified which area of Royal Star's property would be given the easement. Mr. Thieroff explained that it was the parcel west of Royal Star that is referred to as the "remnant parcel" in the staff report.

Chair Ross asked the applicant's attorney about the long delay in coming forward to have the conditions removed. Mr. Thieroff explained the application was a reaction to the EDA work session discussion about the property.

Chair Ross opened the public hearing.

Mr. Garcia came forward to comment on the item. Mr. Garcia provided clarification about the City's perspective and staff's outreach to the applicant.

Chair Ross asked if the city has ever used eminent domain and would that be used in this case. Mr. Garcia stated that the City has previously used eminent domain but would not use eminent domain in this scenario.

Chair Ross asked how the Comprehensive Plan views this area. Mr. Healy stated that the comprehensive plan does dictate this area as a location poised for a renewed small area plan. The City is focusing on North Concord in 2021 and will likely look at the Concord Exchange plan in the next few years.

Commissioner Frankot made a motion to recommend approval of only the removal of Condition “P” of the Conditional Use Permit amendment, which requires the applicant to record a final plat and prohibits a final certificate of occupancy being issued until that is completed. The motion failed due to the lack of a second.

Motion to recommend approval of the request to remove Condition “P” and denial of the request to remove Condition “O” per the rationale laid out in the staff report. - Felton/Frankot (6-0)

D) Public Hearing for a Proposed Swimming Pool Ordinance Amendment

Ms. Mann presented the staff report. The City is proposing an ordinance amendment which would revise the standards for swimming pools. In 2020, the City Council requested staff bring forward a review of the City’s swimming pool ordinance in response to the increased number of large temporary pools around town. Staff are taking the opportunity to propose other amendments to the City’s swimming pool ordinance, including city-specific safety standards given that the most recent edition of the building code no longer regulates swimming pools.

The City’s existing ordinance was written in 1980. The ordinance has three standards: all pools over 1,000 gallons require a building permit; swimming pools cannot be located under or above utility lines or within an easement, and swimming pools must employ fencing or barriers so children cannot gain uncontrolled access to the pool when it is not in use. This ordinance has a number of shortcomings which need to be addressed in the ordinance update.

After reviewing the standards for swimming pools in the surrounding communities, staff has proposed an ordinance which does the following: creates definitions for “swimming pools” and “temporary pools”; excludes temporary pools from needing a building permit; increases the gallon requirement that triggers the need for a building permit from 1,000 gallons to 5,000 gallons; defines the setback standards for pools over 24”; clarifies barrier requirements, and states standards for draining swimming pools.

Staff recommends approval of the proposed ordinance.

Chair Ross asked if there were maintenance standards in place for pools that are left outside and become a nuisance. Mr. Healy explained that the City has nuisance ordinance for situations such as this and that there is no need to regulate this through a zoning ordinance.

Commissioner Frankot asked if the ordinance provides language to prevent temporary pools from being left out in the winter and becoming a nuisance. Ms. Mann stated the ordinance includes a timeline for when temporary pools can be setup and if the city receives a complaint about a temporary pool being left up after that timeline, the issue would be dealt with via code enforcement.

Commissioner Felton suggested that the timeline for seasonal pools be extended through October.

Chair Ross opened the public hearing.

No one was present to speak on the item nor was anyone present to comment on the item.

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Chair Ross closed the public hearing.

Commissioner Felton made a motion to recommend approval of the proposed ordinance with the amendment that temporary pools be set up between May 1<sup>st</sup> and October 31<sup>st</sup>. Commissioner Krueger seconded the motion.

Commissioner Thompson suggested that May 1<sup>st</sup> is late in the season to start setting up a temporary pool. Chair Ross suggested April 15<sup>th</sup>.

Motion to recommend approval of the proposed ordinance with the amendment that temporary pools be set up from April 1<sup>st</sup> to October 31<sup>st</sup>. - Felton/Krueger (6-0).

5) OTHER BUSINESS

A) Planning Commission Annual Report

Chair Ross introduced the annual report.

Motion to recommend approval of the annual report and forward it to the City Council. - Krueger/Thompson (6-0)

B) North Concord Mixed Use District Consultant Selection Update

Mr. Healy shared that the City has selected Michael Lamb Consulting LLC as the preferred consultant for the Concord Gateway Mixed Use District Zoning Update Project and is recommending that the City Council approve a contract with that consultant group. Staff anticipates 2-3 joint work sessions with the City Council and the Planning Commission in the coming months. The tentative dates for the joint meetings are April 26<sup>th</sup> and May 24<sup>th</sup>, 2021. These items would be held during the City Council work session.

6) ADJOURNMENT

Motion to adjourn- Frankot/Felton (6-0).