



**MEETING MINUTES**

**LAND USE COMMISSION**

Wednesday, August 24, 2022

7:00 PM

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

Members Present: Myrna Arevalo, George Halik, John Hewko, Brian Johnson, Jeanne Lindwall, Kiril Mirintchev, Max Puchtel, Matt Rodgers, Kristine Westerberg

Members Absent: Violetta Cullen

Staff Present: Sarah Flax, Alexandra Ruggie, Elizabeth Williams, Melissa Klotz, Meagan Jones

Presiding Member: Matt Rodgers (and Max Puchtel for Item 3A)

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**Call to Order**

Chair Rodgers opened the meeting at 7:10pm. A roll call was then done and a quorum was determined to be present.

**Approval of August 10, 2022 Meeting Minutes**

Commissioner Lindwall then made a motion to approve the Land Use Commission meeting minutes from August 10, 2022 as amended. Seconded by Commissioner Westerberg. A voice vote was taken and the motion passed, 7-0, with 2 abstentions.

**New Business**

Chair Rodgers stated that the application for the request for a Special Use at 1930 Sherman had been withdrawn and would not be heard at this meeting. Ms. Williams explained that staff had not heard from the applicant on whether or not they will re-engage on the application so they will need to resubmit and the case will be renoticed at that time.

**A. Public Hearing: Major Adjustment to a Planned Development | 999-1015 Howard Street |22PLND-0053**

**David Block, applicant, submits for a major adjustment to the planned development approved by Ordinance 8-O-20 in the B2 Business District. The applicant is requesting to modify the approved building elevations. 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.**

Ms. Jones read the case into the record. Chair Rodgers announced that he will be recusing himself due to being part of discussions for this project prior to his appointment to the Commission. Commissioner Puchtel, who is Vice-Chair, acted as Chair in Chair Rodgers' absence.

Mr. David Block, Director of Development and Principal with Evergreen Real Estate Group, introduced Dominic Hart with Urbanworks Architecture and attorney Steve Friedman from Applegate and Thorne Thompson. He then presented an overview of the project, explaining that the building has been substantially complete for some time and has gone through its necessary City inspections. Mr. Block stated that the building received its Temporary Certificate of Occupancy (TCO) in March, and is just about fully occupied with low income seniors aged 62 and up. He then explained that the building now needs to convert its TCO to an FCO and provided an overview of the programming being offered as well as a timeline of the building's approval before the pandemic and construction in the midst of the pandemic. Mr. Block then detailed other facades of the building, efforts in coordinating with multiple entities to get the building complete and supply chain issues that lead to the request. He also stated that there has been communication with neighbors throughout the project.

#### Commissioner Questions

Commissioner Westerberg asked when in the construction schedule the applicant knew an adjustment to the facade was needed and when he alerted the City. Mr. Block responded that the need for the adjustment was realized at the end of 2021, but the City was not alerted as the development team felt it was a minor adjustment to the building that was purely aesthetic and did not affect the functionality of the building.

Commissioner Westerberg then stated that she understands delays and labor shortage issues but it still seems like there should have been some kind of alert provided to the City to avoid this type of pressure. Mr. Block responded that in hindsight perhaps he should have done that. He explained that the City had staff from different departments visiting the property throughout construction and he was more concerned that items like plumbing and electrical were functioning.

Commissioner Halik stated that the applicant has put the City in a bad position since the development is already built but he believes this building design is just as good as the original design. He then asked what the Commission should do to make sure this type of situation does not happen again.

Mr. Block responded that the City's code forces this conversation. The Commission has an obligation to evaluate if the story being told by him or other developers with a similar set of circumstances makes sense. Mr. Block then stated that there is now a clause that says Covid is no excuse. It is part of the challenge now but at the time it was still too new. He then argued that the change was done in good faith, but admitted that it may not have been communicated as well as it could have been. Commissioner Halik stated that communication is the issue and circled back to what should be done to prevent this from happening again, suggesting an interim review for Zoning during construction. He

remembered the conversation when the project initially came in for review and people were happy with it.

Acting Chair Puchtel stated that he is expecting a motion later in the meeting to have staff review the language around adjustments so that it is clearer. He then asked the applicant in relation to the wood paneling, if it was price or lead time that led to the issues. Mr. Block replied that it was both, they were hearing a 6-8 month wait at \$300,000 and the project was already over budget. He then explained that the project has an investor that needs a final FCO and that if there is a condition attached, they will require that money is put up that the project does not have which puts project at risk of litigation

Commissioner Mirintchev asked if the revisions were approved by the architect and submitted to the City. Mr. Block responded no; they were designed by the architect but believed it to be minor changes that did not need additional notice needed to staff. Commissioner Mirintchev then inquired what documents were shown to staff during inspections. Mr. Block added that City inspectors that come are looking at life safety issues not visuals of the building. The only visual review happens at the end of the project

Commissioner Arevalo stated that, as an architect, she understands the situation. She used a house as an example, explaining that if you show wood siding on your plans but have to use vinyl siding, if that does not affect finishing other features of the home like installing windows and sealing them, then it is just a decorative feature.

#### Public Comment

Steven Lohm stated that he believes the original elevation is more attractive and inquired if additional funds could be made available to help get it done.

Clare Kettlekamp, landscape architect for the project, explained more details of the building's facade, specifically figuring out how to do the living facade and keeping the tree of life elevation with the Center for Jewish Elderly. She explained the facade landscaping was planted in early June and now has coverage. Ms. Kettlekamp then shared that she has not had someone request as much care with an alley facade as this project has. She then stated that this seems to be a hiccup in the code and she hopes it gets approved.

Ms. Ann Rainey expressed that she does not think this situation will occur again because staff has mentioned that this should not need to occur through this process. Staff will request changes to the code. Ms. Rainey then stated that she asked people who do not live in the neighborhood about the project and they stated it was something they liked to see on Howard Street and they loved the building. She then shared that she hoped the shopping center would eventually go away and that building design is not really under the Commission's LUC purview

Lois Headman stated that she learned a lot and that when she initially got a postcard she got concerned and that this case demonstrated a break in the communication. She then explained that to be able to move the building (as a minor variation) but not change the facade does not make sense. She is glad that the building is finished, people are moving in and likes what has been done with the existing CJE building and the growing element of the façade. She expressed that she gets defensive about how Howard Street is treated and that, while she understands issues from the Covid pandemic, the City needs to make sure this issue does not get through to this point again.

Mr. Devon Reid expressed excitement about the building and stated the City should take things on a case by case basis. He shared that he spoke with people who are excited about this development but emphasized that it is important that the City be clear so that developers do not think they can get away from what was approved.

Ms. Sue Loellbach with Connections for the Homeless stated that this is a weird zoning issue with items like this being major but other listed items in the Code are minor, they should be flipped. She then explained that the zoning code needs to allow flexibility to enable people to build affordably. Given almost everything stopped with the pandemic it's great that this building was completed since even though things look like they may be leveling out, housing costs are increasing. Ms. Loellbach then stated that she hopes to have this project move forward and shared notes from Bonnie Wilson who stated the building facade was cheerful and the developer has worked hard to provide affordable housing and should have more costs added.

Mr. Warren Brenner stated that he now lives in the Ann Rainey Apartments and that he loves the building and is glad to live there. He then stated that the only bad thing is smell coming from restaurants at the corner strip mall. He finished by stating everything is fantastic and he wishes the developer the best.

Ms. Williams stated that staff understand the challenges that the applicant has encountered during the process and are in support of their request. Staff also recognizes that the code does present challenges and is open to feedback on future changes. Mr. Puchtel then asked if she agreed that staff was forced onto this path by the restrictions of the code. Ms. Williams responded that the memo does explain that staff does understand that the code is limiting and change to the facade is not listed as a minor adjustment.

Mr. Puchtel asked if there is anything other than the facade that there are issues with. Ms. Williams confirmed that it is just the facade and no other adjustments have been requested at this point.

Mr. Block made closing comments and Acting Chair Puchtel then closed the record.

### Deliberations

Commissioner Halik stated he has no problem with the revised project and that he is familiar with Evergreen, believes they do great projects, and that this is one of them. He

then referenced Ms. Rainey's statement about design not being a part of the Commission's purview and stated that that is true but what is under the Commission's purview is making sure that what the developer says they are going to do is done. He then stated that there is work to be done on the standards for major and minor adjustments.

Commissioner Mirintchev echoed Commissioner Halik's comments, explaining that he is ok with the changes but that the review process for revisions needs to be followed. He then expressed that he preferred the original rendering better but will leave any additional changes to the architect to follow up on.

Commissioner Westerberg agreed that this is an important project but she does not think this is about a quirk in the code but this is about accountability. She stated that she understands issues with Covid and labor shortages but her concern and her recommendation is that the City finds a way to prevent this from happening in the future and make sure developers are held accountable to build what is approved. The applicant has already addressed that this was a lapse in communication and it's important that accountability be carried through for every developer that works in the City

Commissioner Lindwall stated that the project is substantially complete and that going back and punishing the developer is not a good move. She stated that facade design is very important and that there are design guidelines on what is and isn't acceptable. Commissioner Lindwall then explained that it is important that there are interim inspections or meetings with staff to touch base on possible issues and keep the City informed so that if changes are needed there can be a public process. She also stated that she does not necessarily think that building materials are necessarily minor adjustments. Some projects have been built where people wonder how it was approved and that was due to the project simply meeting the zoning code. She also stated that there need to be changes to the Code that require changes to the building be brought back to the City, even if it is done administratively, so that this does not occur again.

Commissioner Hewko agreed with previous comments provided and stated that he intends to vote in support of the project. He stated that the Code is very clear on what is a major and minor and he is surprised that this fell through the cracks. He then explained that while he does not think we necessarily need to change the code, there should be an interim process for review.

Commissioner Johnson stated that he intends to vote yes. He is sympathetic to the financing and supply delays. He then stated that part of the charge is to hold developers accountable. The building is built and neighbors seem happy with it. Commissioner Johnson stated that he will vote in support but with concern on making sure there is no precedent set.

Commissioner Arevalo stated that she intends to vote yes on the proposed adjustment. She explained that many are not familiar with the process and that the zoning review

stage is the beginning or conceptual stage of a project. Once a project has gone through that zoning process, then it goes through the actual building permitting and construction process. That is where details relating to life safety, structural, electrical, etc. have to be taken into account. Those building plans are submitted to the City and if at that time there were changes to the structure or building placement, those would be major changes; something like the final color, should not be represented since it is visual and changeable.

Commissioner Halik then responded that the applicant submitted the original design for a building permit. The issue is what happens after that. After a permit, other factors come in and there is no mechanism or regular communication after the permit is issued. Commissioner Arevalo expressed that there never is. For example, if someone wants to build a house, a design is drawn, then that is submitted for permitting, then there is a bidding process and in looking at the budget for the project that is when it is decided what can and cannot stay.

Commissioner Halik asked if zoning review is part of the building permit approval process. Ms. Williams explained that staff reviews building permit plans and that staff looks at the original plans that were approved per ordinance and checks for substantial compliance with those plans and to make sure the building is still zoning compliant. She stated that her understanding is that for this project changes occurred after building permits were issued and construction began.

Acting Chair Puchtel stated that he is in favor of granting the adjustment. He explained that he works in construction and can confirm that lead times and costs in particular with wood products have been highly volatile during the pandemic. He also expressed that he has no reason to believe the developer has not acted in good faith and thinks that the change to the facade is not egregious and increases the amount of window area which one could consider to be a good thing.

The Commission then discussed the Standards for Special Use, Standard for Planned Developments; and Standards and Guidelines established for Planned Developments in the B2 Business District and found that each were still met.

**Commissioner Halik made a motion to accept the applicant's revised design as presented and recommend approval of the major adjustment. Seconded by Commissioner Mirintchev. A roll call vote was taken and the motion passed, 8-0.**

Commissioner Rodgers returned to the dais Commissioner Rodgers stated he has been in discussion with staff regarding possible updates to the major and minor adjustment process.

**Commissioner Rodgers then made a motion for staff to review how the City classifies major and minor adjustments to planned development, in particular looking at when site development allowances are granted to look at using those as standards for major adjustments and have other changes be considered minor**



adjustments which would be addressed following the process of having staff review it and forwarding it on to Planning & Development Committee and City Council for final approval (so there would be opportunity for the public to speak but the items would not come before the Land Use Commission). Seconded by Chair Puchtel.

Chair Rodgers resumed his Chair duties.

Commissioner Westerberg requested clarification on what Chair Rodgers suggested, clarifying that the text amendment needed to make the change would come before the Commission for review; the differentiation between the adjustments would be once the categories are created, major variations would be addressed through the Commission while other items would be reviewed by staff, Planning & Development Committee and Council.

Commissioner Lindwall expressed support for adjustments coming back to the Commission and explained that it is important that significant changes to the facade, even the materials, have some discussion on whether or not that is a major variance and if they are brought before the Commission. Chair Rodgers stated that the Commission can act as a determining body should an applicant appeal a decision from staff. Staff can also decide if something should be forwarded up to the Commission for further review.

**A voice vote was taken on the motion and the motion passed, 9-0.**

**B. Public Hearing Special Use | 1930 Sherman Avenue | 22ZMJV-0054 Charles Davidson of CDG Real Estate, applicant on behalf of the Jewish Learning Foundation, requests a Special Use Permit for a Religious Institution in the R5 General Residential District (Zoning Code Section 6-8-7-3). 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. The application for this request has been withdrawn by the applicant.**

No action taken.

**C. Public Hearing: Text Amendment | Restaurants in MXE | 22PLND-0055 City initiated Text Amendment to the Zoning Ordinance, Title 6 of the City Code, to add Restaurant, Type 1, as a Permitted Use, and Restaurant, Type 2, as an Administrative Review Use in the MXE Mixed-Use Employment District. The Land Use Commission makes a recommendation to the City Council, the determining body for this case in accordance with Section 6-3-4 of the Evanston Zoning Code and Ordinance 92-O-21.**

Ms. Klotz read the case into the record and provided an overview of the request. This text amendment is a referral from Councilmember Burns at the request of Soul and

Smoke, a catering business which wants to expand to a full restaurant. Ms. Klotz explained that there is a craft brewery in this district that essentially acts as a restaurant so it makes sense to make the amendment. There are several MXE business districts that have transitioned to having a mixture of quasi- industrial, commercial and residential uses within them and now there is demand for restaurant uses. The full recommendation is that Type 1 restaurants be a permitted use and Type 2 restaurants (or quick serve restaurants) be an administrative review use, with the ability to approve, deny or defer to the special use process.

Ms. Klotz then stated that staff has become aware of another light manufacturing use that would like to transition into a likely Type 2 restaurant use in a different MXE area.

#### Commissioner Questions

Commissioner Westerberg asked if any comments or questions had been received from residents. Ms. Klotz responded that none had been received.

Commissioner Lindwall expressed that she thinks the amendment is a good idea. MXE and MUE districts came about because those areas were a hodge-podge of uses and people did not quite know what to do with those areas to allow them to evolve over time. She then stated that she is in support of the text amendment, adding that uses have been added to the district as it has evolved. Handling the evolution through text amendments provides safeguards and flexibility.

Commissioner Halik expressed agreement, stating that restaurants help to stabilize these types of areas.

Chair Rodgers stated that mixed use districts should be our catchalls that can include restaurants, retail, residential etc. and that heavy manufacturing districts should be heavily regulated. He then stated that the City does not have much space designated MXE so he does not have concerns.

#### Public Comment

None

#### Deliberations

The Commission reviewed the standards for approval of text amendments

- A. Met
- B. Met
- C. Met
- D. Met

**Commissioner Lindwall made a motion to recommend approval of the text amendment to add Type 1 restaurants as a permitted use and Type 2 restaurants as an administrative review use in the MXE district. Seconded by Commissioner Puchtel. A voice vote was taken and the motion passed, 9-0.**

#### Communications



Ms. Flax, Interim Community Development Director, gave a brief update on the Comprehensive Plan process, explaining it had been on hold but will hopefully be moving forward soon.

**Public Comment**

No public comment.

**Adjournment**

Commissioner Westerberg motioned to adjourn, Commissioner Lindwall seconded, and the motion carried, 9-0.

Adjourned 8:47 pm

Respectfully submitted,

Meagan Jones, Neighborhood & Land Use Planner