Case 5660B-14

CITY OF
BLOOMINGTON
MINNESOTA

DATE: November 19, 2014

TO: Planning Commission

CC: Mark Bernhardson, City Manager
Sandra Johnson, City Attorney
Larry Lee, Community Development Director

FROM: Amy Schmidt, Associate City Attorney

RE: Jennifer Development Company, Inc., FS&BP
10701 Hampshire Avenue

Background

Included in the agenda materials for the Planning Commission meeting on November 20, 2014, is a letter from the attorney for the Applicant in the matter noted above regarding Code requirement for sidewalks on the site. Attached to this Memo is a response letter from City staff dated November 13, 2014, along with further communication from Applicant's attorney dated November 18, 2014.

The Applicant's Major Revision to a Final Site and Building Plans generally includes the demolition of a large portion of an existing building, leaving only the slab on which the current structure exists. A larger structure will be rebuilt on that portion of the site, which is identified on the Applicant's plan set at an "Addition." It is staff's interpretation of the City Code that this constitutes a "significant redevelopment," which triggers the Code requirements related to the construction or reconstruction of sidewalks on the site.

As set forth in the letter included in the packet and the letter attached hereto, the Applicant contends that Staff's interpretation of the Code is incorrect. The Applicant also asserts that the Code is ambiguous and should be construed in favor the applicant. The Applicant included a Letter of Transmittal from 2010 that was sent to the Applicant following a prior approval of a similar application. Because this Letter of Transmittal does not specifically list the sidewalk provisions as requirements, the Applicant asserts that City staff is interpreting the Code inconsistently.

Issue

Is the Applicant required to construct Code-complying sidewalks on the Site?

Discussion

Based on the submitted plans and the current City Code, the sidewalk requirements are triggered, and it is appropriate for the Planning Commission to impose the condition of approval related to sidewalks that is included in the Staff Report.

1. *"Significant Redevelopment"*

Section 21.301.04(b)(3) defines "significant redevelopment" as "either a full redevelopment of a site or an addition that would increase the total floor area on a site by 25 percent or more." In this case, the "Addition," as it is identified on the Applicant's plan set, after demolition of a portion of the building is 81,098 square feet. This constitutes a 48.9 percent area increase in relation to the total building, which is clearly greater than 25 percent. The Applicant asserts that the increase of the "Addition" is only the incremental increase in area over the current building, or 12,224 square feet. As is outlined below, the Applicant's interpretation of the Code is incorrect, and the proposed redevelopment of the site is a significant redevelopment pursuant to the City Code.

2. *Code Interpretation*

Minnesota Statutes Chapter 645 regarding the Interpretation of Statutes is also applicable to the interpretation of city code provisions. When interpreting a code provision, it is presumed that when adopting the provision, the legislative body (city council) did "not intend a result that is absurd, impossible of execution, or unreasonable . . . ." Minn. Stat. § 645.17(1).

The Applicant's interpretation of the Code leads to an absurd result, which should be avoided. *Edberg v. Johnson,* 149 Minn. 395, 184 N.W. 12 (1921); *Piper v. Willcuts*, 64 F2d 813 (8th Cir. 1933); Guderian v. Olmstead County, 595 N.W.2d 540 (Minn. App. 1999), *rev. denied* (Minn. Sept. 14, 1999); *In re Estate of Ablan*, 591 N.W.2d 725 (Minn. App. 1999); *Country Joe v. City of Eagan,* 548 N.W.2d 281 (Minn. App. 1996), *review granted, affirmed* 560 N.W.2d 681 (Minn. 1997); *Lenz v. Coon Creek Watershed Dist.,* 278 Minn. 1, 153 N.W.2d 209 (1967); *Ramsey County v. Lake Henry Tp.*, 234 Minn. 119, 47 N.W.2d 554 (1951). Applicant's interpretation of the code provision related to sidewalks does lead to an absurd result because such an interpretation would essentially allow any owner to raze all or part of a building, and rebuild it only slightly larger, or to increase the size of a building incrementally in small amounts over time, while ignoring the full impact of such redevelopment. This could result in endless additions onto a building, while essentially disregarding the Code. It is absurd to conclude that the City Council intended to allow such result when it adopted the definition of "significant redevelopment" or the sidewalk requirements generally.

Moreover, Applicant's reliance on the holding in the *Frank's Nursery* case ignores the full holding of the case, which also requires that an ordinance be construed "in light of the ordinance's underlying goals." *Frank's Nursery Sales, Inc. v. City f Roseville*, 294 N.W.2d 604, 608-09 (Minn. 1980). *Frank's Nursery* is not a "free pass" that allows an owner to merely assert

that there is an ambiguity in an ordinance, and therefore their interpretation controls. It is not that simple. Here, the underlying goal of the ordinance is to assure that properties and the public are served by adequate sidewalks. If an owner is allowed to avoid improvements that are driven by their developments, then the Code requirements are hollow, and the entire Code provision is negated. This would never have been the intent of the Council.

3. 2010 Approvals

The approvals from 2010 do not control today. That approval expired for lack of execution of the approval. In addition to conditions of approval, the Letter of Transmittal enumerates multiple Code requirements that are applicable to the site. The fact that the Letter does not specifically call out the sidewalk provisions does not indicate that the site was relieved of all Code requirements not specifically enumerated. The site is always subject to all applicable Cide requirements regardless of whether it is listed in the Letter of Transmittal.

Also, the omission of any conditions related to sidewalks is not indicative of a different interpretation of the City Code by staff, as the Applicant asserts. Rather, the fact that the sidewalks are not mentioned at all is more indicative of an omission by City staff in 2010. Such an omission, if it a mistake by City staff, does not bind the City to any current or future action, nor does it prevent the City from enforcing the correct Code provisions. *See City of North Oaks v. Sarpal*, 797 N.W.2d 18 (Minn. 2011); *RSI Recycling, Inc. v. City of Bloomington*, 2012 WL 302410 (Minn. App. July 23, 2012) (unpublished case), *review denied* (Minn. Sept. 25, 2012).

Conclusion

Pursuant to the Code, this project constitutes a "significant redevelopment" of the site, and the sidewalk requirements are applicable to the redevelopment.