



**MEETING MINUTES
OF THE
PLAN COMMISSION
February 1, 2023 – 7:00 P.M.**

**LINCOLNWOOD VILLAGE HALL
6900 NORTH LINCOLN AVENUE
LINCOLNWOOD, ILLINOIS 60712**

Present: Chairman Mark Yohanna, Commissioners Mark DeAngelis, Adi Kohn, Don Sampen, Henry Novoselsky, Steven Jakubowski and Suzanne Auerbach

Absent: None

Staff Present: Community Development Director Scott Mangum, Planning and Economic Development Manager Doug Hammel, Community Development Coordinator Marcos Classen, and Village Attorney Hart Passman, Village Trustee Atour Sargon

I. Call to Order

Chairman Mark Yohanna noted a quorum and called the meeting to order at 7:01 p.m.

II. Pledge of Allegiance

III. Approval of Minutes

Motion to approve January 4th Plan Commission Minutes was made by Commissioner DeAngelis and seconded by Commissioner Sampen.

Aye: Kohn, DeAngelis, Sampen, Novoselsky, and Yohanna

Nay:

Abstain: Auerbach, Jakubowski

Motion Approved: 5-0

Chairman Yohanna announced a change to the order of items on the docket PC-03-23 to go first followed by PC-02-23 then PC-01-23.

IV. Case #PC-03-23: 4370 West Touhy Avenue – Special Use to Allow a Permanent Dermal Pigmentation Establishment

Planning and Zoning Manager Doug Hammel presented information included in the staff report. Mr. Hammel noted that the applicant is looking to relocate an existing business (a permanent

dermal pigmentation establishment) to a new address 4370 W. Touhy inside the David's Square shopping center which is in the B-2 zoning district. At the business's previous address on the 3900 Block of Touhy, the applicant went through the public hearing process, and the Village Board passed both a text amendment allowing permanent dermal pigmentation establishment to operate via a Special Use application and the subsequent Special Use application allowing the business to open at the former location. The applicant is now looking to have the same Special Use allowances approved at the new location in the David's Square shopping center. This applicant is looking to expand their business with this new larger space (approx. 2500 sq feet). Mr. Hammel also spoke about the history while at the previous address and stated that there was no record of any code enforcement issues. He also pointed out that staff received a reference from the previous landlord at the former address. Finally, Mr. Hammel spoke about potential parking management issues and stated that there have been discussions about the potential impact the new business would have at the location.

Petitioner (Kaitlyn Moskowitz) and property owner (Angelo Apostolou) spoke on behalf of the request.

Ms. Moskowitz spoke about how her business is at the point that they needed a bigger space to accommodate her customers.

There was some discussion about the hours of operation, and it was noted that the business would not operate out of the standard hours allowed in Lincolnwood (10 am – 10 pm).

Mr. Apostolou stated that any parking issues the site previously had ended when a previous tenant (Starbucks) moved. He also stated that he believes that the nature of the new business would allow for better staggering of patrons and would lessen the impact on parking in the area.

Ms. Moskowitz also noted that currently they are planning on working with customers by appointment only, so it would help regulate how many people are at the location at a given time.

Commissioner Novoselsky asked why a hearing was needed based on the fact that this owner has been to the Plan Commission before for the same reason and there is no evidence of any issues at the previous location.

Village Attorney Hart Passman stated that while it is correct that the applicant has been through the process before, for both a text amendment and a special use application, the result of those hearings were that the code was amended to allow for a permanent dermal pigmentation establishment to be established in the B-2 District via a special use application. The Special Use at the former address does not transfer to the new address and would need to be granted by the Village Board in accordance with the Village Code.

Public Comment

Arlene Larosa spoke in favor of granting a special use, stating that the Petitioner was born and raised in Lincolnwood and feels that this would be a good business for Lincolnwood.

Commissioner Jakubowski and Chairman Yohanna both stated that is nice to see a local business succeed and expand in this way.

A Motion was made by Commissioner Jakubowski to approve a special use as.

The motion was seconded by Commissioner Novoselsky.

Aye: Jakubowski, Kohn, DeAngelis, Novoselsky, Sampen, Auerbach, and Yohanna

Nay: None

Abstain: None

Passes 7-0

Case #PC-03-23 will be heard at the February 21, 2023 Village Board meeting.

V. **Case #PC-02-23: Zoning Text Amendment – Regulations related to the Permissibility of Parking Lot Security Gates**

Commissioner Novoselsky asked if the parking lot in question was a through lot and therefore subject to the Special Fence provision of the Village Code. Mr. Hammel stated that depending on any recommendation made tonight, this type of space may fall into the Special Fence provision.

Chairman Yohanna wanted to give some context to Commissioners who may not have been on the Commission at the time about the property in question. He stated that when the property was first under the review of the Plan Commission the applicant addressed all issues in regard to coming up with parking solutions to lessen the impact on the neighborhood.

Planning and Zoning Manager Doug Hammel went over the staff report. Initially this was looked at as a fence request based on the current definition of fences in the Village Code, but further considerations made staff look at how the current code doesn't address safety and security in parking lots. Mr. Hammel went on to summarize the outcome of a recent Committee of the Whole discussion. Generally, the Committee recognized the appropriateness of security gates, but felt that security gates should be separate from fences (in terms of zoning definitions and standards for approval), they also suggested that the need for a security gate be demonstrated, as well as discussing impacts to patrons of a given property and any potential impacts to public parking on surrounding streets.

Mr. Hammel spoke about existing security gates in the Village but noted that these existing gates only limited some sections of a parking lot while still having sections that were fully open to the public. There was also discussion about emergency access for emergency vehicles.

Commissioner Jakubowski asked why this request was submitted as a text amendment and not as a variation for the specific property.

Mr. Hammel stated that the code does not currently define these types of structures and the closest definition would define them as fences. The problem with this is the current code does not allow fences in the front yard of properties. If they are considered to be a structure that is not a fence then they do not fall into a category that has a defined path in the Village Code which makes the path to approval more difficult.

Commissioner Novoselsky asked if these types of structures could fall under the special fence provision in the Village Code.

Mr. Hammel stated that the current code does not have specific language for Special Fences.

Mr. Passman identified three paths for tonight's discussion:

- 1) Don't allow security fences;
- 2) Allow security fences with no restrictions; or
- 3) Allow security fences with restrictions but define what restrictions or procedures should be in place to approve them.

There was some discussion about holding up the improvement at the applicant's property while the Village figures out what to do with these types of structures.

There was also some discussion about different technologies that could be used to mitigate some of the stacking issued raised by using slower equipment.

Mr. Hammel spoke about how the main takeaway he took from the Village Board's discussion was that applicants who sought these types of structures would need to show a need, and that need could be vetted out via the public hearing process.

Trustee Sargon spoke about the discussion that the Village Board had and how their intention was to create an administrative review that would ensure emergency access for police and fire. They also discussed whether this would fit under the existing fence ordinance or should be a part of a different process, like a special use or special fence provision.

Chairman Yohanna asked for the petitioner to address the Commission.

Chris Canning, attorney for petitioner, addressed the commission. He stated the request was submitted as a text amendment because after working with Mr. Hammel on determining a path forward, he felt that he and his client believed that the Village Code didn't quite cover this type of request. He also talked about potential sign issues and the desire to not need to seek variations for them if possible and the hope that whatever process is created will account for signage. He went on to talk about how when there is a request for a special use or variation the standards for the review process are clearly laid out, in this case that was not the case.

Petitioner Sayeed Shariff addressed the commission. He spoke about why this security fence is needed by going over issues at the parking lot currently during Friday prayer, and talked about how the lot is used as a pass thru by motorists to avoid traffic.

There was no public comment.

Mr. Hammel discussed Special Fences and what is currently in the Village Code as well as what is not in the Code currently.

Attorney Passman stated that the consensus he heard from the Plan Commission was to write a text amendment that defines security gates as a special use.

Commissioner DeAngelis stated security fences should be permitted so long as they do not create an adverse impacts.

Commissioner Auerbach noted that she felt that security gates should not be allowed in residential districts.

There was discussion about the terminology used in the packet and if the staff recommendation included residential districts. Mr. Hammel stated that only nonresidential areas were considered by staff.

There was additional discussion about driveways versus parking lots and if they were defined in the Village Code. Mr. Passman stated that if the terms are not explicitly defined in the Village Code then the common definitions would prevail.

There was consensus among the commission that using the term “parking lot security gates” would result in an interpretation that residential driveways would not be eligible for this type of improvement.

A Motion was made by Commissioner DeAngelis to recommend a text amendment to allow for parking lot security gates through the special fence process in all districts with the limitation that it not cause adverse impacts.

The motion was seconded by Commissioner Sampen.

Aye: Jakubowski, Kohn, DeAngelis, Novoselsky, Sampen, and Auerbach

Nay: Yohanna

Abstain: None

Passes 6-1

Case #PC-02-23 will be heard at the February 21, 2023 Village Board meeting.

VI. Case #PC-01-23: 7336 North Kenneth Avenue - Reasonable Accommodation for a Non-Compliant Fence

Planning and Economic Development Manager Doug Hammel overviewed the staff report and updates since last month’s hearing. He highlighted the relevant fences at issue, regulatory context, required relief, and the previous discussions related to the case. Mr. Hammel relayed that Staff and the Village Attorney prepared a questionnaire for the petitioner related to major life activities of the petitioner, in order to facilitate the gathering of information necessary for the Village to determine if the petitioner’s request met the standards for granting of a reasonable accommodation, as contemplated by federal law and the Zoning Code, while also protecting the petitioner’s desire for privacy.

Commissioner Novoselsky asked about if the Fair Housing Act applied to this case. Village Attorney Passman stated that the Act did apply, and that the Village was trying to be as mindful

and respectful of petitioner's stated desire for privacy while also working to ascertain whether the Act required the granting of a reasonable accommodation in the instant case.

Chairman Yohanna asked if staff received a written response to the questionnaire. Mr. Hammel stated that no questionnaire response was received, but that the petitioner was invited to provide oral answers at the Commission's hearing.

The Fair Housing Act standards as it relates to a reasonable accommodation were highlighted by Attorney Passman. Commissioner Jakubowski clarified Attorney Passman's point and stated that the Plan Commission should assume a disability exists and should consider a reasonable accommodation from there. Mr. Passman agreed with the Commissioner's comment.

Commissioner Jakubowski asked about the timing of application for the reasonable accommodation. Mr. Passman stated that if someone is entitled to a reasonable accommodation, the timing of the application is irrelevant.

Chairman Yohanna swore the petitioner in and went over questions in the questionnaire. Chairman Yohanna asked the petitioner to identify all major life activities that were limited as a result of the petitioner's condition. She stated: eating, sleeping, walking, and working. The petitioner stated that questions 2, 3, and 4 of the questionnaire were confusing.

Chairman Yohanna asked how presence of a fence would alleviate the condition the petitioner has. The petitioner stated: gardening for therapeutic reasons and the care for her pets were the reasons for the fence.

Commissioner Auerbach discussed the nature of a semi-private fence. She discussed the gaps of such a fence and opined that a small dog would not fit through semi-private fence gap. Chairman Yohanna asked how a four-foot-tall fence in the side yard of the property would impair or limit the petitioner's ability to engage in the activities previously stated. The Petitioner stated that she feels anxiety when opening the front door.

Chairman Yohanna asked the petitioner to please provide any additional information that explains how the proposed solid side yard and rear yard fences are financially, therapeutically or otherwise necessary to allow you an equal opportunity to use and enjoy housing in the Village. The petitioner cited financial reasons and safety concerns. A discussion on the recent history of the fence occurred.

Commissioner Auerbach asked about a shadowbox fence and asked how an ungated side yard fence provides safety. The husband of petitioner addressed the Commission. He discussed privacy between the neighbor and himself being the reason for the fence.

Commissioner Kohn asked about the encroachment on to the neighbor's property. A brief discussion on the topic occurred.

Attorney Passman stated that the financial impact of being forced to remove the fence does not affect the reasonable accommodation question. He reiterated the sensitivity to the issue of the Petitioner's medical privacy. The Commission discussed the petitioner's statements concerning

the major life activities that she stated were impaired by the regular application of the Zoning Code. Chairman Yohanna stated he had not heard one expert opinion that would suggest this accommodation is related to a disability.

There was no public comment.

Commissioner Auerbach stated that in a perfect world would a shadowbox fence meet her accommodations. The petitioner stated that she would not accept a shadowbox fence.

A motion was made by Commissioner Sampen to recommend denial of a reasonable accommodation.

The motion was seconded by Commissioner Auerbach.

Discussion on the motion occurred. Commissioner DeAngelis asked Attorney Passman whether the petitioner had submitted any documents from an expert in support of the requested accommodation.

Attorney Passman discussed the documents provided, and stated that those documents did not mention a fence or privacy concerns.

Commissioner DeAngelis stated that he has not seen enough to grant the request.

Commissioner Auerbach stated that the Plan Commission would need a letter that mentioned the need for a fence. She stated that she doesn't see how shadowbox fence would not meet the criteria.

Commissioner Novoselsky stated that there is a material difference between self-serving conclusions and competent expert testimony.

Commissioner Sampen stated he had not heard the need from the petitioner for the need for a therapy animal. He also said, even if he had heard that need, he had not heard the need for a 6-foot fence.

Commissioner Jakubowski asked what the burden of proof is for the petitioner. Attorney Passman stated an applicant is entitled to an accommodation if they can demonstrate the Village's codes impair or impede a major life activity.

Commissioner Kohn asked if the petitioner were to receive a letter from an expert, what would be next steps would be. The petitioner stated that she cannot get this type of letter from the doctor.

Chairman Yohanna asked if any suggestion was made to the applicant that she may want to bring in a non-descript letter. Mr. Hammel stated these topics were discussed early in conversations with the petitioner.

Commissioner DeAngelis stated that he would need a letter from an expert that states the need for the relief.

Aye: Jakubowski, Kohn, DeAngelis, Novo, Sampen, and Auerbach,

Nay: Yohanna

Abstain: None

Passes 6-1

Case #PC-01-23 will be heard at the February 21, 2023 Village Board meeting.

VII. Case #PC-15-22: Zoning Code Text Amendment – Regulations Related to Required Transition Yards, Setback Buffers, and Landscape Screening on Commercial Properties Abutting Residential Properties

A Motion was made by Commissioner Jakubowski to continue the case to February 22st meeting. The motion was seconded by Commissioner Sampen.

Aye: Jakubowski, Kohn, DeAngelis, Novo, Sampen, Auerbach, and Yohanna

Nay:

Abstain:

Passes 7-0

**VIII. Case #PC-10-22: Zoning Code Text Amendment – Permissibility of Certain Use in Various Zoning Districts Throughout the Village
*This matter is continued from the June 1, July 6, September 7, and September 28, 2022, meetings.***

A Motion was made by Commissioner Jakubowski to continue the case to February 22st meeting. The motion was seconded by Commissioner Sampen.

Aye: Jakubowski, Kohn, DeAngelis, Novo, Sampen, Auerbach, and Yohanna

Nay:

Abstain:

Passes 7-0

IX. Next Meeting

The next meeting of the Plan Commission is scheduled for Wednesday February 22, 2023.

X. Public Comment

Chairman Yohanna announced the opportunity for additional comments from the public. Let the record show that no one came forward.

XI. Adjournment

Motion to recommend adjournment was made by Commissioner Novoselsky and seconded by Commissioner Kohn.

Aye: Jakubowski, Kohn, DeAngelis, Novo, Sampen, Auerbach, and Yohanna

Nay: None

Abstain: None

Passes 7-0

Meeting adjourned at 9:52 p.m.

Respectfully submitted,

Jake Litz

Management Analyst