

Approved
VILLAGE OF LAKE ZURICH
PLANNING & ZONING COMMISSION MINUTES
SEPTEMBER 18, 2019

The meeting was called to order by Chairman Stratman at 7:02 p.m.

ROLL CALL: *Present* – Chairman Stratman, Commissioners Baumann, Castillo, Muir, and Schultz. *Absent* - Commissioners Dannegger, Giannini, and Riley. Chairman Stratman noted a quorum was present and Alternate Muir would be a voting member due to an absence. *Also present:* Community Development Director Sarosh Saher and Planner Tim Verbeke.

CONSIDERATION OF MINUTES AND FINDINGS OF THE COMMISSION

Approval of the August 21, 2019 Meeting Minutes of the Planning & Zoning Commission:

MOTION was made by Commissioner Baumann, seconded by Commissioner Muir, to approve the August 21, 2019 minutes of the Planning and Zoning Commission as submitted.

Upon roll call:

AYES: 5 Chairman Stratman, Commissioners Baumann, Castillo, Muir, and Schultz.

NAYS: 0

ABSENT: 3 Commissioners Dannegger, Giannini, and Riley.

MOTION CARRIED

PUBLIC COMMENT

Marty Filson, 33 E. Harbor Drive, asked if School District 95 was required to follow the recommendations recommended by the PZC to address drainage issues and a sidewalk on the east side of Church Street for approval for the construction of the new May Whitney School. Discussion followed. It was pointed out that the PZC is a “recommending” body and only the Board of Trustees is able to require actions and set stipulations on development. Director Saher said there has not been any discussions about the sidewalk, but the project engineer will be addressing the drainage with particular attention to the south driveway where there is erosion.

PUBLIC HEARING:

MOTION was made by Commissioner Schultz, seconded by Commissioner Muir, to open the following public hearing at 7:22 p.m. for Application PZC 2019-18, Linden Road, Variation Application PZC 2019-19; and Text Amendment – Temporary Moratorium on establishments related to the sale, use and possession of tobacco and nicotine related products.

Upon roll call:

AYES: 5 Chairman Stratman, Commissioners Baumann, Castillo, Muir, and Schultz.

NAYS: 0

ABSENT: 3 Commissioners Dannegger, Giannini, and Riley.

MOTION CARRIED

A. 40 Linden Road – Variation for a Swimming Pool (PZC 2019-18)

Public hearing to consider a request for a Variation to allow for the construction of an in-ground swimming pool. Detailed information is contained within the accompanying staff report and all exhibits submitted by the applicant.

Applicant and Owner: Michael and Diann Tomaino

Mr. Michael and Mrs. Diann Tomaino, owners of 40 Linden Road, were present to request a variation to the minimum side yard and landscaped surface area for an in-ground pool. Per staff review, the installation of the proposed pool and accessory concrete deck would exceed the R-5 Zoning Code impervious surface requirement by 5%. Mr. Tomaino displayed and reviewed the revised plat of survey and further described their proposal and explained why they were unable to comply with staff's recommendation and comply with code requirements. He does not think a one-foot concrete pad surrounding the pool is adequate for full and safe movements and cannot move the slide because they will have a retractable cover for safety reasons. Mr. Tomaino said they had not been advised of these requirements when they purchased their home and could not have known they could not build their pool and concrete pad due to code requirements and therefore have a hardship. The neighbors at 30 Linden, 50 Linden, and 1140 Honey lake Road all wrote letters supporting the Tomaino's pool.

Director Saher provided clarification about the Zoning Code and explained that variations to the Landscaped Surfaced Area are not authorized by the zoning code in the R-5 single-family residential district and would require a Text Amendment, which would apply to the entire Village. He said this requirement provides storm water management and flood control and added that this particular subdivision does have existing drainage problems. The concrete deck causes the impervious surface to exceed the code requirements of 40% to a maximum of 45% as proposed. Director Saher said a wooden deck or treks if raised with slats would not be considered impervious material and may allow the Tomaino's to have their pool subject to staff review for compliance. He suggested they meet with Planner Verbeke and pursue this option.

The options and next steps were explained to the petitioner. Chairman Stratman asked the Tomaino's what they would like the PZC to do. Mr. Tomaino said he would like a continuance and would meet with Planner Verbeke.

MOTION was made by Commissioner Schultz, seconded by Commissioner Castillo, to continue the public hearing for Application PZC 2019-18, to reconsider a request for a variation at Linden Road to the next regularly scheduled PZC meeting on October 23, 2019. Upon roll call:

AYES: 5 Chairman Stratman, Commissioners Baumann, Castillo, Muir, and Schultz.

NAYS: 0

ABSENT: 3 Commissioners Dannegger, Giannini, and Riley.

MOTION CARRIED

MOTION was made by Commissioner Baumann, seconded by Commissioner Muir, to re-open the public hearing for Application PZC 2019-18, to allow a public comment at 8:07 p.m.

Upon roll call:

AYES: 5 Chairman Stratman, Commissioners Baumann, Castillo, Muir, and Schultz.

NAYS: 0

ABSENT: 3 Commissioners Dannegger, Giannini, and Riley.

MOTION CARRIED

John Eberle, 50 Linden, lives north of the Tomaino's. He provided personal information praising the family and supported their proposal to install a pool.

MOTION was made by Commissioner Baumann, seconded by Commissioner Schultz, to continue the public hearing for Application PZC 2019-18, to reconsider a request for a variation at 40 Linden Road to the next regularly scheduled PZC meeting October 23, 2019.

Upon roll call:

AYES: 5 Chairman Stratman, Commissioners Baumann, Castillo, Muir, and Schultz.

NAYS: 0

ABSENT: 3 Commissioners Dannegger, Giannini, and Riley.

MOTION CARRIED**B. Text Amendment – Regulations for Tobacco and Alternative Nicotine Businesses (PZC 2019-19)**

Public Hearing to consider a request for an Amendment to the Text of the Zoning Code and other pertinent sections of the Municipal Code to establish regulations for the establishment of new tobacco and alternative nicotine businesses and uses in the Village of Lake Zurich - *Applicant: Village of Lake Zurich*

Director Saher represented the Village of Lake Zurich and presented an application for an amendment to the Zoning Code to amend the regulations and requirements of Chapter 4, 5, and 7D, to amend Chapter 22, and to repeal a temporary moratorium on new tobacco stores and stands within the Village. This action will:

- Reclassify “Tobacco stores and Stands” as “Tobacco and Alternative Nicotine Product stores and stands” and add additional conditions.
- Add definitions for Principal “Tobacco and alternative nicotine products shops and stands.”
- Add a definition for “Lounges for use of tobacco and alternative nicotine products only as an accessory to principal tobacco and alternative nicotine products stores and stands.”

Director Saher gave a presentation providing background information including the courtesy review and zoning history and provided additional information on the amendments being considered. The five existing stores that sell tobacco and alternative nicotine products will remain lawful but become a nonconforming use subject to Chapter 11 of the zoning code. They will be “grandfathered” and will continue to be allowed unless they expand, move, or terminate for more than one year at which time they would no longer be permitted. They will now be defined under the code to include tobacco and alternative nicotine products. He addressed:

- Locations - Now allowed in O-2 and O-3 District and will not change.
- Conditions Added - Buffering requirement of 1,500 rather than 100 feet of sensitive uses (i.e. church or schools) and disbursement or separation from each other of 1,000 feet to avoid a concentration of this type of store.

- Conditions on Lounge: Must be an Accessory to a permitted use and only visible from within the store and control of the manager and under lock and key.

Chairman Stratman suggested changing it to within view *and/or* control.

Director Saher reviewed the zoning map that showed the existing tobacco/alternative nicotine businesses and illustrated how buffering and separation/disbursement would impact any new uses. Although these uses cannot be banned since they are lawful, a government body may regulate their operation as the Village has done and is continuing to do. There will be a 30-day period to garner public comments regarding the regulations. After they are studied, a permanent recommendation on regulations will be presented to the PZC and the temporary moratorium will be repealed and replaced with a permanent regulation.

Marty Filson, 33 E. Harbor Drive, was disappointed that cigar lounges will be prohibited. Director Saher read the definition of an Alternative Nicotine Product (3-2-18 A) for Mr. Filson's clarification. Mr. Filson does not support vape shops and thinks many residents also don't support them, but he has concerns about restricting liberty and infringing on the ability to own this type of these shop. He believes the age restriction should have an exception for active military, recommends the testing of products for purity and certification, and is concerned this could potentially restrict entrepreneurship. He was concerned that the existing stores could be at a disadvantage because their permit is tied to their location so they cannot move their store and could be subject to unreasonable rental fees.

Director Saher noted that Mr. Filson's comments dealt primarily with the sale and possession of tobacco products while the Village is more concerned about their locations and controlling the number of stores. Chairman Stratman said Lake Zurich now must follow state law regarding the sale or use of marijuana.

MOTION was made by Commissioner Schultz, seconded by Commissioner Muir, to continue the public hearing on Application PZC 2019-19, Text Amendment – Temporary Moratorium Text on Establishments Related to the Sale, Use, and Possession of Tobacco and Nicotine Related Products to the next regularly scheduled PZC meeting on October 23, 2019 at 7 p.m.

Upon roll call:

AYES: 5 Chairman Stratman, Commissioners Baumann, Castillo, Muir, and Schultz.

NAYS: 0

ABSENT: 3 Commissioners Dannegger, Giannini, and Riley.

MOTION CARRIED

STAFF REPORT:

Planner Tim Verbeke said there is already one application for a variation received for the September meeting plus discussion related to the smoke and vape moratorium will be on the agenda. two special use applications and the text amendment on tobacco and alternative nicotine businesses and the continued Linden Road variation.

ADJOURNMENT:

MOTION was made by Commissioner Schultz, seconded by Commissioner Muir, to adjourn the meeting. Voice Vote, all in favor. MOTION CARRIED. The meeting was adjourned at 9:02 p.m.

Submitted by: Janet McKay, Recording Secretary

Approved by:

A handwritten signature in black ink, appearing to read "Orlando Schultz".