

MINUTES OF MEETING
SOUTH ST. PAUL PLANNING COMMISISON
January 6th, 2021

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

Present: Angela DesMarais
 Tim Felton
 Jason Frankot
 Ruth Krueger
 John Ross
 Matthew Thompson
 Michael Healy, City Planner

Absent: Justin Humenik

- 1) APPROVAL OF AGENDA – DesMarais/Frankot (5-0)
- 2) APPROVAL OF MINUTES – December 2, 2020 – Motion to approve the minutes as presented – DesMarais/Ross (5-0).
- 3) NEW BUSINESS

None

- 4) PUBLIC HEARINGS

A) Public Hearing for Variances Related to a Deck Addition at 600 Concord Street North

Mr. Healy presented the staff report. The applicant is George Tirado on behalf of Las Islas. Spanish language translation was provided by a paid translator. During the spring and summer of 2020, the applicant built a large, roofed deck addition onto the restaurant without proper permitting. The building official discovered the deck addition in September of 2020 and issued a “Stop Work” and “Do Not Occupy” orders. The deck addition is not safe and does not meet the Zoning Code, Building Code or Fire Code. The applicant must remove the addition unless the City Council grants variances from the Zoning Code and the applicant receives a building permit and corrects the numerous code issues with the structure.

The subject property is a complicated site. The property is 60 feet deep at its widest point. The property contains a 16 to 20-foot-tall river bluff with a 50% slope. There are railroad tracks to the east of the site that are at the base of the bluff. The subject property is zoned North Concord Mixed Use, NCMU. In addition, the property is also located in the Shorelands District, which limits building height and the amount of impervious surface coverage a site can have. The property is also located in the Mississippi River Critical Corridor Overlay district which has rules about the impacts to river bluffs. The restaurant and original deck were built in 1970 and are “grandfathered” as they do not meet the setback, building material, or impervious surface requirements of the NCMU district. Under state law, nonconformities can be maintained, repaired, improved, and replaced, but not expanded.

Staff has determined that six variances and a site plan approval are needed in order for the applicant to use their deck:

Planning Commission Minutes

January 6, 2021

Page 2 of 5

- Site Plan review for a deck addition.
- A rear setback variance to allow a rear setback of 2.9 feet instead of 20 feet.
- A variance from the requirement that nonconforming buildings expanded by between 10% and 50% of their total floor area or assessed value must come into partial compliance with the NCMU district architectural and site design requirements. *The deck addition expands the floor area of the building by approximately 12%.*
- A variance from the Mississippi River Critical Corridor Area (MRCCA) requirement that all structures must be setback at least 40 feet from bluff lines. *The deck hangs over a bluff and is supported by posts that are installed into the bluff.*
- A variance from the Shoreland District rules that properties within 300 feet of the Mississippi River cannot exceed 30% coverage by impervious surfaces. *The property is at nearly 100% coverage by impervious surfaces following the addition.*
- A variance from the MRCCA requirement that retaining walls built into bluffs must be wood or natural stone or similar. *The applicant is proposing a concrete retaining wall to support a set of stairs.*
- A variance from the parking ordinance which requires restaurants to provide one (1) parking stall for every 3 restaurant seats. *The 700 square foot addition has added new seating and no additional parking is required.*

In addition to zoning issues, the site has Building and Zoning code issues. The deck should have been designed and built by a licensed architect, a licensed structural engineer, and a licensed soils engineer. The applicant built the deck and then hired a licensed architect and structural engineer after the fact. The Building Official has determined at least 17 structural issues with the deck that will need to be corrected.

Staff recommended approval of all 6 variances subject to the conditions stated in the staff report.

Chair Ross asked if the investigation into the building had resulted in finding additional areas that may be out of compliance, such as handicap accessibility. Mr. Healy explained that the architects review of the building would identify those issues.

Chair Ross asked if the applicant had given a reason for not obtaining a permit or the variance approval prior to starting construction. Mr. Healy stated that the applicant did not give him an explanation.

Chair Ross asked if the applicant intended to use the deck as a smoking patio. Mr. Healy stated he was unsure of the intended use for the deck. Mr. Healy stated the applicant told him that the additional outdoor seating was for COVID-19.

Commissioner Felton queried if the applicant or the property owner was responsible for obtaining permits and paying fines or fees. Mr. Healy explained that renters cannot apply for building permits or land use approvals without the consent of the property owner.

Commissioner Felton asked if there were fines that were levied for this project. Mr. Healy explained that in these scenarios, the building permit fee is usually doubled instead of fining the owner. Commissioner Felton asked if any monetary action would be taken against the property owner for their numerous illegal structures. Mr. Healy stated there was not. He went on to explain that the process to bring the deck into compliance would be very expensive because the deck was built incorrectly and would be much costlier to fix than if it was built properly in the first place.

Planning Commission Minutes

January 6, 2021

Page 3 of 5

Commissioner Felton asked if the City would be liable if someone were injured on the property because the structure was built without a permit. Mr. Healy explained that he reviewed the case with the City Attorney. Per this conversation, because staff sent the applicant letters ordering him not to use the deck, the property owner would be liable if someone were injured on the deck after the owner had been ordered not to use it. Commissioner Felton asked if the City would have been liable if someone had been injured on the deck before the City was aware of the illegally deck addition. Mr. Healy stated that he did not believe the City would be liable.

Commissioner Felton asked if the applicant leased the property with the understanding of the zoning restrictions on the site. Mr. Healy stated that the zoning at the site is extremely complicated and it was unlikely that the applicant understood it; however, it is the responsibility of the owner to reach out to the City if they have questions.

Commissioner Felton asked if the gravel parking lot was up to code and if the site would need to be paved. Mr. Healy explained that the gravel parking at the site was grandfathered. Mr. Healy stated that paving the parking lot could be added as a condition.

Commissioner Felton asked why the City was pursuing these variances now if the NCMU district would be overhauled in the next year or two. Mr. Healy explained the NCMU update would include modified design standards for new buildings and may change how existing buildings are treated. The deck that was being discussed this evening is not visible from the street and is not an architectural feature. The only relationship to the NCMU standards is that the deck expanded the floor area of the building by 10% and in turn requires the building to be brought into compliance with the district standards. The City did not unilaterally create the MRCCA and Shoreland standards, these are based on Statute and overseen by the Minnesota Department of Natural Resources, but the City has the authority to grant variances from them.

Chair Ross asked the applicant if he would be able to comply with all 17 conditions. Mr. Tirado stated that it was his mistake to build the deck in this way and that he would comply with all 17 conditions.

Chair Ross asked Staff to confirm that substantial improvements would be made within one year of approval date. Mr. Healy explained that the applicant had one year to hire professionals, create all the necessary plans, obtain a building permit, and start working on the deck. If the applicant did not take all of these actions, the applicant would need to take down the deck. Mr. Tirado stated he was confused by this requirement. Mr. Healy reexplained the conditions under which the variance approval would expire.

Chair Ross opened the public hearing.

Mr. Healy stated he had spoken with a neighbor who was concerned about safety, but that the neighbor decided not to submit comments after learning the applicant would be required to get a building permit and submit professional plans.

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

Chair Ross closed the public hearing.

Chair Ross asked how many spaces were in the north parking lot. Mr. Healy stated there were likely zero code conforming spaces. To the best of staff's knowledge, the north parking lot is used for loading/unloading and possibly for employee parking.

Planning Commission Minutes

January 6, 2021

Page 4 of 5

Chair Ross asked if the applicant would be addressing the erosion control issues on-site. Mr. Healy stated the City Engineer wanted paving or another structure at the edge of the parking lot to prevent further issues. As part of the approval, the applicant's team needed to design a structure and the City engineer must approve it.

Commissioner Thompson commented that the NCMU district standards have been disregarded in a number of projects and so it would be difficult to require those standards to be enforced in this project. Mr. Healy cautioned that adding other requirements such as paving, or window additions may make the project more trouble than its worth.

Commissioner Felton stated that he did not feel that COVID-19 was a valid reasoning for adding a deck. Commissioner Felton stated that he believed the history of non-compliance at the site will likely be an indicator of how compliant the applicant is with the conditions. Commissioner Felton shared his concerns that if all the variance requests are granted, it would be hard to deny multiple variance requests for other properties in the area in the future.

Chair Ross stated that if the commission were to recommend denial, findings would need to be adopted that the practical difficulties were caused by the applicant himself, the variances are inconsistent with the comprehensive plan or that the variances are inconsistent with the city ordinances.

Commissioner Krueger stated that the commissioners can focus on the fact that permits were not obtained in a timely manner or the commissioners can look to create a vision for North Concord. Commissioner Krueger shared her experience with one of the previous businesses that occupied the property and the value of the river view from the property. She shared that she hoped there was a way to grant the variances and give the applicant a chance.

Chair Ross asked for the commissioners' opinions on whether or not a condition should be added to require the applicant to add windows. Commissioner Krueger stated she was hesitant to add any more requirements that would further increase the cost of the project for the applicant.

Commissioner Frankot asked if the changes to Concord Street would create additional space in front of the property. Mr. Healy stated the building and its parking lot have a zero-foot setback and so there is no way to include landscaping without the parking lot being too narrow to fit parking. While the reconstruction of Concord Street would not affect the site, the street would be more pedestrian friendly with sidewalks on both sides and designated parking stalls in front of the property.

The commissioners further discussed design standards for the site.

Motion to approve the site plan and the six (6) variances as presented, subject to the conditions in the staff report- Krueger/Thompson (5-1) (Felton).

5) OTHER BUSINESS

Mr. Healy shared that the City had received a \$30,000 grant from Dakota County to study the NCMU district and to create a new vision for the corridor. Staff would be releasing a Request for Proposal for a consultant during January and anticipate selecting a consultant for the project in February.

Planning Commission Minutes

January 6, 2021

Page 5 of 5

6) ADJOURNMENT

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