



**PLANNING and ZONING COMMISSION
MINUTES
MARCH 9, 2010**

Albertville Council Chamber

7:00 PM

CALL TO ORDER – ROLL CALL

The March 9, 2010 regular Albertville Planning and Zoning Commission meeting was called to order at 7:02 p.m.

PRESENT: Vice-chair Frank Kocon, Commission members Robert Olson, and Natalya Lindberg, Council liaison Tom Fay

ABSENT: Commission member Dale Edgren

OTHERS: City Planner Al Brixius, Zoning Administrator/Building Official Jon Sutherland, City Attorney Mike Couri, and City Clerk/Recording Secretary Bridget Miller

ADOPT AGENDA

Vice-chair Kocon asked for a motion to approve the agenda as amended adding 2010 appointment of Chair and Vice-chair.

MOTION BY Commission member Olson, seconded by Commission member Lindberg to approve the Tuesday, March 9, 2010 agenda as amended adding the 2010 appointment of the Chair and Vice-chair, which will be scanned and an electronic copy will be kept on file in the office of the City Clerk. Motion carried unanimously.

MINUTES

Vice-chair Kocon asked if there were any changes, additions, or deletions to be made on the Thursday, November 5, 2009 special Planning and Zoning Commission minutes.

MOTION BY Commission member Olson, seconded by Commission member Lindberg to approve the Thursday, November 5, 2009 special Planning and Zoning Commission minutes as presented, which a signed copy will be scanned and an electronic copy will be kept on file in the office of the City Clerk.

PUBLIC HEARINGS

DEVELOPMENT APPLICATION CASE NO. 2010-01 KNOWN AS DAN & JERRY'S GREENHOUSES, LLC. (ROGER LITCHY) FOR A VARIANCE TO ERECT A 20' X 48' GREENHOUSE, 40' X 40' SHADE STRUCTURE, AND A 10' X 10' CASHIER'S STAND FOR THE TIMEFRAME OF APRIL 15, 2010 THROUGH JULY 15, 2010 THAT WILL BE LOCATED ON THE OVERFLOW PARKING LOT OF THE ALBERTVILLE PREMIUM OUTLETS SECOND (PHASE II)

Vice-chair Kocon opened the public hearing at 7:03 p.m.

City Planner Brixius began by explaining that Temporary Outdoor Seasonal Sales permits do not generally go before the Planning and Zoning Commission. In this case, the applicant Roger Litchy of Dan and Jerry's Greenhouse has applied for an Administrative Permit to allow for temporary outdoor seasonal sales within the Albertville Premium Outlets Promenade Shops overflow parking lot. The temporary greenhouse will be located in the southwest corner of the Second Phase of the Outlet Mall. Such temporary outdoor seasonal sales operations are allowed in business zoning districts upon the approval of an Administrative Permit.

The greenhouse and customer parking must occupy only those parking spaces that are designated as excess of the minimum required parking for the initial intent of the site. The applicant has applied for a variance from the temporary outdoor seasonal sales standards and a variance for the sign height limitation to allow for an identification sign to be placed above the fence enclosure along CSAH 19. According to the principal use, the Promenade Shops of Albertville was approved without excess parking to dedicate to temporary outdoor sales activity.

Brixius touched on various Permit Criteria that were included in the Planner's report.

The maximum term of the operation shall be sixty (60) consecutive days, with a maximum of two (2) permits per calendar year for each use.

The applicant is proposing to operate from April 15, 2010 to July 15, 2010 (90 days). Approval of two concurrent administrative permits is necessary to accommodate this request.

Parking and display areas associated with the use shall not distract or interfere with existing business operations or traffic circulation.

The applicant is requesting to locate the temporary sales operation within an "overflow" parking area for the Promenade. The spring and summer months are generally not the shopping center's peak season and, as such, this overflow parking is rarely used. The General Manager of the Albertville Premium Outlets has stated that the proposed use will not interfere with existing business operations and traffic circulation. The proposed

structures appear to be located in an arrangement that will not obstruct view of the shopping center.

Temporary Outdoor seasonal sales uses (with a valid administrative permit) may have one (1) on site temporary sign not to exceed twenty four (24) square-feet in area and not more than six (6) feet in height.

The applicant is proposing multiple identification and directional signage; however, most of those signs will be located within the enclosed sales area. One 20 square foot sign is proposed to be located on the shade structure facing CSAH 19. This sign will be placed at a height higher than six feet; however, due to the existing fence located along the west property line, in order to be visible from the roadway this sign must be located at a taller height. This sign is proposed to read "Albertville Gardens" and will be 15 inches tall by 16 feet wide (20 square feet).

Vice-chair Kocon asked if any Commission members had questions or concerns regarding the proposed Development Application Case No. 2010-01 known as Dan & Jerry's Greenhouses, LLC. (Roger Litchy) for a Variance to erect a 20' x 48' greenhouse, 40' x 40' shade structure, and a 10' x 10' cashier's stand for the timeframe of April 15, 2010 through July 15, 2010 that will be located on the overflow parking lot of the Albertville Premium Outlets Second (Phase II).

Kocon waited for other Commission members to respond. Kocon asked if there will be restroom facilities available for the staff of the Greenhouse. Mr. Litchy reported the Albertville Premium Outlets has agreed to allow the staff to use a vacant space that would be available for the sales clerks to use the restroom facilities; however, there will be no general public facilities provided except for those that are open to the public through the Albertville Premium Outlets.

Kocon turned to Building/Zoning Administrator Sutherland to inquire if there have been any complaints of problems over the years with the Coborn's seasonal greenhouse. Sutherland stated there have been no complaints reported to the City Offices relating to the Coborn's outdoor seasonal sales display.

Vice-chair Kocon asked if there was anyone in the audience that wanted to share comments or concerns regarding the proposed Development Application Case No. 2010-01 known as Dan & Jerry's Greenhouses, LLC. (Roger Litchy) for a Variance to erect a 20' x 48' greenhouse, 40' x 40' shade structure, and a 10' x 10' cashier's stand for the timeframe of April 15, 2010 through July 15, 2010 that will be located on the overflow parking lot of the Albertville Premium Outlets Second (Phase II).

There was no one in the audience that wanted to express their views of concerns as it related to the three Ordinance amendments being proposed.

Vice-chair Kocon closed the public hearing at 7:16 p.m.

MOTION BY Commission member Olson, seconded by Commission member Lindberg to approve the proposed Development Application Case No. 2010-01 known as Dan & Jerry's Greenhouses, LLC. (Roger Litchy) for a Variance to erect a 20' x 48' greenhouse, 40' x 40' shade structure, and a 10' x 10' cashier's stand for the timeframe of April 15, 2010 through July 15, 2010 that will be located on the overflow parking lot of the Albertville Premium Outlets Second (Phase II) with the City Planner's recommendations in the March 3, 2010 City Planner's Report that included the following:

Approval of a variance from Section 1000.22 of the Albertville Municipal City Code to allow a temporary seasonal sales operation on a property without designated excess parking and a temporary sign in excess of six feet in height based on the following findings:

1. Unique hardship has been demonstrated due to the previous approval of fewer parking stalls than normally required for the subject site and the location of an existing six foot fence surrounding the subject site.
2. Special conditions of the site include vast amounts of parking stalls that are under-utilized during spring and summer months.
3. The variances requested are the minimum necessary to accomplish the intended use.

Approval of two consecutive administrative permits for a temporary seasonal sales operation located within the Promenade Shops of Albertville parking lot subject to the following conditions:

1. A building permit for the proposed greenhouse and shade structure shall be required.
2. A permit shall be required for the proposed propane tank.
3. The applicant shall obtain a permit for interconnection to the irrigation system.
4. Approval of the administrative permits shall be valid for April 15, 2010 through July 15, 2010.
5. The applicant shall submit a daily cleanup program subject to the review and approval of City staff.
6. The temporary seasonal sales operation shall comply with all applicable provisions of the Building Code and Fire Code.
7. The variance shall be declared null and void if the temporary seasonal sales operation is found to disrupt normal traffic circulation parking needs on the subject site.

other comments and concerns from the March 9, 2010 Planning and Zoning Commission meeting, City Planner's report dated March 3, 2010, and; contingent upon City Council approval at the April 5, 2010 regular City Council meeting or a meeting soon thereafter, at which time the proposed Case No. 2010-01 will be presented for Council review and approval. Motion carried unanimously.

DEVELOPMENT APPLICATION CASE NO. 2010-02 KNOWN AS LAMAR ADVERTISING (EMIL RADAICH-M POTTER) FOR A VARIANCE TO ERECT A SIGN/BILLBOARD, WHICH A PERMANENT SIGN PERMIT APPLICATION WILL BE SUBMITTED AND A WETLAND PERMIT APPLICATION FOR THE POTTER PROPERTY LOCATED WITHIN THE ALBERTVILLE CITY LIMITS

Vice-chair Kocon opened the public hearing at 7:17 p.m.

City Planner Brixius began by asking the Commission members to be patient with the Lamar Advertising billboard variance requests and went over some basic history of the site. In 2008, Dayton Holdings Inc. requested a sign permit to replace an existing billboard at their property located at 5701 MacKenzie Avenue NE in Albertville. The sign existed as a legal non-conforming billboard in that it did not meet the 1,000 foot spacing guidelines set in the Albertville City Code. Under Minn., Statutes 462.357, subd. 12.e. a property owner may replace an existing legal non-conforming structure provided the new structure did not increase the degree of non-conformity. The City issued a permit to Dayton Holdings Inc. on May 27, 2008.

In 2009, the City received a sign application from Lamar Advertising Signs to relocate the billboard at 5701 MacKenzie Avenue NE to a new location at a site 536 feet to the west on property owned by Michael Potter. Their application indicated that the existing sign would be removed and relocated to the Potter site. Receiving two (2) applications for the same sign at the same address, staff mistakenly thought they were the same applicant.

As staff reviews the Lamar billboard application, it was assumed that the 5701 MacKenzie billboard was not being replaced. In this light, the sign met the sign area, height and spacing requirements. In an April 2009 e-mail, staff identified that the site plan did not accurately demonstrate compliance with the required 20 foot lot line setback and the requirement that the sign be located within 100 feet of the I-94 right-of-way. At the time of review, the City Planner indicated that the billboard sign permit could be approved with confirmation that the sign must meet the 20 foot side and rear yard setbacks and also be within 100 feet of the I-94 right-of-way.

Upon staff discovering that the two applications were separate, one by the property owner and the second by the sign company, on April 21, 2009 City staff prepared and sent written notification to Lamar Advertising repealing the approved building-sign permit.

Lamar Advertising filed a lawsuit against the City suing for the right to place a billboard on the Potter property. Through legal negotiations, Lamar has offered to drop the lawsuit against the City if the City would approve a variance from the 1,000 foot spacing requirement for billboards. After the applicant examined placing the sign on the site, Lamar realized they cannot place a standard billboard on the Potter property in compliance with the required 20 foot side and rear yard setbacks, while keeping the billboard within 100 feet of the I-94 right-of-way. Lamar has requested to include a variance from the 1,000 foot spacing and a variance from the 20 foot side and rear yard setbacks.

Brixius reviewed the following finding of fact and grant approvals based upon the considerations:

- A. That the conditions involved are unique to the particular parcel of land or use involved.

- B. That the purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the business involved.
- C. That the alleged difficulty or hardship is caused by this chapter and has not been created by any person presently having an interest in the parcel. (amended Ord. 1987-3, 10-19-1987)
- D. That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or interfere with the function of the sheriff's and fire departments of the City. (amended Ord. 1987-3, 10-19-1987; amd. By 2005 Albertville City Code)

Brixius went over the three Options being offered that staff has prepared for the Planning and Zoning Commission and the City Council review:

OPTION 1. Approve both the variance for the 1,000 foot spacing requirement and to allow setbacks of two feet from the side and rear property lines with the following findings:

- 1. The mistaken issuance of the building permit for the sign is a hardship for the property owner created through public action.
- 2. The 536 foot spacing between the proposed sign and the next nearest sign complies with the State spacing requirements.
- 3. The property is unique in its configuration in that only a portion of the parcel falls within 100 feet of the I-94 right-of-way. Relief from the lot line setback is necessary to accommodate the billboard within 100 feet of the I-94 right-of-way.
- 4. The site in question is surrounded by wetlands. The reduced setbacks will not negatively impact adjoining properties or buildings.

OPTION 2. Approve the spacing variance but deny the side and rear yard setback variance based on the following findings:

Approve the Spacing Variance

- 1. The mistaken issuance of the sign and building permit is a hardship for the property owner created through public action.
- 2. The 536 foot spacing between the proposed sign and the nearest sign meets the State highway spacing requirements.
- 3. The site is surrounded by wetlands so the sign location will not impact surrounding properties or buildings.

Deny the Setback Variance

- 1. The original application graphics provided by the applicant suggested that the proposed sign would meet all setbacks and be within 100 feet of the I-94 right-of-way. No variances were requested.
- 2. City staff identified the setback issues and issued the permit conditioned on the applicant confirming that the sign would provide 20 foot setbacks from the property lines and be located entirely within 100 feet of the I-94 right-of-way.

3. With approval of the spacing variance, other sites may be available to accommodate the sign without need for setback variances.

OPTION 3. Deny both requested variances (1,000 foot spacing and 20 foot side and rear yard setbacks) based on the following findings:

1. Issuance of the original permit was a mistake by City staff that was corrected within two (2) weeks of the permit issuance.
2. The site is not eligible for a billboard based on the location of existing billboards.
3. The original application graphics provided by the applicant suggest that the sign location would meet all required setbacks. City staff conditioned permit approval in compliance with the required setbacks.
4. The physical hardships of the site are not exclusively unique to this property and may convey a use not available to other properties within the same zoning district.

City Planner then proceeded to go over Title 10, Chapter 7, Section 9 of the 2005 Albertville Municipal City Code, see below:

10-7-9: VARIANCES:

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the provisions of this chapter, the City Council has the power to vary the requirements of this chapter in harmony with the general purpose and intent hereof, so that the public health, safety and general welfare may be secured and substantial justice done. When considering a variance, the City Council shall make a finding of fact and grant approval based upon the following conditions:

- A. That the conditions involved are unique to the particular parcel of land or use involved.
- B. That the purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the business involved.
- C. That the alleged difficulty or hardship is caused by this chapter and has not been created by any persons presently having an interest in the parcel. (Amended Ord. 1987-3, 10-19-1987)
- D. That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or interfere with the function of the sheriff's and fire departments of the City. (Amended Ord. 1987-3, 10-19-1987; amd. by 2005 Code)

Vice-chair Kocon asked if any Commission members had questions or concerns regarding the proposed Development Application Case No. 2010-02 known as Lamar Advertising (Emil Radaich-M Potter) for a Variance to erect a sign/billboard, which a permanent sign permit

application will be submitted and a wetland permit application for the Potter Property located within the Albertville city limits.

City Attorney Couri reported the applications before the Commission are for granting a side and rear yard setback variance and a 1,000 foot spacing variance. The City Council at this time has not entered into any settlement agreement as it relates to the lawsuit. The variance requests will be processed in the same manner as any other variance that is submitted and brought before the Planning and Zoning Commission and City Council for approval or denial.

Couri went on to inform the Commission members that State Statutes has been interpreted by the Court System in previous years and have been rather harsh in their reviewing. Over the years, the Court Systems have softened up a little where they may turn it back upon the City to make the decision to approve or deny these types of variances.

Vice-chair Kocon asked if there was anyone in the audience that wanted to share comments or concerns regarding the proposed Development Application Case No. 2010-02 known as Lamar Advertising (Emil Radaich-M Potter) for a Variance to erect a sign/billboard, which a permanent sign permit application will be submitted and a wetland permit application for the Potter Property located within the Albertville city limits.

Jessica Rivas from Larkin Hoffman Daly & Lindgren Ltd. went over the background of the issue and how Lamar Advertising Company has requested a Public Hearing for the City's approval for two (2) variances. Rivas noted that in March 2009, Lamar applied to the City of Albertville for a building-sign permit to remove the existing Lamar billboard that is located at 5701 MacKenzie Avenue NE and relocate the billboard approximately 536 feet to the east onto the Potter property. On April 9, 2009, the City approved Lamar's sign and permit application for the Property. In reliance on the City's approval, Lamar made plans to move its billboard from 5701 MacKenzie Avenue NE to the Potter Property. On April 21, 2009, the City sent a written notice to Lamar stating that it was revoking the sign and building permit that was issued to Lamar. It was explained in the letter why the sign and building permit that had been issued was being revoked. Lamar was in violation of the 1,000 foot spacing requirement between billboards.

Rivas brought to the Commission's attention that in the interim of the submission of the Lamar sign-building permit that it was discovered by City staff that there was another sign-building permit application for the same location, which was submitted to the City in 2008. This is what brings us here today.

Phil Morris of Morris Development and the Albertville Marketplace Addition spoke in regards to the proposed Case No. 2010-02 relating to the Lamar Advertising permit. Morris stated that he has an application for signage along I-94 on his property. The signage was a key factor to the whole picture of his process in developing the land. As Morris went through the application process he was under the impression that signage was acceptable and that he met the standard requirements. Randy Dulley noted that he is part owner operator of the Shell/Convenience Store

that will be opening very soon. The signage along I-94 would be very visible for the Albertville Marketplace Addition.

Commission member Olson wanted clarification as to how Dayton Holdings fit into the picture, which was explained that Dayton Holding was part of the Lawsuit. Olson then requested additional information on Option 1, as it related to the number of billboards that will be along this portion of I-94. Staff reported there will be an additional sign inserted between the existing billboards along the I-94 corridor near the Emma Krumbes Restaurant. It would meet the 500 foot State spacing requirements.

Couri wanted to clarify that the State of Minnesota has had a 500 foot spacing allowance for billboards for a number of years. The City of Albertville amended the sign ordinance approximately 12 years ago putting a 1,000 foot spacing restriction on billboards; however, the State remained at 500 feet.

When Lamar read the ordinance, they thought they had interrupted the requirements differently. After finding out the City denied the applicant, Lamar reduced the size of the sign and requested a 2-foot side and rear yard setback.

Building Official/Zoning Administrator Sutherland brought to the Commission member's attention page 43 of the Planning Commission packet, which was the Building Permit that Lamar Advertising had submitted to the City on March 25, 2009. Sutherland pointed out 1. the notation in the lower right-hand corner "see City Planner review; 2. re-setback; and, 3. approval". Sutherland went on to acknowledge the fact that according to the permit that was submitted, it appeared that Lamar would be removing the existing billboard and constructing a new sign approximately 500 feet from the current billboard. City staff took the assumption that the new billboard would meet the standard requirements.

Vice-chair Kocon closed the public hearing at 7:38 p.m.

The Planning and Zoning Commission made the following motion:

MOTION BY Commission member Lindberg, seconded by Commission member Olson to approve **Option 3 - Deny both requested variances** (20 foot setback and 1,000 foot spacing) based on the following findings:

1. Issuance of the original permit was a mistake by City staff that was corrected within two weeks of the permit issuance.
2. The site is not eligible for a billboard based on the location of existing billboards.
3. The original application graphics provided by the applicant suggest that the sign location would meet all required setbacks. City staff conditioned permit approval in compliance with the required setbacks.
4. The physical hardships of the site are not exclusively unique to this property and may convey a use not available to other properties within the same zoning district.

for the proposed Development Application Case No. 2010-02 known as Lamar Advertising (Emil Radaich-M Potter) for a Variance to erect a sign/billboard, which a permanent sign permit application will be submitted and a wetland permit application for the Potter Property located within the Albertville city limits, with staff's recommendations, City Planner's report dated March 3, 2010 and; contingent upon City Council approval at the April 5, 2010 regular City Council meeting or a meeting soon thereafter, at which time the proposed Case No. 2010-02 will be presented for Council review and approval. Motion carried unanimously.

OTHER BUSINESS

INTERVIEW PLANNING AND ZONING COMMISSION APPLICANTS

There were two applicants that have applied for the vacant position formerly held by Sharon Leintz. The individuals are Brian Totman of 10231 Karston Avenue NE, and Jesse Hoffman of 5239 Lansing Circle NE.

Jesse Hoffman gave a brief history of where he lives, how long he has resided in Albertville (approximately 10 years), what his intentions are in serving on the Planning and Zoning Commission, which is to get involved in the planning and reviewing of the City of Albertville. He would be committed to attending the City at Planning Commission meetings that are held the second Tuesday of every month. He was open to answering any additional questions the Commission had for him. Mr. Hoffman's one question for the Commission is to find out when the Planning Commission would be making a decision for appointment.

No motion for recommendation was made at this time. Commission members want to wait to hear from Brian Totman before making a decision.

APPOINTMENT OF CHAIR AND VICE-CHAIR

City Planner Brixius reported that at the first meeting of the year the nomination and appointment of the positions of the Chair and Vice-chair are appointed. At the November 5, 2009 special Planning Commission meeting Commission member Kocon was appointed to serve as the Vice-chair for the remainder of 2009 and the entire 2010 calendar year.

Commission member Olson nominated Commission member Kocon to serve as Chairperson on the Planning and Zoning Commission for the 2010 calendar year.

Commission member Olson noted that Commission member Edgren would be the next appropriate member to serve as the 2010 Vice-chair to the Planning and Zoning Commission.

MOTION BY Commission member Olson, seconded by Commission member Lindberg to amend the appointment of Commission member Kocon to serve as the 2010 Chair and

appointing Commission member Edgren as Vice-chair for the 2010 calendar year. Motion carried unanimously.

Commission members made a recommendation to direct staff to draft a letter to former Commission member Leintz recognizing her for her years of service on the Planning and Zoning Commission.

ADJOURNMENT

MOTION BY Commission member Olson, seconded by Commission member Lindberg to adjourn the March 9, 2010 regular Planning and Zoning Commission meeting at 8:13 p.m. Motion carried unanimously.

Bridget Miller, City Clerk/Secretary