



MEETING MINUTES

LAND USE COMMISSION

Wednesday, May 25, 2022

7:00 PM

Lorraine H. Morton Civic Center, 2100 Ridge Avenue, James C. Lytle City Council Chambers

Members Present: Myrna Arevalo, Violetta Cullen (remote), George Halik, John Hewko, Jeanne Lindwall, Kiril Mirintchev, Max Puchtel, Matt Rodgers, Kristine Westerberg

Members Absent: Brian Johnson

Staff Present: Alexandra Ruggie, Johanna Nyden, Melissa Klotz, Meagan Jones, Katie Ashbaugh

Presiding Member: Matt Rodgers

Call to Order

Chair Rodgers opened the meeting at 7:00pm. A roll call was then done and a quorum was determined to be present.

Approval of May 11, 2022 Meeting Minutes

Commissioner Westerberg and Commissioner Lindwall suggest edits to the draft minutes. Commissioner Westerberg then made a motion to approve the Land Use Commission meeting minutes from May 11, 2022 as amended. Seconded by Commissioner Puchtel. A voice vote was taken and the motion passed, 8-0, with one abstention.

Alexandra Ruggie addressed the public regarding communicating with Commissioners, stating it is inappropriate to send items relating to hearing cases directly to Commissioners and directing the public to send communications through City staff.

Old Business

A. Appeal | 1566 Oak Avenue | 22ZMJV-0031

Chris Dillow, appellant, appeals the decision of the Determination of Use issued by the Zoning Administrator on March 17, 2022, regarding operations of Connections for the Homeless at the Margarita Inn at 1566 Oak Avenue, which found the operations to be consistent with the Zoning Ordinance definition for Rooming House (Section 6-18-3) and also found existing Special Use Ord. 51-O-74, adopted in 1974, is no longer valid. The Land Use Commission is the determining body for this case in accordance with Section 6-3-9-8 of the Evanston Zoning Code and Ordinance 92-O-21.

Chair Rodgers explained that at the previous meeting a concurrent vote of 6 Commissioners was not achieved for this appeal and was continued to this meeting. He then verified that Commissioners Halik and Cullen read the meeting minutes or watched the meeting video.

Commissioner Cullen's and Commissioner Halik's votes were taken and were in favor of affirming the Zoning Administrator's decision on the determination of use. This brought the total vote to 6-3, thus denying the appeal of the Zoning Administrator's decision.

New Business

A. Major Adjustment to a Planned Development | 1571 Maple Avenue | 22PLND-0032

1571 Maple Avenue, LLC, applicant, submits for a major adjustment to the planned development approved by ordinance 19-O-15, and amended by ordinances 61-O-16 and 147-O-18 in the D3 Downtown Core Development District. The applicant is requesting to modify the number of required leased parking spaces from 55 to 0, terminating the existing parking lease between the applicant and the City of Evanston. The Land Use Commission makes a recommendation to the City Council, the determining body for this case, in accordance with Section 6-3-9-8 of the Evanston Zoning Code and Ordinance 92-O-21. Staff requests that this item be continued to the June 8, 2022 Commission meeting.

Ms. Jones explained that due to the need for additional information from both staff and the applicant, staff is requesting that this review be continued to the June 8th meeting. The comments that were submitted will be added to the next meetings' packet.

Commissioner Halik made a motion to continue this item to the June 8th meeting. Seconded by Commissioner Lindwall. A roll call vote was taken and the motion was approved, 9-0.

B. Special Use | 1026 Davis Street | 22ZMJV-0034

Renee Ruffing, applicant on behalf of Beacon Academy, requests a Special Use Permit for a Private Educational Institution at 1026 Davis Street in the D2 Downtown Retail Core District (Zoning Code Section 6-11-3-4). The Land Use Commission makes a recommendation to the City Council, the determining body for this case in accordance with Section 6-3-5-8 of the Evanston Zoning Code and Ordinance 92-O-21.

Ms. Ashbaugh read the case into the record.

Commissioner Hewko shared that Beacon leases space in the Rotary Center so, as the Chief Executive Officer of Rotary International, he checked with legal counsel on potential conflict of interest. Ms. Ruggie confirmed that there was no conflict of interest.

Presentation

Steve Friedman, attorney, provided an overview of Beacon Academy's proposal. He explained that the space will be an additional classroom and art annex for the school. It will consist of flexible classroom space and office space at street level. There will be 2 classrooms (1,400 sf each), lobby area (1,000 sf) and storage (1,000 sf). 50 faculty and students will be onsite on a regular basis and partitions will be used to divide space for different uses as needed. Staff will direct guests to use Maple Avenue garage. Mr. Friedman then referenced the DAPR recommendations, confirming that Beacon Academy will not have screening on windows as they want the interior space to be seen, and this location will not be the primary pick-up drop-off site. The school day will not end and start at this space. Sherman Avenue is where the main facility is located.

Questions

Chair Rodgers asked for confirmation on the day beginning and ending at the Rotary building. Mr. Friedman clarified that the day begins and ends at that building as does any pick-up and drop-off

Commissioner Lindwall inquired if the space is being leased. Mr. Friedman confirmed that it will be.

Commissioner Westerberg asked how the school will monitor not having too many pickups and drop-offs at this site. Renee Ruffin responded that, in the morning, the 1574 Sherman Ave space is where all students expected to be. Half of the student population takes public transportation and there are currently no issues. Administrators that are on duty everyday can make sure the policy is followed

Commissioner Mirintchev pointed out that this is part of a street that should be lively, and mentioned the DAPR recommendation. He then asked if there are any initiatives to create an attractive space for pedestrians. Ms. Ruffin responded that that is Beacon's goal as well. Having an attractive space will also serve as promotion for the school so it is to their advantage to make it as appealing as possible from the road and for pedestrians. The front space will have a rotation of art on a big screen on one side and another space with active work. Rotating art will stay, but the group has not yet thought of lighting. Commissioner Mirintchev then emphasized that the street is active late so it would be good to have lighting

Chair Rodgers asked if there would be signage and directions to the main building. Ms. Ruffin replied that signage will likely be installed calling out the annex and directing people to the main building.

Mr. Friedman made a closing statement explaining that Beacon Academy has been a good partner in the community.

Public Comment

There was no public comment.

Deliberations

Commissioner Halik stated adding the word “primary” is a good suggestion for pick-up and drop-offs, as well as adding nighttime lighting as part of what the applicant does with their front space. He then suggested adding in space for art displays and not just the proposed television screen.

Commissioner Westerberg suggested adding language that administrators will monitor pick-ups and drop-offs to make sure there is no congestion on the street.

The Commission then reviewed the Standards for Special Uses

1. Met
2. Met
3. Met
4. Met
5. Met
6. Met
7. NA
8. Met
9. Met

Commissioner Halik made a motion to recommend approval of the Special Use, subject to the following conditions: 1) That the space not be used as the primary location for student pick-up/drop-off, 2) that a Beacon administrator is assigned to monitor pick-up/drop-off to make sure there is no vehicle congestion on the street, 3) That nighttime lighting is incorporated to the space and 4) that space at the storefront be made available for art displays visible from the street. Seconded by Commissioner Westerberg. A roll call vote was taken and the motion passed, 9-0.

C. Appeal | 1566 Oak Avenue | 22ZMJV-0035 Andrew Scott, attorney on behalf of 1566 Oak Ave. LLC, appeals the decision of the Determination of Use issued by the Zoning Administrator on March 17, 2022, regarding operations of Connections for the Homeless at the Margarita Inn at 1566 Oak Avenue, which found the operations to be consistent with the Zoning Ordinance definition for Rooming House (Section 6-18-3) and also found existing Special Use Ord. 51-O-74, adopted in 1974, is no longer valid. The Land Use Commission is the determining body for this case in accordance with Section 6-3-9-8 of the Evanston Zoning Code and Ordinance 92-O-21.

Ms. Klotz read the case into the record and noted that a request for continuance was part of comments submitted after the meeting packet was posted.

Commissioner Halik asked for confirmation on what is being voted on for this appeal. Rodgers confirmed that this appeal was regarding the decision that the 1974 Special Use was no longer valid.

Presentation

Mr. Andrew Scott provided an overview of what the appeal is referencing (Zoning Administrator saying the 1974 Special Use is invalid). He explained that it is his client's position that the Zoning Administrator was erroneous in her decision nor do documents provided in the packet support it.

Mr. Scott then addressed various points of the Zoning Administrator's decision: He stated that, with regards to structural alterations, staff should be looking at whether or not there were changes to the building support structures (such as roof exterior walls, load bearing walls, beams, etc.). He referenced older inspections for the building done in 1980's and 1994 then stated that there was substantial renovation done in 2013 but they did not lead to structural alterations; the changes were mostly moving demising walls and upgrading of bathrooms. Mr. Scott then explained that the Zoning Administrator noted that the work was done in accordance with City of Evanston approvals and there is an absence of evidence that there is structural changes

Mr. Scott then addressed parking, explaining that 28 parking spaces were required for the Margarita Inn and that 16 of those spaces could be provided off-site. This requirement contemplated both the rooming house and restaurant (which is no longer in use). The Margarita Inn rented spaces in a surface lot until 2019 when the 1555 Ridge development was approved for that site. Mr. Scott then posited that the City brought about conditions that brought about the absence of required parking and that, even if parking went away; it is not a violation of the Special Use Permit that causes it to be out of compliance. He then noted that a number of other users at 1570 Maple were able to use the City's garage and that the Margarita Inn should have had the opportunity to cure the violation.

Mr. Scott then addressed the position that the Margarita Inn operated as a hotel for some time and not consistently as a rooming house. He stated that payment of hotel tax was used as evidence and referenced the tax definition for hotels and rooming houses. He then compared the zoning definitions and suggested that the tax code and zoning definition were virtually identical. He added that the City is within its rights to charge hotel tax to rooming houses but it is not a definitive way to dictate what it is nor are public reviews. Mr. Scott clarified that Ascend is a hospitality company and will make the property look as good as possible and that people will want to stay at a hotel vs. rooming house. The site does not currently reference the Inn.

Mr. Scott then addressed the owner referencing the building as a hotel and suggested that just because this was said, it does not make it so. He added that the problem is that the zoning code has a number of definitions that are very similar. There was a similar challenge two weeks ago on determining the use of the property. He also mentioned that a 2013 Certificate of Zoning Compliance was provided to the property. Mr. Scott

closed by stating that he believes the Margarita in is in compliance as a rooming house. Definitions are very circular and confusing and the City has consistently issued a rooming house license to the building. When looking at what the operations are there is a similar level of confusion. He noted that there is no distinction between a hotel and rooming house in the zoning code and it is difficult to put forth clear and consistent evidence that rooming house is invalid.

Questions

Chair Rodgers indicated that he is not seeing anything indicating structural changes have been made. He then explained that it seems the applicant is pushing the responsibility of the parking off on the City and asked if the City required that parking be at that particular location. Mr. Scott responded that the stipulation from the special use permit was that 16 spaces be within 500 ft. of the property. Chair Rodgers then stated that the applicant referenced 1570 Maple and asked if the City required they replace/reduce parking through an amendment. Mr. Scott responded that he believed they were granted a variation; he was uncertain if the City cited them or if it was done on their own.

Chair Rodgers then asked if the owner had referenced the Inn as a hotel to the City. Mr. Scott responded yes and a funding gap for the 2013 renovations was closed by way of tax sharing as a hotel. He added that in the meeting materials there is reference to the Margarita Inn as a hotel but it could have easily referenced a rooming house. Chair Rodgers stated that what the owner says as vernacular is different but is not what Zoning looks at.

Chair Rodgers then asked if it was Mr. Scott's contention that the Commission should be looking at zoning definitions or tax definitions. Mr. Scott responded that the Commission should look at tax definitions and noted that collecting the hotel tax could ensnare rooming house operators due to the nature of the definitions.

Chair Rodgers asked if it was Mr. Scott's contention that this was a rooming house in 1974 and that although there are references to the use as a hotel since then, we are again referencing the space as a rooming house. Mr. Scott responded that he contends there is insufficient evidence to say this space operated as anything other than a rooming house since day one.

Commissioner Westerberg asked if the hotel tax was paid. Mr. Scott responded yes but was unsure of the exact years. Commissioner Westerberg then asked if the Inn attempted to reach out to the City to correct the parking issue. Mr. Scott responded not to his knowledge but it may have been the case it may not have been needed since the restaurant was no longer in operation. Chair Rodgers confirmed that the restaurant was accessory to the building use and not a self-sustaining restaurant. Mr. Scott responded that that was correct.

Commissioner Westerberg stated that if parking was tied in to keeping the special use permit active, that would have been something that the owner would have needed to be proactive with to maintain.

Ms. Klotz provided a few points of clarification: The estimated work value on the permit for the 2013 work had an estimated value of \$1.4 million and included renovating rooms, adding 5 new guest rooms and adding accessibility to the building; zoning definitions lead to structural modification when demising walls were taken down. Structural inspections were done by City inspectors

Commissioner Halik inquired where the connections between demising walls and structural work was made. Ms. Klotz stated that the zoning definition for structural modifications was used to determine this. A brief discussion on the definition occurred.

Ms. Klotz then stated that the inclusion of the Yelp reviews was to show descriptions of what the guests did and demonstrate the transient nature of the use. She then stated that the use has been licensed as a rooming house by the Health Department; this does not affect zoning definitions.

Ms. Klotz then explained that when the building at 1555 Ridge was being proposed, public notice was sent to property owners within 1,000 ft. of the property which would have included the owner of the Inn.

Public Comment

Chris Dillow expressed that there is a part of the appeal that was not addressed. Regulations stated that the Zoning Administrator has the authority to render use designations for any party with legal or beneficial interest in the property. Connections for the Homeless was being represented as contract purchaser, however that statement was inaccurate, so it appears that Connections does not have the right to apply for zoning determination. The Zoning Administrator should not have issued the use determination and it should not have been allowed in the first place.

Commissioner Halik asked how staff responds to Mr. Dillow's assertions. Ms. Klotz responded that applicants who apply for a determination of use are typically not owners, they are lessees and are trying to determine if the use they are proposing is permitted or not. Chair Rodgers noted that on the application itself, it states "As contract purchaser" and that is what he takes Connections for the Homeless to be. He agreed that it is a regular occurrence.

Commissioner Westerberg asked about Legal's input on the assertions. Ms. Ruggie agreed with staff's determination; it is common for lessees and contract purchasers to make these requests and it is permitted by code. Connections for the Homeless indicated that they are the contract purchaser of the property and there is no appeal stating that they are not the contact buyer. That is also not before the Commission.

Diana Durkes stated that she is a member of the neighborhood group who wants to steer the use. She explained that residents have been sending items to the City that have not gotten a response and conditions exist that need zoning to enforce; Connections for the Homeless is not addressing the concerns mentioned. She also mentioned that Connections has stated that it wants to be the northshore location for the homeless, but deflected when asked about that statement. She finished by stating that code is needed that sets rules and regulations.

Don Durkes stated that this is a tough issue that is important to all stakeholders and emphasized that neighbors are not complaining about trivial matters; there has been an increase in emergency calls, some minor a lot are major. He then clarified that neighbors are not asking for it to go away but want controls for the use. To ignore concerns puts homeless in the northshore above residents. He then stated that this is not a rooming house due to programs provided.

Monica Forte, legal representation for John Cleave, stated that she requested a continuance due to just having been retained and not all neighbors receiving notice of this hearing.

Eric Paset explained that several tenants are not renewing leases due to problems at Margarita Inn. When some hear there is a homeless shelter next door, they do not want to lease. He explained it does not blend in, there problems with harassment of tenants, and he felt slighted previously by not being able to speak at the previous meeting but Lawyers were allowed to. He emphasized that issues are not being addressed.

Mike Joyce mentioned that a nuisance ticket has been issued; things have escalated at the site since the last Commission meeting. He then stated that his wife had been followed by a man who she was able to evade but saw her come into their home. Police were not able to do anything since the man left

Christina Jiang, wife of Mike Joyce, explained that she moved to Evanston 10 years ago, and felt safe until Connections for the Homeless moved in, especially in the last year. There has been noise from residents, emergency vehicles, etc. She then described the instance in which a Connections resident followed her and the efforts she had to go through to evade him. She finished by expressing that it is not fair to be that panicked and disturbed and wondered how that can happen and not be addressed.

Lewis D Clark stated he and his wife live in an 80 unit condominium building. He stated it is not good for the neighborhood and the City to have people moving out and a solution for the Margarita Inn should be reasonable. He explained that he has questions on what has been presented as it still does not address a number of problems brought up. He stated that the zoning classification can be decided but there need to be conditions that address the problems.

Deborah Wilner Clark described staying in the Margarita Inn and using Ascend to do so. She stated that she stayed in an accessible unit that was likely previously part of the

restaurant so she understands the Zoning Administrator's decision regarding structural changes. She then stated that parking is an issue and she is not sure how that will be addressed and that the exceptions mentioned by Mr. Scott are not clear and she wonders what else is not being addressed. She agreed with previous public comments and stated she would like to work with the City on this and hopes for some closure.

William McKenna, representing the Connections for the Homeless responded to Mr. Dillow, stating parties are entitled to seek interpretation and applications may be filed by anyone who has equal or equitable interest in ownership that gives rise to the need for the interpretation. which Connections, through its use, meets the requirement. He then agreed with Mr. Scott's arguments and stated Connections is ready to file, however, ownership has asked Connections to pause as negotiations take place.

Ms. Forte reiterated she was recently retained, and wished to have time to view documents, especially relating to structural changes made. She repeated that at least one person did not get the notice; need to ensure notice has been provided. She then indicated that Mr. Cleave would have liked to speak at the meeting but is out of town.

Chair Rodgers provided clarification on mailed notices being sent and staff confirmed this was done in accordance with the code. He stated that it is up to the Commission to grant a continuance to review documents and provided Ms. Forte an opportunity to provide additional reasoning to support it. Ms. Forte responded that there are 4 items that are the basis for the Zoning Administrator's decision but there is also the need to include having a more intense use. She placed emphasis on the need to review the structural changes done and see if more information could be gathered.

A brief discussion followed on possible meeting dates and process.

Mr. Scott pointed out that the appellants filed an appeal 30 days ago and only obtained legal counsel two days ago and does not believe any new information will be discovered; therefore, he objects to granting the continuance.

Commissioner Westerberg motions to continue to June 8, 2022 Seconded by Commissioner Arevalo.

Commissioner Puchtel stated that he reviewed documents and does not think additional information will be found regarding structural changes and does not think that is a strong argument. Commissioner Halik agreed stating that he believes that the structure is the clearest argument to him.

A roll call vote was taken and the motion failed, 4-5. Continuance was not granted

Ms. Forte was given the floor and stated that she agrees that the 1974 special use permit is not valid. She provided a description of a series of exhibits that were made part of the record. She explained that it was admitted that the owner did not keep up requisite parking and no efforts were made to dispute with the City or seek new parking.

She then expressed that the roof replacement that occurred constitutes a structural change. Ms. Forte also stated that Connections for the Homeless' use exceeds the maximum use allowed. She stated that Connections for the Homeless needs to apply for a new special use and have it vetted and asked that the Zoning Administrator's decision be upheld.

Mr. Scott made a closing statement expressing appreciation for comments provided and hoping the Commission separates those comments from what is being decided. He expressed that Commissioner Halik's point relating to structural changes is correct. Not definitive time of stay for visitors. Incumbent upon the owner to maintain parking but it was not deemed to be a problem. Should be provided a violation. Forte's exhibits do not speak to whether use is a hotel or not. Have to look at the code.

Chair Rodgers closed the record.

Deliberations

Commissioner Westerberg stated that the basic issue is if the Zoning Administrator is correct in the judgment of the special use permit being expired. She emphasized that there are items brought up by the public that need to be addressed, however, those items are not relevant to what is being determined at this meeting. She agreed with Mr. Scott that there is a lot of ambiguity in the zoning code and noted that Inn has clearly been referenced as a hotel at times and a rooming house other times. Commissioner Westerberg then stated that the business and actual real estate designation for the use are different things. She mentioned that the Zoning Administrator had to decide between definitions that were not so adequate for the rooming house and had to do similar for this special use. Commissioner Westerberg then stated that there are two items that are clear: the parking condition of the special use is really necessary to maintain and the Margarita Inn has paid hotel tax in the past. This leads who to believe the Zoning Administrator made a logical judgment.

Commissioner Mirintchev expressed that for the first condition of parking not being supplied, it is not about the reason the parking is not supplied but simply if it is not supplied the special use is invalidated. He then explained that with regard to structural alterations there is no structural partition. The definition of a partition is something that can bear only its own weight so it is a bit of a contradiction between structural alterations but the definitions say load bearing walls or partitions. Therefore, moving partitions of partitions means that special use was invalidated. These two items make him support the Zoning Administrator's decision

Commissioner Lindwall in support of the Zoning Administrator's decision. She mentioned going to the restaurant that previously existed in the building. Clearly operated as a hotel; hotel tax has been collected, testimony was received from a resident who spent a night there as a hotel. She agreed with Commissioner Mirintchev on the changing of partitions and adding bathrooms, stating that if a homeowner were to make those changes they would need to be getting building permits to do so. With regards to the required parking, the fact that the parking lot where 16 spaces were being leased has been redeveloped, the obligation is still on the owner to replace their

lost parking or request a variation, which did not happen. That does not relieve the owner of that obligation.

Commissioner Halik agreed with what had been said and suggested that an increase in room occupancy should have triggered invalidation as well. He then added that he does not believe roof replacement is a structural alteration but agrees with the Zoning Administrator on the other points.

Commissioner Puchtel expressed agreement with the Zoning Administrator except in relation to structural changes; the other two points explained in the decision have merit. He stated that some items within the special use permit were granted almost 50 years ago and do not really apply anymore and he supports the Zoning Administrator's decision. He ended his statement by expressing eagerness to get to the next meeting and discuss the new special use once that is submitted as that is where a big part of the discussion regarding Connections' use of the space needs to happen.

Chair Rodgers explained that with regards to structural changes, bearing walls and bearing partitions, the standard has not been met. Regarding loss of parking, it is incumbent on the applicant to address their parking when it is lost; the fact that the City took it away does not change that responsibility. Another owner addressed that parking concern. He explained that the zoning definitions are not perfect, but if something doesn't fit a particular definition, the next closest item has to apply. Chair Rodgers then stated that a referral has been made to create a new definition and that tax definitions are not referenced by the zoning code or the Commission.

The Commission then reviewed the Standards for Determination of Use

1. Met - this was previously determined
2. Met - the use was not started under the current zoning ordinance but this type of structure would exist
3. Met
4. Partially Met - except for the structural change interpretation
5. Met

Commissioner Halik motioned to uphold the decision of the Zoning Administrator. Seconded by Lindwall. A roll call vote was taken and the motion was approved, 9-0. Therefore the appeal was denied.

Commissioner Lindwall suggested that Congregate Housing could be a possible use classification. Chair Rodgers responded that there is a proposed referral moving forward and a text amendment may take months; a special use permit for a new use muddies the water since the Inn has been determined to be rooming house. He then explained that a special use permit review process is where issues that have been raised will truly be addressed. Notices will be sent and documents will be able to be reviewed; the public can raise concerns and conditions can be placed on the permit if granted. That is where the public's voice is most important.

Communications

Ms. Nyden provided an update on the Comprehensive Plan process.

Public Comment

There was no public comment

Adjournment

Commissioner Lindwall motioned to adjourn, Commissioner Westerberg seconded, and the motion carried.

Adjourned 9:51 pm

Respectfully submitted,

Meagan Jones, Neighborhood & Land Use Planner