CASE NO.: ZPC 09 PLND-0056

Re: To consider amendments to the Zoning Ordinance as part of the Zoning Ordinance Strategic Improvement Program, Phase 1-C

Transcribed Report of Proceedings of a public meeting, held August 12, 2009, at the Evanston Civic Center, 2100 Ridge Avenue, Council Chambers, Evanston, Illinois, at 7:08 p.m. and presided over by Stuart Opdycke, Chair.

PRESENT:

S. OPDYCKE, CHAIR  D. GALLOWAY
J. NYDEN  C. STALEY
J. WOODS  R. SHURE
S. PETERS

STAFF:
BILL DUNKLEY - Zoning Administrator
DOMINICK ARGUMEDO - Zoning Planner
SUSAN GUDERLEY
CRAIG SKLENAR
CHAIRMAN OPDYCKE: The Plan Commission is now called to order. We do in fact have a quorum, so we can proceed. First item is approval of the July 8th Planning Commission Meeting minutes. Is there a motion?

MR. STALEY: I would move approval.

CHAIRMAN OPDYCKE: Is there a second?

MS. NYDEN: Second.

CHAIRMAN OPDYCKE: All those in favor say aye.

(Chorus of ayes.)

CHAIRMAN OPDYCKE: Opposed? Motion carries.

Next item is continuation of a Zoning Ordinance Text Amendment Public Hearing ZPC 09 PLND-0056. To consider amendments to the Zoning Ordinance as part of the Zoning Ordinance Strategic Improvement program, Phase 1-C. Mr. Dunkley.

MR. DUNKLEY: Good evening, Commissioners.

Bill Dunkley your Zoning Administrator.

CHAIRMAN OPDYCKE: Good evening, Mr. Dunkley.

And we do have a new member that just came, Mr. Galloway. Good evening, Dave. We are under way. He's an old member, to be sure.

MR. DUNKLEY: Item 3 is Case No. 09 PLND-0056, and it is a set of proposed updates to the Zoning Code, or Text Amendments, that all relate to, that primarily
relate to variances and what, and eligibility for
variances of different types. There is one on special
uses and the expiration of, proposed expiration of
special uses, and there's also the very first one is
really, we really are looking at it as an omission, as
really a correction that should have been made at the
time the MXE District was added to the ordinance.

CHAIRMAN OPDYCKE: Bill, before you go any
further, Mr. Shure, do you have a question?

MR. SHURE: No.

CHAIRMAN OPDYCKE: Okay. I think, is it your
light that is on?

MR. SHURE: Oh, okay, sorry.

CHAIRMAN OPDYCKE: Thank you. Mr. Dunkley.

MR. DUNKLEY: Yes. And I'll just take these in
order and give a recap of the events in the public
hearing at the Zoning Committee.

The first item is C-1, correcting omissions
relating to the MXE District. When the MXE District was
added to the zoning ordinance, intended to replace the
MU and MUE Districts, the district itself, the language
of the district and the commensurate map amendments or
re-zonings, were all handled correctly, as they should.

There was an additional task that needed to be
done, actually several tasks, and that was to go from
front to back of the zoning ordinance to look for
references to the MU and MUE Districts and determine
whether they should also be expanded to include
references or functional matters related to the new MXE
District. It appears that that task was never done.
And so C-1 is intended to fix what appears to us to be
obviously an error of omission, the most significant of
which is the last item listed on the informational page
on C-1, which is the Exemption of from Required Spaces,
which is given to the, all of the non-residential
districts in Section 6-16-1-4, with the glaring omission
of MXE, is just not included in the list. And that, if
you know, is the 2,000, the exemption of the first 2,000
square feet of commercial space requiring residential,
requiring on-site parking from those parking
requirements. It's one of the ways we implement our
policy of allowing smaller spaces, smaller commercial
spaces, without having to require on-site parking, which
would be pretty much cataclysmic for any adaptive reuse
or new construction.

So, our policy has been to provide this 2,000
square foot exemption, with the exception of MXE. And
in looking at the order of events that occurred, we
realized quickly that the MXE District was added after the general exemption. There was really, appears to be no attempt to go back and add it to that list. So, it is not given in the MXE District text itself, it's only given in this one section in Chapter 16, which is the parking regulations. So, the proposal there is to add the add-in MXE as it appears for all of the other non-residential districts and non-downtown districts, to complete that.

The other one that is more than really just purely an omission is the next up on the list 6-13-1-8, which allows certain percentages of outdoor storage in the MU and MUE Districts, but not MXE. And again, same situation applies, is the MXE District was added after this, after 6-13-1-8 was added to the ordinance. And we didn't go back to update that, to ask if it should be added. The discussion the Zoning Commission centered around whether it was closer to 15 percent, which is the amount of outdoor storage allowed in MU, or 25 percent, which is the MUE. MXE is really modeled more over an MUE, it's more of an employment district and the recommendation was to model the MXE addition to, against the MUE. So, the proposal is to add MXE to the list of allowed, districts allowing outdoor storage area to the
percent of 25 percent of the land area, of the lot area.
The remainder, 6-4-4-5, 6-4-4-6, 7, 6-4-5-3, 6-4-5-4, 6-4-6-7, and 6-4-9, area really, they're just purely errors of omission. They are cross references to districts that, to which these items pertain and they are missing the MXE District. So, we propose to add those in, merely to complete the list. And most of these are very infrequently referred to areas, however, since we're going and doing this work, we felt we should do it completely. And we feel that this list really kind of cleans up the addition of MXE throughout the ordinance.

CHAIRMAN OPDYCKE: Mr. Dunkley, perhaps I should say for the benefit of the public, that all of these proposed recommendations emerged from the Zoning Committee, with unanimous approval, save for Item B which is Townhouse Orientation, if memory serves, it was four in favor and one in opposition. But apart from that, all the other proposals were accepted unanimously.

I also notice we have a number of people, citizens in the chamber tonight, and if any one of them would like to address any of the items that are on the agenda, please just raise your hand and I will invite you to come forward, state your name and your address.
for the record, and you will be free to make any
inquiries or comments that you wish.

Yes, sir, come forward. If it isn't on an
item that we are discussing presently, I want the
comments to be contemporaneous with the items that Mr.
Dunkley is addressing.

AUDIENCE MEMBER: It is Item C-6.

MR. WOODS: We're talking about C-1 right now.

CHAIRMAN OPDYCKE: We're talking about C-1,
yes. Thank you, thank you very much. Mr. Dunkley.

MR. DUNKLEY: Yes. Would you like to continue
on?

CHAIRMAN OPDYCKE: Yes, please.

MR. DUNKLEY: Item C-2 concerns the --

MR. STALEY: Could I make a suggestion.

Obviously the people are here for C-6. Why don't we,
well, a suggestion. Why don't we go to C-6 so that
people don't have to sit here. We're all on the Zoning
Committee, so we've all been through this once. If you
want to hear all this, you know, all right. But if
you'd rather just go to the one you're interested in, I
think we should.

CHAIRMAN OPDYCKE: Well, let me take a poll
here of those in attendance, members of the public. How
many would like to speak on the issue of, presented in C-6? Raise your hands. Two? All right. What other items would the remaining members like to address? So everyone is not here on C-6, is that correct?

MR. DUNKLEY: I think they just don't want to speak.

CHAIRMAN OPDYCKE: Oh, okay.

AUDIENCE MEMBER: We are here for C-6, but we don't want to speak.

CHAIRMAN OPDYCKE: Okay, all right. That being the case, Mr. Dunkley, perhaps we should move ahead to Item F, which is C-6, Expand the Eligibility of Certain Requirements of the Central Street Corridor Overlay. Would that be all right with you, Mr. Dunkley?

MR. DUNKLEY: Absolutely, absolutely.

CHAIRMAN OPDYCKE: All right.

MR. DUNKLEY: Item C-6 is a proposal to add two requirements of the CSC, the Central Street Corridor, Zoning Overlay District, which as you all know, or could imagine, is almost the entirety of Central Street, with adjoining cross streets, portions of adjoining cross streets. Many of us worked together on putting this ordinance together. And those two items, well actually, there are no specific items in
Central Street that are unique to the Central Street ordinance that are eligible for variances.

There are several new zoning concepts that have been introduced with Central Street, the idea of a required pedestrian area, being a sidewalk and parkway and any space between the facade of the building and the property line. Before Central Street we had no designation of a minimum area that needs to be set aside for pedestrians.

And the other is, the other that's the topic of this proposal is the idea of a minimum, a depth of active uses at street level. This is actually not unique. It does appear in the downtown districts. But the requirement is that there be in certain segments, certain parts of the district, that there be at least 50 feet deep of active use, and those are defined in the ordinance. You can imagine they are retail restaurant and the like.

During the course of the Central Street creation, our putting this together, we conjectured on what are those items that we might want to be able to vary. And we ended up not including any additional in it to what is already specified in or allowed in the ordinance.
We have some experience with the district and it's working fairly well. However, we did run into a situation where we had a particular proposal on Grosse Point Road, it was where the gas station is, that actually was, and we believe it would be a very beneficial development, a re-development of a, actually it was a non-contributing site, since it's really been closed, in the spirit that the Central Street corridor was, should be promoting. However, it was on a corner lot and the requirements in that sub-area were for wide pedestrian areas, and they could not be varied, it reduced the developable area of the site so that it could not be developed. And because these requirements were ineligible for variances, there is nothing we can do about it. You either develop with these, the sidewalks as specified, or you don't develop new construction on that site. Not an enviable position to be in.

CHAIRMAN OPDYCKE: Touch for a moment on what those requirements were.

MR. DUNKLEY: It's a 30 foot total width of sidewalk and parkway and flex area. And that would be, that is possible in the, it's in sub-area 6, which is the Grosse Point, Crawford area. In the plan it's
identified as a gateway area. It is one of the best opportunities for redevelopment in the corridor and it is particularly pedestrian unfriendly. There is the opportunity to provide wider sidewalks, however, the situation particularly for a corner lot that gets hit on both sides by that requirement, turns out to be quite a, turns into a diminution of the amount of developable area. And in this case it was so much so, that the project just couldn't, it just couldn't work.

CHAIRMAN OPDYCKE: And there was a 50 foot depth as I recall, as well.

MR. DUNKLEY: No, that's the pedestrian area, the sidewalk requirement. The depth actually, depth requirement comes into play as well, because of the 50 foot, mandatory 50 foot. It's 50 foot or more. For shallower lots, for instance, that could be a real challenge to provide.

CHAIRMAN OPDYCKE: Excuse me for just one moment, Mr. Galloway, you have a question?

MR. GALLOWAY: Well, maybe Bill's getting there, but do I understand that as a result of the 30 foot required depth for sidewalk and parkway, et cetera, that the first floor area could not achieve the 50 foot depth requirement for development?
MR. DUNKLEY: That could be possible.

MR. GALLOWAY: Or the first floor area was not of sufficient size to qualify?

MR. DUNKLEY: I couldn't tell you for certain if that is the case, but that certainly is a possibility for corner properties that are fairly shallow.

MR. GALLOWAY: Right.

MR. DUNKLEY: Which would be ironic. So, these, and in my experience in working with regulations such as these, fairly, actually very similar to these, these two areas are appropriate for variances, to allow variances. We proposed that they be brought in right, within the existing structure of minor, of major and minor variances, which makes them fairly straightforward to administer. The active ground floor uses, of course, because it would not apply to single and two family uses, which is a requirement for being eligible for minor variances. That would only be eligible as a major variance, which would make sense.

In addition, well, the pedestrian area requirements could, for single and two family uses which are not that prevalent actually within the corridor, they could be eligible for minor variance if they only were asking for a 35 percent or less variation. But we
would anticipate that they would be mostly major
variances, which again we think makes sense, they would
have that level of scrutiny.

We don't propose any additional standards for
granting those variances. The existing standards appear
to be perfectly capable of the type of requirements we'd
like to see. They all relate to the lot itself, they
are, have to do with cumulative effect, not being self-
created. It seems like it would work just fine without
creating, for instance, new standards, such as only
corner lots being eligible for the pedestrian area.
There may very well be other circumstances, other lot
configurations where meeting the requirement of the
zoning ordinance is just not practical or even possible.

So we propose that they be included in the list of
eligible variances, and that really would be the extent
of the Text Amendment, that would be in Chapter 3 under
eligible variances, listing them with the others, the
other requirements.

CHAIRMAN OPDYCKE: Does, any members of the
Commission have any questions so far? Mr. Galloway?
MR. GALLOWAY: You may have said this and I
may not have caught it, but the situation you described
is specific to this Central, Grosse Point, Crawford
situations, but you're proposing that the variance
that's, whose needs have been brought upon by this
specific condition, be allowed for the entire Central
Street Corridor?

MR. DUNKLEY: That's correct.

MR. GALLOWAY: Okay.

MR. DUNKLEY: Particularly small corner lots,
for instances, would have the same issue, even with the
more modest requirements.

CHAIRMAN OPDYCKE: Mr. Hughes?

MR. HUGHES: Hi. My name is Jim Hughes. I
live at 2518 Hartsell Street, and I'm speaking as an
individual here tonight. Thanks for this opportunity.
I would like to comment on Item C-6 and I
recognize that previous discussion has taken place on
that and we do have some questions, and that was one
question we had about whether this applies to the whole
of Central Street or just that sub-area. So, it wasn't
clear to us. We thought it was just area 6, and when
that question came up it became very clear that we need
to be a little more poignant in these comments.

The Central Street master plan recommended
retail depths of at least 50 feet along the Central
Street Corridor. This was done in part to assure a
viable and robust retail district. I would encourage
the Commission to continue the requirement in keeping
with the recommendations developed by many neighbors and
merchants participating in the plan process, lasting
over a year in 2006 and 7.

Recognizing that there needs to be some
flexibility, I would, however, encourage the Commission
in crafting any variances to one, include an absolute
minimum, say 40 feet, in the depth of retail space, as a
limit to the variance. Assure variances are always
considered major variances in the review process. The
question tonight, about the availability of these
variances to residential, which would be minor
variances. There shouldn't be any lack of clarity in
that that this should be considered, fully considered as
a major variance.

I'd also encourage to limit the availability
of retail depth variances to specific sub-areas that
have this problem of lot depth, instead of making it
available all up and down the street.

Regarding the pedestrian area requirement in
sub-area 6, and having straightened that out that it is
intended to be for the whole street, we, me, I feel
opposed to that because we started out to improve a
gateway streetscape that was lacking in hospitality. These pedestrian requirements also were to improve access, which is lacking in an area of very high auto thoroughfare, and also to improve driver visibility in that area. I know if you go through there, it's a high traffic multi-corner situation.

And also, we considered, as it became clear tonight, there's one site involved here. There was a development being considered at that site in the plan, a multi-use development with condominiums that included retail on the first floor. So I felt that was appropriately considered in the plan and the recommendations reflected that.

For all these reasons, I feel it's not a good solution to allow this. And also at the time of plan development, there was some discussion of the height of buildings in this sub-area. Added height was viewed as a possibility, if the streetscape setbacks were in place. Trading streetscape at this juncture would also warrant revisiting the building heights, which we discussed thoroughly at the time of the plan.

So, thank you very much for your consideration.

CHAIRMAN OPDYCKE: Any comments from members
of the Commission with regard to those comments from Mr. 
Hughes?

Mr. Wright.

MR. WRIGHT: Yes, my name is Richard Wright.  
I'm from 2603 Hartsell Street and I apologize for not 
being at the Zoning Committee, where I know these things 
are worked out more easily. I was destroying myself in 
the High Sierra's in my old age hiking.

But I remain confused about the proposal 
because, as I saw it in the notice of the Zoning 
Committee, and even the notice tonight, it's different 
that's what's been talked about now. We have no 
specific language, so it's hard to know exactly what 
we're aiming at or talking about here. The proposal as 
it's been described for the first one, on Central Street 
C-6, supposedly applies only to area 6, I mean, is that 
no longer true?

MR. DUNKLEY: I do apologize. We should have 
updated that based upon our conversation in the Zoning 
Committee. We just, we missed that, that it was felt 
that if we stay within the existing framework of 
variances in the ordinance, it would be easier to 
administer and would, really didn't open us up for much 
additional risk, and would capture other situations
where that may very well be an issue. It's the first
time we've included required pedestrian areas. We don't
know specifically that it will always be possible to
meet the requirement. And if you have a situation where
it's not possible to meet the requirement because of the
configuration of the lot, and someone can tell a
compelling story as to why that is not possible, we're
in a difficult situation because you cannot, we have no
way to vary that requirement. Either you meet it or you
don't which sometimes means not doing something that may
very well be beneficial.

MR. WRIGHT: Thank you. I appreciate that.
And on the second one, maybe again, I notice
coming up, it was defined even for tonight as a proposal
to only allow less than 50 feet active area use for
shallow lots. And there's a proposal to define shallow
lots tonight. Is that no longer the case?

MR. DUNKLEY: Yeah, again, the example is that
we think is pretty understandable, fairly common on
Central Street, is the case of the shallow lot. That
may not be the only --

CHAIRMAN OPDYCKE: I'm sorry, what did you
say, Bill?

MR. DUNKLEY: The example is pretty ubiquitous
on Central Street, is the shallow lot. If you have a shallow lot, it may not be possible to provide 50 feet of retail, and provide the on site parking that's necessary, and all of the setbacks that are required, et cetera. But that may not be the only situation that gives rise to a need for a variance. For instance, we have variances available on building lot coverage, and impervious surface coverage. And generally those are given to small or substandard lots. But that's not a requirement, and that also means that you don't have to define what a substandard lot is. It's left to the judgment of public scrutiny of reasonable people, which is generally how our variances have worked fairly well to date. Obviously we're making some adjustments. But, we didn't see that there was really a need to specify that this is only available for shallow lots, because then you have to define what a shallow lot is, and that's a difficult situation. I'm not sure how we would do that. It could be an absolute measurement, but does that really meet what the function of a variance is. It could be in relationship to the surrounding lots, to the improvements on the property. You very quickly get into a situation that's very complicated to try and make an absolute determination,
or absolute definition of a shallow lot.

CHAIRMAN OPDYCKE: Mr. Wright?

MR. WRIGHT: Again, thanks. You know, I understand, I think we all understand the need for flexibility and I think the one thing I would want to make sure I don't miss is emphasize what Jim said, is that understanding the need for flexibility insofar as there are variances on this plan, they should all be major variances. You know, these are things that were put into place to try and maintain and even enhance the streetscape on Central Street. So, Bill mentioned, for example, when maybe compared to the neighboring lots, that wouldn't seem quite right. Well, the idea was to kind of actually kind of, as these things are redeveloped, to kind of make them step back a bit more in some areas than they are now. Not to kind of say because the one next to it is already out this far, we'll keep a very narrow sidewalk space. The idea was to try and, as the future as we develop, have these things maintain a better sidewalk space that's more consistent.

So, I would be very opposed and I can't speak for Central Street neighbors group as a whole, I haven't really been very active in it lately, but I'm sure the
Central Street neighbors group as a whole, if we asked them, would be very opposed to having this, any of these particular things occur as opposed to, you know, impervious or something like that perhaps, occur as minor variances. It can be done without any public hearing, as far as I understand. These things should be ventilated if they're going to be departures from the Central Street plan that was strongly negotiated. And even the people who developed the plan, they're the ones that kind of put in this sort of 30 foot requirement in area 6, and now it's any area, which is a particularly troublesome area. I think you all know out there by CVS. All the intersections coming in and Bill mentioned, this development which was already in the plans, was, I know they were here at the time complaining, you know, we oppose this 30 feet setback. They were here complaining about that at that time. And we pointed out, well, yeah, you've got a 30 foot setback, but you have a lot more buildable space because you have greatly increased the height. You've changed from whatever it was a C-1 or a C-2, to a B-2 or a B-3, whatever it was, bigger than we wanted. They got much more height. They have much more buildable space than before. And there is no problem, as far as I know on
this lot they're talking about, about a 50 foot depth. This is not a shallow lot. There are shallow lots.

We understand the need to kind of have variances, you know, for shallow lots that really are shallow like the symphony area. I think they're only about 75 feet depth, right. So you need to have variances for those. But to kind of give a blanket, sort of minor variance approach, would gut the Central Street plan. It would kind of pretty much wipe out all the effort we put into it and all the effort you put into it. And that was, the idea was to strengthen these controls and not to wipe them out.

So I think, that at the very least, these have to be major variances. I think that there also should be some restriction, I think as Jim says, on how far you can reduce that 50 foot active use requirement. We all know that if you go too low, you don't get an active use. That building on Prairie still has nothing sitting in it. It was approved with, you know, a very small front area. It's not going to, you know, so there has to be some minimum.

Again, we're not opposed to flexibility, but we don't want to have the plan gutted by turning everything into minor variances.
CHAIRMAN OPDYCKE: I take it you would be reasonably content were these all major variances?

MR. WRIGHT: That would make it, you know, much more suitable, yes. And I think, I think even then, well, speaking for myself, I think I would be, I'm not sure about Central Street overall, I think I'd probably be, you know, that would solve a lot of the problems. Maybe you can explain to me, a major variance requires what sort of process? It requires some sort of public hearing before the Board of Zoning Appeals, is that what goes on?

CHAIRMAN OPDYCKE: Mr. Dunkley, you want to address that.

MR. WOODS: Bill, could you review minor and major?

MR. DUNKLEY: As far as the thresholds between the two and the process?

CHAIRMAN OPDYCKE: Yes.

MR. DUNKLEY: Minor variances, there are specific regulations that are eligible for minor variance, but the blanket restriction is that minors are only available for single and two family uses, which is a lot of Evanston. However, they're not available for commercial uses, or non-residential uses, or multi-
family uses. And the requirements are eligible only up
to 35 percent of that requirement, either plus 35 or
minus 35, depending upon whether it's a not to be
exceeded or a minimum required, if you know what I mean.

For instance, a minimum five foot side yard
setback, which we have across the city, if you are
proposing a setback of, from 3.25 to 5 would qualify for
a minor variance. Anything smaller than 3.25 feet
would, by definition, only qualify for a major variance.

And it works fairly well. It's very clear what's major
and what's minor. The processes are different. A minor
variance is intended to be an administrative process,
however, it's subject to meeting, the proposal meeting
certain specified findings, to there being a public
notice. All property owners within 250 feet of the
application site are notified of the application,
there's a mandatory ten business day public comment
period. We also post the notice at the Civic Center.

And after that public comment period, then we render a
determination, but it is done administratively, and we
consider not only precedent, but the specifics, of
course, of the proposal and, of course, the findings,
the required findings.

Major variances, as you can imagine, a much
higher level of scrutiny. Five hundred feet is the notification of property owners. There's a public hearing in front of the Zoning Board of Appeals. There's also a notice requirement in a major publication, we use the Evanston Review, and a yard sign has to be posted so it's clearly visible at least ten business days before the hearing. And that's the basics of the difference in the process. There are certain exceptions that go all the way to Council. And they also, all major variances get a recommendation from the Site Plan and Appearance Review Committee as well.

CHAIRMAN OPDYCKE: Is there any Council involvement in major --

MR. DUNKLEY: There's Council involvement for all, well, we're talking about variations, so it would be those that have to do with on-site parking and loading and height of 50 feet, which turn out to be a surprisingly large percentage. They go to City Council, those are all implemented as ordinances and they follow the standard Council procedure for ordinances, they get an initial recommendation from the Planning and Development Committee, and potentially an introduction at Council the same night. However, action cannot be taken until the next regular Council meeting, usually
two weeks following. So, there's a fairly high degree of scrutiny and public input throughout the process. I'd like to say, the level of scrutiny of a major variance, I think, is perfectly appropriate for these types of elements. And I think that would give us the level of protection and deliberation, to be able to determine those projects that require a variance, from those that are merely seeking a relaxation of the regulations.

CHAIRMAN OPDYCKE: Any comment from the Commissioners? Any further comment from citizens, Mr. Wright?

MR. WRIGHT: I guess the other thing besides making them all major variances, I do think there should be a minimum required depth for these active uses that they're all -- Jim suggested 40 feet. It's hard to imagine one that would be, you know, allowed that would actually work. And I think even the shallowest lots, I'm aware of the ones near Symphony, I think are 75 feet, you know, so there's no reason they couldn't use 40 feet for that. In fact they probably already do, more than that.

CHAIRMAN OPDYCKE: Jim?

MR. WOODS: A quick question. Seventy-five
foot lot at Symphony and Central Street, just as an example, combining 30 foot pedestrian way, 50 foot depth, how far, well, how far would the pedestrian way actually go into the lot?

MR. WRIGHT: It's not 30 feet required there --

MR. WOODS: Okay.

MR. WRIGHT: It's from the curb, not from the property line.

MR. WOODS: I know, now I'm trying to figure out approximately how wide that sidewalk currently is.

MR. HUGHES: We did a map of the lot at the gas station. That is 107 feet deep at that point. So 30 feet out there plus 50 feet retail leaves, what, 30 feet roughly, 27 feet.

MR. WOODS: And Bill, I assume that all these lots have rear and side yard setbacks as well?

MR. DUNKLEY: Yes.

I'd like to kind of expound upon two, really two things that come from experience that variances speak to. One is the specific development proposal. And we had the opportunity, over several months, to work in detail with administering the ordinance for this particular site and in going through that you go through
an endurative process with the applicant. And the
culmination of different requirements all acting
together, produced a situation where what was being
proposed or even a reasonable amount of what was being
proposed wasn't possible and had to do with location of
loading, with setbacks, with the required setbacks, all
of those acting together, we tried to work something out
ten days till Sunday, and it was just not possible to do
with what we had to work with.

There could have been a variance on any of
those and the obvious one was the sidewalk because it,
on a corner lot, that did seem to be fairly
unreasonable, almost on the verge of taking. However,
with working through in detail with folks who know the
ordinance and what can be done and what can't be done,
it was a situation where it couldn't be done.

The other is the value of policy and policy
derived through experience. I'll give you an example,
fence variances. I handle all applications for fence
variances, and they're a lot more complicated than you
may think. And over the years we have developed a
policy that fences to be allowed in the front, or street
side yards, that they will, we only will consider those
for corner lots, unless there is a truly compelling
situation that amounts to hardship. And even so, we'll only grant a variance for fences that are no more four feet high and no greater than 70 percent opaque. So there has to be some transparency. And that's a policy that works, it's been developed over time. It can be changed, if necessary, but it's not a regulation, it's not part of the ordinance which can't be varied if necessary. It does come down to, you know, policy versus ordinance, but that's the point of a variance is that we can't foresee situations where it is not possible to meet the requirements of the ordinance without, you know, in any kind of reasonable way. It's understanding that we can't be all, we can't foresee all possible situations, and in those cases we leave it up to reasonable people to make reasonable decisions.

CHAIRMAN OPDYCKE: Do you have any thoughts on whether a major variance in all instances here would be appropriate?

MR. DUNKLEY: I think that would be very appropriate. And it would only be a small percentage of cases that might qualify as a minor variance, with the interest in making sure that we do follow the plan, the interest that's in the community, and I think the degree of scrutiny that's required to maintain the benefits
that this corner has. I have no problem with allowing
them only as major variances.

CHAIRMAN OPDYCKE: But you're opposed to
absolute limits.

MR. DUNKLEY: Our absolute limits --

CHAIRMAN OPDYCKE: Or absolute minimums.

MR. DUNKLEY: Our absolute requirements are
regulations. That's where we run into unfortunate
problems with circumstances that are just different that
we haven't been able to foresee. If we knew they were
coming and we knew where they were, we would take them
into account.

CHAIRMAN OPDYCKE: Mr. Peters?

MR. PETERS: It's not entire clear to me
what's before us because one of the neighbors spoke
about a notice of hearing and the proposal he talked
about was different than what I see. Are you, is this
limited to shallow lots?

MR. DUNKLEY: Shallow lots are referenced as
an obvious situation where a variance on required active
use might be appropriate. But I can't say with any
certainty that that would be the only situation where a
variance would be appropriate. The notice requirements
are actually part of the required procedure for, for
instance, the major variance itself.

MR. PETERS: I'm talking about the notice of this proposal, not the notice requirements for a variance, but the notice of what's before us tonight.

MR. DUNKLEY: Yeah, uh-hum.

MR. PETERS: Did you talk about shallow lots?

MR. DUNKLEY: Yes. And it was, as it was discussed in the Zoning Committee as a fairly clear example of why a variation would be necessary on this particular requirement.

MR. PETERS: If other, on different basis for a variance, was possible, would that not be something that should be in the notice?

MR. DUNKLEY: Again, it's not, it's not proposed as a basis for the variance. The basis for the variance are the standards that are in the ordinance.

MR. PETERS: What's being varied? What requirements should be varied here?

MR. DUNKLEY: We're proposing that two requirements be eligible for variance in this case. One is the requirement for active ground floor uses and the other is the requirement for minimum pedestrian area. That has several sub-components. For instance, the requirements that are currently eligible for variances
are lot size, they are setbacks in required yards, height, lot coverage, being building lot coverage and impervious surface coverage, off street parking requirements. In no case do we ever say that well, you're eligible for a height variance, but only if you're -- oh, great thanks -- yards and setbacks, height, lot size, lot coverage, off street parking and loading and home occupations, (it's like naming the seven Dwarfs,) is eligible for major variances. We don't say height, but only up to ten feet then, or ten percent higher than the requirement, than the regulation or lot size, but only up to ten percent less than what's required in the district.

CHAIRMAN OPDYCKE: Mr. Staley.

MR. STALEY: It was handed to me, and actually I had it in front of me too, the notice, I guess the problem is are we, I think the problem is, are we limited really as to what we can do here, because the notice that went out does refer specifically, the second part, to projects for shallow lots. This is this notice.

MR. DUNKLEY: Yeah, that's not the notice.

MR. STALEY: That's not the notice?

MR. DUNKLEY: No.
MR. STALEY: Well, what is the --

MR. DUNKLEY: That was the packet, the explanatory materials. The notice identifies the specific sections of the code that are being proposed for variance, and has a description of the type of amendment that's being proposed.

MR. STALEY: I was told that this was the notice that was on the internet.

MR. DUNKLEY: Yeah, we make it available to the internet to provide background on why this proposal makes sense, the examples in which, the cases in which it would make sense, the specific sections it would apply to and other information so that we can all come with a background on the issue.

MR. STALEY: I guess the point though, is, did someone not come tonight because, after looking at this, they figured well, it's just dealing with shallow lots and I could care less about shallow lots. But if they thought they were going to open everything up to variations, be they major, that they might have shown up. I guess that's the issue.

CHAIRMAN OPDYCKE: Mr. Wright, Mr. Wright, please, if you have something to say, come up here so you're on the record.
MR. WRIGHT: I'm only commenting because it was raised. I mean, again, I personally don't care about being a stickler on this, you know, but the public notice did refer, which I indicated at the beginning of my comments, the public notice referred on the first issue only to Area 6 for the pedestrian area changes. And on the second referred only to shallow lots. And we only learned tonight when we got here that it's much broader than that. Again, you know, I'd like to see a reasonable resolution, you know, if it's not sort of a legal problem for the Committee, it's not a problem.

CHAIRMAN OPDYCKE: Thank you. Thank you, Mr. Wright. Can we clear up this notice question.

MR. DUNKLEY: We're fetching a copy of the public notice.

CHAIRMAN OPDYCKE: Okay. My inclination is to have you articulate exactly what it is that you are proposing, and then we will use that as a basis for a motion. And in your articulation, if you would refer as well together these constitute major variations.

MR. DUNKLEY: Would you like me to do that now, right now?

CHAIRMAN OPDYCKE: I think we should get the notice issue resolved first. But perhaps we could go on
to something else, some other -- do you want to go on to
C-2, Townhouse Orientation?

MR. DUNKLEY: Yeah, that would be fine.

MS. NYDEN: So, going forward, Bill will bring
us back something for next, for September with C-6?

MR. DUNKLEY: No, we're hoping to resolve this
now. We're just waiting for a copy of the notice, which
we just don't happen to have.

MS. NYDEN: Oh, okay, sorry.

CHAIRMAN OPDYCKE: David?

MR. GALLOWAY: I was trying to recall the
genesis of this requirement for related to optimal first
floor usage, and I know that we in the Plan Commission
have seen a number of proposals that have come forward,
a couple of, actually two of them that I recall, on
Central Street, where there was a retail area, it was
like 20 feet deep. Not it may have been 200 feet long,
but it nevertheless was 20 feet deep and a number of us
sort of cringed like, well, what kind of merchant could
make use of that. I have no experience in developing
those kinds of spaces. I am certain that some creative
merchant, in a unique situation, could probably make use
of them, but I don't know. So, I wondering what other
people's experiences have been, number one. And number
two, another thought was, I wouldn't want to penalize a merchant who has a irregularly configured space, wherein a portion of it might be, say, 35 feet deep and the other portion might be 70 feet deep. So I don't know whether we want to entertain a median or mean depth through all that or not. I'm generally more comfortable with putting this up to the wide review of a body of relatively intelligent individuals to discern whatever case comes before us, is appropriate to require, or appropriate to achieve the variance requirements.

MR. DUNKLEY: Frankly, the ordinance is, and we are not proposing any change to the minimum 50 foot active use requirement. We're not proposing a by right exception to that. That is the requirement. What we're proposing is the possibility of a variance for those that feel that they cannot meet the requirements of the zoning code and the standards, the specific standards that have to be met for any variance to be granted. So it is a case by case basis.

Again, the requirement still is 50 feet. In my experience, that's quite a bit. Twenty feet is too little. There is an average optimum depth that, like I say, somewhere in there, but I couldn't tell you what the absolute minimum would be. And the applicant for
the variance has to show that they can't meet what's
required. That's item number one. And it can't be of
their own making.

MR. GALLOWAY: Why don't we look at the notice
requirements. Let me speak to the policy, and I would
support allowing a variation from the requirements in
each of the two sections. And that's based on sitting
for ten years on the Zoning Board of Appeals, when all
kinds of strange things make lots unbuildable, and the
Board watches, watched, continues to watch for the
interest of neighbors. I would also support limiting
this to a major variation procedure so that the
neighbors have better notice and an opportunity to come
in and respond to the proposal. But, I agree with your
conclusion, that there may well be unforeseeable,
unbuildable lots with this rigid requirement.

CHAIRMAN OPDYCKE: Where are we, excuse me,
where are we on the notice?

MR. DUNKLEY: We're still looking, yes.

CHAIRMAN OPDYCKE: It's coming, all right.

Then let us move on to Townhouse Orientation and we will
just hold in abeyance C-6 until we have some
confirmation on notice and then we will return to it.

MR. DUNKLEY: Item B, or Agency Item B, Item
C-2 in the larger program, has to do with Townhouse Orientation. And this is an item which is, this is a requirement for townhouse development that is difficult to find, but it's there and it's unequivocal. It requires townhouses in Zoning Districts R4 and above to be oriented, to have their front facades oriented to a public way or to a public street. Again, a very good planning and development principle, and certainly one that I think is, that type of development has served us well. It keeps us from having cul-de-sac development, and internally focused townhouse developments, and overall has done very good things.

However, we have been in the same situation of having a perfectly desirable townhouse development that, for reason of the lot configuration, was not possible to support more than just a small number of townhouses, if they were required to front on the public street. And the solution that was presented, one particular case was a very elegant solution, it was right here on Foster Street, that would make use of an odd lot that had odd egress and ingress and could not work, if that was a strict requirement.

The ability to allow a variance in cases such as this, the proposal again is only as a major variance.
This type of variance really requires a high level of scrutiny, to be able to vary that, and the variance would be an allowance of, other than, an orientation other than the facade at the street. And of course in any variance, conditions can be attached, and this would be, I think, a situation where, that in general, good use could be made of conditions to make sure that each instance was done in a way that was overall, that was beneficial, and that met the intent of the particular Zoning District.

But again, we found ourselves stuck in saying you can't do it, because they don't face this way.

CHAIRMAN OPDYCKE: Any questions from the Commission Members on this? All right, let us return then to Item C-6 and the issue of notice.

MR. DUNKLEY: We have, I'm sorry, I'm reading four point type here, it's, it might be six, but I'm over 40. It's been a long day.

CHAIRMAN OPDYCKE: Does anybody have a Coke bottle?

MR. DUNKLEY: No, I can read it, I'm just --

MR. WOODS: He's trying to find the appropriate section.

MR. DUNKLEY: Yeah, it's a long one.
Yeah, the bulleted item is, expand the eligible variances to include pedestrian area requirements and active -- let me begin again. Thank you.

Expand eligibility of minor variances to include, (now I'm in the wrong place) pedestrian area requirements and active ground floor uses in the Central Street Overlay Zoning District, if such application meets targeted eligibility standards such as corner or shallow lots.

So, the intent was to consider the possibility of there being additional standards. When we met and discussed in Zoning Committee, we felt that that was, that was really not necessary. And seeing that throughout the Zoning Ordinance, we don't have such specific standards, other than those that are in the existing requirements for variances of any type. I think we were convinced that that provided adequate safeguards against --

CHAIRMAN OPDYCKE: Are we all set as far as the notice requirement has been met?

MR. STALEY: Yes.

CHAIRMAN OPDYCKE: Okay. That being the case, are there any other questions from Commission Members on
MR. STALEY: I agree with Mr. Peters, actually.

CHAIRMAN OPDYCKE: And what would that be, Chuck?

MR. PETERS: That would be that I think that we should, if it were a motion, it would be that we would accept the recommendation of the staff on Item C-6, but clarify that every variation must meet the standards of a major variation.

CHAIRMAN OPDYCKE: All right. Well, with that in mind, Mr. Dunkley, would you articulate for me, and for the members of the Commission, the proposal.

MR. DUNKLEY: The proposal would be to add to the list of eligible major variations, the requirements for pedestrian area, for minimum pedestrian area, and for minimum active ground floor uses in the CSC Zone, or of the CSC Zoning Overlay District.

AUDIENCE MEMBER: Minimum depth --

MR. DUNKLEY: Minimum depth, yeah, thank you, of active ground floor uses, and those would come along with citations to the actual code. To list those in the list of eligible major variations in the current code, so that would be Section -- okay, we'd be proposing
changes to, I'm sure we have a citation here.

CHAIRMAN OPDYCKE: 6-15-14-12?

MR. DUNKLEY: No, that's the requirement that can be varied, but it's 6-3-8-5.

CHAIRMAN OPDYCKE: Six, oh, sorry.

MR. DUNKLEY: The list of major variance variations.

CHAIRMAN OPDYCKE: All right. Is there a motion to accept the proposal as articulated by Mr. Dunkley?

MR. WOODS: So moved.

CHAIRMAN OPDYCKE: Is there a second?

MS. NYDEN: Second.

CHAIRMAN OPDYCKE: All those in favor, say aye.

(Chorus of ayes.)

CHAIRMAN OPDYCKE: Opposed? Motion carries.

Now, I suppose we should move on to the standards as to this particular item, and the standards for Zoning Amendments that are listed in 6-3-4-5, there are four standards but only two are applicable. The first one is whether proposed amendments or amendment is consistent with the goals, objectives and policies of comprehensive general plan. I find that it is
consistent. And secondly, whether the proposed amendment will have any adverse effect on the value of adjacent properties, and I find that these proposals will have no adverse effect.

Do the Members of the Commission agree with that, with those particular findings. All those in favor say aye?

(Chorus of ayes.)

CHAIRMAN OPDYCKE: Opposed? We find then that the standards are met as to C-6.

All right. Moving back then to Townhouse Orientation, Mr. Dunkley. Are there any questions on this? All right, how about we move on to Special Use Expiration, because what I think we'll do is we'll take C-2, 3, 4, 5 and 1 and we'll just approve those en-mass, when you're finished, Mr. Dunkley.

MR. DUNKLEY: Item C, I'm sorry.

CHAIRMAN OPDYCKE: Go ahead, we're on C-3 Special Use Expiration.

MR. DUNKLEY: C-3 obviously is intended to add an additional expiration to the special use permit. As I'm sure you know, a special use permit, if granted through ordinance by Council, expires after one year if it is not, if that use is not commenced or if a building...
permit is not granted and if construction is not
diligently pursued to completion. That protects us
against special uses that are granted that are seen as
reasonable, but that are never actually taken advantage
of, for any of a number of reasons. These days it's
most often because of the state of the economy, and the
state of capital availability. And we do allow
extensions of that one-year expiration through applying
to Council and through the approval of the City Council.
And they have been granted for up to two and three
years these days.

So, there is a precedent for having special
uses expire, for having them go away when they are
either not taken advantage of, or supposedly not needed,
or there is some circumstances that cause them not to be
used. However there is no, once it is initiated, you
might say, once that expiration is passed, special uses
stay with the land. They're explicitly not granted to
the owner of the land, nor to that particular business,
or that particular use. They are granted to the land
and they stay in perpetuity forever and ever, usque in
eternum.

Now, a special use by its very nature, is
intended to respond to the specific circumstances of
that location, and of the location's context. Yet, we don't seem to anticipate in the ordinance that over time, contexts change. Over time, a district that operated in one way, may no longer operate in that way. A special use granted in one year may no longer be appropriate in 50 years. Yet there is no ability to take that into account.

The proposal is that a special use, if it is not continually taken advantage of, if for instance, a site is vacant, or is occupied by a permitted use rather than a special use, that after a certain period of time of that non-use, that the special use itself would go away. It would not be available to be taken advantage of.

This has been an issue in the past primarily with convenience stores and Type 2 restaurants. Where there once was a special use granted for a particular location, for a particular use, that was initiated, the business has since left, there may be five, six years that another business, a permitted use, operated in that space and after that time, another use of that category that, for which the special use was granted, say a Type 2 restaurant, a fast food restaurant, could open in that location, as long as they met the conditions that are
part of the ordinance, essentially by right, forever, 
that you would have this situation existing as a 
possibility forever.

MR. GALLOWAY: That's a bad thing?

MR. DUNKLEY: It can be an issue and it has 
been an issue in some instances in the past. So, the 
proposal is to have, in the cases which I enumerated, 
the special use to wither away, I suppose, to be no 
longer valid and it would be up to the property owner to 
show, if necessary, that there was a continuing use of 
the space that was utilizing that special use. And the 
proposed period of time, the Zoning Committee saw was 
reasonable, was two years, and that is our proposal.

In addition, we discussed the possibility of 
having the property owner be able to apply for an 
extension of the expiration and that seems like a 
reasonable thing. It certainly works well now with 
being able to request extensions of the original 
expiration that comes with every special use, that one 
year initial expiration. And we certainly are in a 
situation now where that is necessary and is beneficial, 
particularly in the case of Planned Developments, which 
are types of special uses.

This proposal, by the way, doesn't have any,
it doesn't mean anything in the context of Planned Developments because Planned Development is either built or it's not. It doesn't become vacant or it doesn't become not used in the future if it is in fact built. So, it wouldn't apply to the Planned Development type of special use.

CHAIRMAN OPDYCKE: Johanna?

MS. NYDEN: Do we have to define what inactivity, vacancy or occupancy would be? I mean, does the Zoning Code describe that right now, what they would qualify, I mean, something might not be there, but somebody's paying the rent, somebody's maintaining the property?

MR. DUNKLEY: And I think that is, well, we didn't propose specific standards for that. It works well in the case of legal nonconforming uses where you lose that status if that use is not continued for more than a year. That works very well. We don't anticipate it would work differently in the case of the special use. Very similar type of inquiry. And we would leave those, I believe we would leave those definitions up to the reasonable and customary definitions of those terms.

CHAIRMAN OPDYCKE: Mr. Galloway.

MR. GALLOWAY: One scenario is there's a
special use granted for say, for lack of a better
description, Type 2 restaurant or fast food restaurant
at a certain location. It goes out of business. Is
then the special use expire with that business?

MR. DUNKLEY: It does not. And it wouldn't
for the length of time that this proposal would make.
Currently it doesn't expire ever. And we do have the
possibility, which is very useful and I think very
valuable, we have the allowance of a substitution of an
existing special use. There is a defined process for
it, it works very well, but that only is allowable when
the use has not been discontinued. And it's exactly for
circumstances such as this.

You have a special use that's been granted for
a site, you have change of ownership, is the most common
case. Rather than having them go through the whole
process of the special use, if they abide by the
conditions of the current special use, and they have a
lesser impact, equal or lesser impact, which is a
determination we have to make all the time, then they
can apply for this. There's a public notice period, it
is an administrative process, but there is specific
standards that have to be met and I think it has worked
fairly well. We don't have that many of them, but in
the cases, in similar situations, I think it's made the
difference between a, you know, having the site occupied
and economically contributing, versus possibly not.

CHAIRMAN OPDYCKE: Mr. Hughes? Oh, I'm sorry.

MR. GALLOWAY: Well then, what are the
standards that come into play in order for the special
use to be either non-renewed or revoked?

MR. DUNKLEY: That the site is either vacant
or unused for two years or it is occupied by a permitted
use, not a special use, the special use is not taken
advantage of during that period of time. It is very
similar to the legal nonconforming uses, if a permitted
use happens for more than a year, or if it's vacant for
more than a year, you lose that status.

CHAIRMAN OPDYCKE: Mr. Shure.

MR. SHURE: Bill, do we have something that is
active now that's driving this request?

MR. DUNKLEY: This has been on our, the
docket, I guess, for quite a while, certainly since I
started here. It is proposed by the Director of
Community Development at the time, and the City
Manager's office, in response to, and I know this
because I managed to corner Judy Aiello at the current,
well, now ex-City Manager's farewell party, to get
exactly the driving force behind this. And it has been, much of it has been in Type 2 restaurants that are able to really, by right, once the ordinance is there, to locate in a spot. It really needs some scrutiny, particularly in terms of cumulative effect. That's just not taken into account. There's no re-evaluation once the ordinance is there and exists. And it has been an issue in the past. I can't name specific instances. If necessary, I certainly will do that.

CHAIRMAN OPDYCKE: Mr. Peters.

MR. PETERS: My question's been answered.

CHAIRMAN OPDYCKE: Is it fair to say that in legal parliaments of special use will lapse, if it goes unused for a period of two years?

MR. DUNKLEY: I think that's a very concise and understandable way of stating what we're proposing.

CHAIRMAN OPDYCKE: Any other questions?

MR. WOODS: Thank you, Stuart.

CHAIRMAN OPDYCKE: Okay, next item.

MR. DUNKLEY: C-4 is a proposed change of language that affects three places in the ordinance where the standards for variations are specified, and those are minor, major and family necessity variations, the latter of which we don't have, well, as far as I
know, my experience, we don't have any applications for. However, the standard requires the proposal to be the minimum change necessary, and the use of the word minimum is problematic in that it can never actually be proven that what you're proposing is minimum. There can always be something proposed that's smaller than that.

So, it means really, almost, well really, every variance is capable of being challenged on those grounds. We don't think that's really what was intended and we tried very hard to craft an alternative that would be more applicable and more defensible. The requested variation requires the smallest deviation from the regulation among the feasible options that have been identified, or that identified. That's something we can work with. The other is a logistical nightmare.

CHAIRMAN OPDYCKE: Any questions?
MR. PETERS: Let me, let me --
CHAIRMAN OPDYCKE: Mr. Peters.
MR. PETERS: I would wince at trying to defend feasible options that have been identified because it's not clearly identified by whom to whom, et cetera. And I don't have a better suggestion right now.

MR. DUNKLEY: I think a reasonable person
would conclude that they are identified in the course
of --

CHAIRMAN OPDYCKE: If I may interrupt just for
a moment, there is a maroon Subaru Outback with lights
on in the parking lot. Sorry, Mr. Dunkley, go forward.

MR. DUNKLEY: It puts the standard in the
realm of countable items and identifiable items.

MR. PETERS: But, you just used, you just had
some language that was really good, before you got
interrupted.

MR. DUNKLEY: No chance I'll remember it.

MR. PETERS: That identified in the course of?

MR. DUNKLEY: Yes, of the public hearing and
deliberations, yes, of the item, yes.

MR. PETERS: And deliberations. Add that
language. Then it's much more clear what it means.

CHAIRMAN OPDYCKE: Is this all of record when
these things are discussed? Is it of record, is there a
transcript?

MR. DUNKLEY: Well, for major variations and
family necessity variations, there is a public hearing
process. Minor variations don't require that, however,
there is specific public input that has to be submitted
in a written form.

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MR. PETERS: You can just say, just as you did, identified in the course of consideration.

CHAIRMAN OPDYCKE: That's good.

MR. PETERS: That solves the problem.

CHAIRMAN OPDYCKE: Can you live with that, Mr. Dunkley?

MR. DUNKLEY: Absolutely.

CHAIRMAN OPDYCKE: Okay. Any other questions?

Next item, C-5.

MR. DUNKLEY: C-5.

CHAIRMAN OPDYCKE: Second floor additions.

MR. DUNKLEY: We see this all the time and trying to express this in one sentence, what the proposal is, was one of the most difficult things, I think, we've had to do. Allowing second floor additions, and it generally is only second floor additions, because you can only go as high as two and a half floors in any structure that's any use that's eligible for a minor variance. Second floor additions to existing non-conforming residences to be eligible for minor variance. And specifically it's regarding side yard setbacks where the existing first floor is legal non-conforming in that it encroaches into the required now five foot setback and so it's legally non-
conforming, you can't expand the degree of non-conformance, but to build above it, you're putting stuff in the space, in the required yard, which is not allowed. You have to get a variance for that.

It's difficult to understand why you have to get that variance, just in general, to your average applicant, and in most cases it's a major variance because it's in that three, believe it or not, three to 3.25 feet --

MR. PETERS: Exceeding 35 percent.

MR. DUNKLEY: That is over 35 percent. And it's generally been seen as a, they are almost always granted, it's very difficult to pull back an upper story by a few feet structurally, aesthetically as they're, I'm sure there's a word for it, but it's not pretty and it's usually just not understandable by the applicant why they have to go through this process. And so the proposal is that we move the threshold for side yard setbacks down to three feet as being eligible for minor variances, when the proposal is to put a second floor on top of an existing legal non-conforming situation, with that regard, in regard to the side yard setback. We see it all the time and yet every time we have to continually send these folks to the ZBA and ask them to
pay for verbatim transcripts and the level of scrutiny just is not seen as being necessary in those cases.

MR. PETERS: Having sat in dozens and dozens of these, with long testimony, ending with it's not feasible to have a second story wall that doesn't have a first story underneath, it's unsupported, you know, this should be done in one sentence. I strongly support that.

MR. DUNKLEY: I'm sure most of you know, our side yard setbacks up until 1960 used to be three feet. That's why we have all these existing structures that go out to three feet, because you could. Then, now you can't. And that no-man's land between three and 3.25 is the generator of the problem.

CHAIRMAN OPDYCKE: I have a little technical question.

MR. DUNKLEY: Yes, sir.

CHAIRMAN OPDYCKE: If it is exactly 3.25 feet, does it call for a major variation or a minor variation?

MR. DUNKLEY: That is handled in the code, 3.25 is eligible for a minor variation. Anything over 3.25 --

CHAIRMAN OPDYCKE: Okay, okay, thank you.

MR. DUNKLEY: I'm sorry, anything less than
3.25 currently is eligible for a major. In this case we propose that that line be just shifted down to three. If it's less than three feet, it's legal non-conforming by virtue of something other than the old, the previous zoning code.

CHAIRMAN OPDYCKE: But if it's exactly 3.25, it's a minor variation.

MR. DUNKLEY: Currently it's a minor variance, yes.

CHAIRMAN OPDYCKE: Thank you. Any other questions? Comments from Commission members? All right. I think that takes care of it. We've already dealt with C-6. So, is there a motion to accept the proposals that Mr. Dunkley has articulated with regard to Item C-1, 2, 3, 4 and 5?

MR. WOODS: So moved.

CHAIRMAN OPDYCKE: Is there a second?

MR. SHURE: Second.

CHAIRMAN OPDYCKE: All those in favor say aye. (Chorus of ayes.)

CHAIRMAN OPDYCKE: Opposed? Nay. Motion carries.

Again, we have to apply the standards, which are the same that I have already recited. A, whether
the proposed amendments are consistent with the goals, objectives and policies of the comprehensive general plan and also whether the proposed amendment will have an adverse affect on the value of adjacent properties. I find that the amendments are consistent in fact with the goals and objectives of the comprehensive general plan and that the proposed amendments will have no adverse affect on adjacent properties and I move that the Commission members accept those findings. Is there

MR. WOODS: Second.

CHAIRMAN OPDYCKE: Those in favor?

(Chorus of ayes.)

CHAIRMAN OPDYCKE: Opposed? Okay.
CITY OF EVANSTON

PLAN COMMISSION MEETING

Case No.: ZPC 09 PLND-0071

Re: Text Amendment to the Zoning Ordinance: Revision to I1, I2, and I3 Zoning Districts

Transcribed Report of Proceedings of a public meeting, held August 12, 2009, at the Evanston Civic Center, 2100 Ridge Avenue, Council Chambers, Evanston, Illinois, at 7:08 p.m. and presided over by Stuart Opdycke, Chair.

PRESENT:

S. OPDYCKE, CHAIR
D. GALLOWAY
J. NYDEN
C. STALEY
J. WOODS
R. SHURE
S. PETERS

STAFF:

BILL DUNKLEY - Zoning Administrator
DOMINICK ARGUMEDO - Zoning Planner
SUSAN GUDERLEY
CRAIG SKLENAR
CHAIRMAN OPDYCKE: Next item on the agenda is Evanston Plan 2030. Craig are you up?

MR. DUNKLEY: I'd be glad to give the background on this.

CHAIRMAN OPDYCKE: Okay, Mr. Dunkley, you're still on, up to bat here.

MR. DUNKLEY: This Item 4 on the revised agenda is actually, we would ask that this be handled as an addition to the agenda. The circumstance is that the item which is for a text amendment to the industrial districts, I-1, I-2 and I-3, to alter the permitted and special uses in those districts, was properly noticed, as required, by the ordinance. However, unfortunately, it didn't make it on to the published agenda, for a number of reasons, not one of which, let's say acting in confluence, caused us to drop this off the agenda.

The Illinois Public Open Meetings Act requires us to have all agenda items published at least 48 hours in advance of the meeting. That was not possible. It was actually spotted just this morning. So we consulted with our Law Department, and particularly this request, which is from our Corporate Counsel, Jack Seigel, we need to make sure that not only is it a legislatively unsalable in terms of process, but also, unfortunately,
the opposing force is that it happened within an externally determined time frame. We are currently the subject of a lawsuit regarding the 222 Hartree property, which I think all of you except two are intimately familiar with. And the request is to consider removing uses from both the permitted and special designation from the industrial districts, which really don't fit the goals of the industrial districts. In particular those are membership organizations and religious institutions that are larger than 35,000 square feet.

I've handed out the straightforward memo from our Corporation Counsel, and I think that really speaks for itself, although we've done some research as to effect.

MR. STALEY: I thought you said it wasn't properly on the agenda.

MR. DUNKLEY: It is not, and that's, I just want to give you the context of what we're dealing with and why I think, what we're proposing makes sense.

We can add this to the agenda and it can be discussed this evening. However, Illinois law does not permit us to take action on it, to vote on it, and that's reasonable. I ask that you do add this to the agenda so that we can propose it and we can introduce it
and it can be discussed and that we defer action until
either a special meeting for our next Plan Commission
meeting, which by luck of the calendar, occurs on
Wednesday before the first Council Meeting in September.
So it is possible, if the Commission feels that this
should move forward, and because we have a draft
ordinance already written, it could actually be on that
agenda as planned initially, on the Council agenda for
the 14th of September.

CHAIRMAN OPDYCKE: You would like a motion, I
take it, to place this item on the agenda tonight, as an
item for discussion.

MR. DUNKLEY: Yes, that's right.

CHAIRMAN OPDYCKE: Is there a motion?

MR. PETERS: I move.

CHAIRMAN OPDYCKE: Is there a second?

MR. WOODS: Second.

CHAIRMAN OPDYCKE: Those in favor say aye?

(Chorus of ayes.)

CHAIRMAN OPDYCKE: Opposed? Motion carries.

It's now on the agenda. The Text Amendment to the
Zoning Ordinance, Revision to the Industrial Zoning
Districts.

MR. DUNKLEY: The proposal is very, matter of
fact, I've covered the breadth of it. In detail, it's very simple to implement. It's really striking, two uses from the list of permitted or special uses in the three industrial districts. The thing that these uses have in common is that they are primarily, they primarily allow large gatherings of people. That is difficult to imagine how that meets the purpose of the industrial districts. In fact, in doing our research as to why these are there, it's difficult to ascertain because they were there in the '93 ordinance. They were not added. So, we don't have the benefit of deliberations as to why they were there.

We've done research on existing uses that meet these use descriptions and we found that, we found no membership organizations, however, they would be difficult to find through the means that we have, and we found two religious institutions that meet the size minimum, and that is the vineyard on, the official address is actually, it's not Hartree, it's a private road. It's just west of the, of 222 Hartree. And other is on Dempster. It's 2201, which is an Apostolic Church that was granted a special use in an industrial district. Obviously they are both large. They have to be large in order to be eligible.
However, Mr. Seigel considers this as an anomaly in our code and also as quite a risk, and fairly difficult to defend. I, myself, can't see a reason why membership organizations, especially religious institutions, would be allowed in industrial districts. Industrial districts are for very specific purposes. And for the life of me, I can't come up with, not even a compelling story, I can't come up with any story as to why they are permitted by right or by special use.

CHAIRMAN OPDYCKE: Well, what is it --

MR. PETERS: I'd like to speak in favor of the motion, of this proposal. The emerging federal case law involving religious institutions makes it extremely difficult to use techniques such as special uses and variances to craft case by case consideration. And in the absence of those available techniques, I see no reason why these would be permitted uses in industrial districts, because they are incompatible with the permitted industrial use.

Further, the recent findings, there is recent literature on these types of uses interfering with adjacent industrial uses. And so, based on those two factors, particularly the second one, I would support this proposal.
The current ordinance is problematic. I attended all of the hearings for the last ordinance and the matter was not discussed. I believe those, I don't know how it got into the prior ordinance, other than perhaps people thinking there were, they could handle these on a case by case basis. But, it was not actually considered. No one spoke in favor of this kind of a use mixture. And more recently that the literature begins to show problems with non-industrial uses interfering with industrial uses. In the 1950's, people didn't think about that problem. Lots of land available, so it didn't come up.

CHAIRMAN OPDYCKE: The genesis of this is the pending lawsuit, is that right? And now Mr. Seigel is attempting to change the zoning code, after the lawsuit has been filed?

MR. DUNKLEY: Well, I believe that a positive show that it's generally held that these uses are not compatible with the purposes and the goals of the industrial districts, would go a long way towards diffusing one, apparently one of the main arguments that the prosecution is using.

CHAIRMAN OPDYCKE: All right. Okay, any other discussion from member of the Commission?
So, what would you like from us. You got a consensus as to whether we go along with the proposal?

MR. DUNKLEY: Just our on the record discussion of the items, the introduction of the item and also a statement in the record of the date certain on which we plan, you plan to take action if -- yes, so

MR. STALEY: Could I ask one question?

CHAIRMAN OPDYCKE: Yes. Mr. Staley.

MR. STALEY: I wasn't, you know, I read in the newspapers all this stuff about the vineyards, but I wasn't involved in that. What does doing this, if anything, what impact does that have on the vineyards or their operating religious organization in an industrial area?

MR. DUNKLEY: Since they were, they began using the site at a time when this was a special use, and they were granted a special use, although not by the City Council, they would be considered a legal non-conforming use. They would be permitted to continue forever, ad infinitum, unless they discontinued that use for more than a year, or where the site was actually use as a permitted use for that same period of time.

They also would not be allowed to rebuild, should there be a disaster and the structure destroyed.
That doesn't hold, there are exceptions to that, and it depends on very labyrinthian, the determinations of Chapter 6, which has to do with combinations of non-conforming buildings and non-complying structures.

MR. PETERS: Was there approval by court decree?

MR. DUNKLEY: Yes.

MR. PETERS: It may not even be subject to the elimination of the permitted use, in that circumstance.

MR. DUNKLEY: I do not have the answer to that, but I will gladly bring that up and get an opinion by our Law Department.

CHAIRMAN OPDYCKE: So, Mr. Dunkley, do you need a motion to put this on the agenda for September 9th?

MR. DUNKLEY: Yes. I think that, having that on the record, and also that length of time, meaning we can have a transcript available of this discussion, I think would certainly help make us, have everything done properly.

CHAIRMAN OPDYCKE: Are there any other comments on this item?

MR. WOODS: I mean, I'd just like to speak in favor of this item. It seems absolutely logical to me
and would certainly simplify, I think, some discussions that had occurred. So, I'd absolutely be in favor of it.

CHAIRMAN OPDYCKE: Any other comments? Is there a motion to -- then I would move that we put this on the agenda for the next Planning Commission Meeting September 9th.

MR. WOODS: Second.

CHAIRMAN OPDYCKE: All those in favor?

(Chorus of ayes.)

CHAIRMAN OPDYCKE: Motion carries.

MR. DUNKLEY: Thank you.

CHAIRMAN OPDYCKE: Thank you. Craig?
CITY OF EVANSTON

PLAN COMMISSION MEETING

Re: Evanston Plan 2030

a. CMAP GO TO 2040 Vision Workshop

b. Subcommittee

Transcribed Report of Proceedings of a public meeting, held August 12, 2009, at the Evanston Civic Center, 2100 Ridge Avenue, Council Chambers, Evanston, Illinois, at 7:08 p.m. and presided over by Stuart Opdycke, Chair.

PRESENT:

S. OPDYCKE, CHAIR               D. GALLOWAY
J. NYDEN                                C. STALEY
J. WOODS                                R. SHURE
S. PETERS

STAFF:

BILL DUNKLEY - Zoning Administrator
DOMINICK ARGUMEDO - Zoning Planner
SUSAN GUDERLEY
CRAIG SKLENAR
MR. SKLENAR: Good evening. Just to start the Plan 2030 conversation, I want to remind everybody I've placed one of these little cards, and you've gotten an e-mail. I'm trying to get as many people this next Thursday, six to eight, as we talked about CMAP will be here, they're staffing the meeting, Plan Department will be there throughout the entire thing. I have to leave a little bit early, I have previous engagements. But, please do come, drag people from your neighborhood to this event. I think it's going to be a great way for us to start understanding where citizens are, gauge their opinion of how they feel the City plans within the region, and then that's also going to dictate how we could start drafting our general plan for next year.

So, the other agenda item too is I've placed kind of a quick article underneath your agenda that has, the last page has a list of comprehensive plans from around the nation that I think is something everybody should be looking at. One particular is Youngstown 2010, it was done about five years ago. They're kind of converse of us, they've shrunk from about 160,000 people down to 80. So, physically they have a large amount of land, what to do with it. I think it's an interesting way of how they've approached citizen input, getting
volunteers out to do a lot of the work, a lot of the assessment. A lot of the citizens were involved. They have teams of 80 going out and looking at each block, parcel by parcel, and evaluating what was on the land and helping them derive a new general plan.

That is pretty much what I have tonight. Beyond that we're going to start the Sub-Committee. I don't know if you guys want to still have a meeting tonight or if we want to propose another time next week, since things ran a little longer than I expected.

CHAIRMAN OPDYCKE: Any thoughts from fellow Commissioners on that point, whether you want to take up the issue right now, or do you want to put it on the agenda for September 9th, after we've had the benefit of that seminar. Any thoughts?

MR. STALEY: Sounds good to me.

MS. NYDEN: Also, if we might be getting another Plan Commission member, a ninth member. Then we can start with that, if that person wants to be on the committee.

CHAIRMAN OPDYCKE: Good idea. We'll defer then to September 9th. We'll get it on the agenda for that night.

MR. SKLENAR: Okay.
CHAIRMAN OPDYCKE: All right. Any Committee reports? None. I'm sorry, Sue Guderley? Pardon?

MS. GUDERLEY: If I could just share some information that we wanted to --

CHAIRMAN OPDYCKE: Yes, sure.

MS. GUDERLEY: Thanks. I'll try to be brief, given the hour. What we want to do, in light of the discussions of streetscape, and really the involvement of the Plan Commission in streetscapes generally throughout the city, but especially with the downtown and our recent, the downtown plan, we wanted to lift up to you two streetscape projects that are moving along for downtown. They both involve public streetscape, public initiated streetscape projects.

The first one involves the sidewalks that surround the main library building at Orrington and Church. There is actually, I don't know if anyone has seen it on the web site, there's actually a meeting next Wednesday, August 19th from six until 8:30 p.m., in the community meeting room of the library. The purpose of the meeting is to present a plan that's been devised by the original architect for the library, which is Nagle, Hartree, Danker, Kagen, McKay and Penny.

CHAIRMAN OPDYCKE: Law firm.
MS. GUDERLEY: Pardon me?
CHAIRMAN OPDYCKE: Law firm.
MS. GUDERLEY: Well, it sounds like it, or a chemical combination. It's NHDKMP. But apparently this has been driven by the fact that in the last year there's been five public falls requiring emergency responses in the area surrounding the library. And I walk by there all the time, and today I took special note. They are in pretty bad disrepair, especially the soldier course right in front. People getting out would just fall down. But it's come to a crisis situation.
It's not the silly walks, it's the silly falls, I guess.
But, there will be this meeting. We encourage those of you who are interested to go. I know that the library and public works had contacted me for some of the lists of the downtown residents, things that had been generated for the downtown plan for some discussions or focus groups leading up to this. It's next Wednesday, the 19th.
MS. NYDEN: I was going to say, if it's Thursday, we have to go to two events.
MS. GUDERLEY: No, no, no. We're getting you busy. I know that's your typical meeting. I don't know if you --
I just want to lift up though, in terms of this project, and this will come into play with the second project, what they're proposing right now, the streetscape design is, will not use the paver patterns that are used elsewhere. They're proposing for cost reasons and for, to move ahead, a design that uses concrete with soldier course, three soldier course on the, behind the pavement, and also around the tree wells. They'll still have the decorative tree wells, they'll still have the benches and the other amenities. But they're moving ahead on this as a, proposed as a concrete design. So, I would urge you to go and to understand what they're proposing and why they're proposing it next Wednesday.

Another streetscape project is the widening of the Maple Street streetscape, from Church Street up to Clark, which is basically from the corner where there's Borders and Bravo now, up to the corner that is, it's not a complete intersection, but it's Chili's on one side and it's just about where the hotel property begins on the west side.

Again, this is something that was called out, I think, for a long time both in terms of discussions around the master plan, but, I mean, the downtown plan,
but also just numerous discussions, just comments we get from citizens about how narrow it is. I know that I walk all the time from Metra and I can't even keep my umbrella straight, I have to go like this to get through at certain points. So, it's certainly needed. And again, the proposal at this point, this is on an even faster track because this tiff expires this year and the money that we have remaining in the fund balance needs to be expended.

Now, again for this project, the proposal is to, north of the corners of Church, in front of the Bravo parking, Bravo Restaurant, and in front of Borders, those will still maintain the full enhanced paver design. But north of that, after it wraps the corner, will again be as proposed as concrete with the, again, paver strips along, something like the Chicago Avenue streetscape, which is again a concrete sidewalk with paver striping behind the curb and around the tree wells.

So, that is proposed. That will go to Council on September 14th, on the bills list. If it's approved, they hope to move ahead with all due haste to begin that construction and get it done.

Other elements I can think of, there is a mid-
They're finding that when the movies let out, people just walk like in beelines across the street, and really that street is designed for rush hour in Schaumburg because it's so wide right now. I like to look at the animated traffic model we have, and you're watching, at rush hour you're watching Ridge just totally packed and Church totally packed, and there's like three vehicles that go down Maple. And it's designed, it's just so over-designed. So, this is good. It'll be one lane in either direction with the turn lanes and a much greater pedestrian area.

MS. NYDEN: So the sidewalks will be getting --

CHAIRMAN OPDYCKE: Wider.

MS. GUDERLEY: Much wider, yes. I'm going to say eight feet in good portions of it. Some portions are less than that.

CHAIRMAN OPDYCKE: There's a lot to be said for concrete.

MS. GUDERLEY: Pardon me?

CHAIRMAN OPDYCKE: There's a lot to be said for concrete.

MS. GUDERLEY: And it, you know, no trip
CHAIRMEN OPDYCKE: Any other comments from members of the Commission?

MS. GALLOWAY: Just to say that, in the Parking Committee, we've seen the proposal for Maple Street evolve over the last, probably half year, easily, and it is a marked improvement. Although it would be hard to do anything that would be worse.

I do remember the discussions about the width of Maple Street when that project was under consideration, and as I recall, the fire department insisted on being able to turn a fire truck around or something ridiculous like that.

CHAIRMEN OPDYCKE: Is there a motion to adjourn?

MR. WOODS: So move.

MR. STALEY: Second.

CHAIRMEN OPDYCKE: All those in favor?

(Chorus of ayes.)

CHAIRMEN OPDYCKE: We are adjourned.

(Whereupon the meeting was concluded at 8:52 p.m.)