

In the Council Chambers of the Municipal Building, on Tuesday, May 8, 1973, at 7:30 p.m., E.S.T., with Council President Charlotte T. Zietlow presiding.

SPECIAL SESSION
COMMON COUNCIL
CITY OF BLOOMINGTON
INDIANA

PRESENT: Hubert Davis, Richard Behen, Brian De St. Croix, Wayne Fix, Charlotte Zietlow.

ROLL CALL

ABSENT: Jack Morrison, Alfred Towell, Sherwin Mizell, James Ackerman.

Tom Crossman, Planning Director; Rasoul Istrabadi, City Engineer; Marvard Clark, Assistant City Engineer; James Register, Corporate Counsel; Grace Johnson, City Clerk.

CITY OFFICIALS PRESENT

Four people, including members of the press. Council President Charlotte Zietlow announced that this special session of the Council had been called for the second reading and consideration of Ordinance NO. 73-39, amendments to the site planning regulations, ordinance no. 73-11.

OTHERS PRESENT

Councilman De St. Croix moved that ordinance no. 73-39 be advanced to second reading and read by the clerk by title only. Councilman Davis seconded the motion. The motion was carried by a unanimous voice vote.

Ordinance NO. 73-39,
amendments to
ordinance no. 73-11

Grace Johnson read Ordinance NO. 73-39 by title only.

Councilman De St. Croix moved that ordinance no. 73-39 be adopted. Councilman Davis seconded the motion.

Mr. Crossman, Planning Director, addressed the Council: During the process of administration of the site plan ordinance as originally adopted, particularly Mr. Istrabadi in the engineering department, ran into a good deal of difficulty and a good deal of hardship was placed upon builders, developers and people who had small developments, single lots that had no particular effect upon the plans or the site arrangement in the city. Mr. Istrabadi and I concurred and decided that we would attempt to find some means of stream-lining the procedures. The amendments that you have in front of you are a result of that attempt. We are recommending that those developments that do not require the construction of new streets or drives, that are essentially on existing streets, which do not have any serious topographic or drainage problems and which involve two or fewer structures be handled by review of the engineering department and the planning department administratively. If there are any circumstances wherein there are drainage problems, wherein any of the other factors that we normally consider come about, then the requirement still stands that the planning commission would have to review and approve the site development. We believe that the modification of the ordinance in the form before you would substantially diminish the amount of work that the council and the planning commission particularly - it doesn't necessarily diminish the amount of the work the staff would have to do. It would also create a great deal less delay and a great deal less difficulty upon the building community. These amendments were reviewed last night by the plan commission; they had one addition that they recommend to you and that being that if any party is unhappy or dissatisfied with the administrative recommendation that is made, that they then in turn have a perfect right to have a hearing before the planning commission. The other general amendment presented modifies the ordinance from listing the city council as the appeals board, which the corporate counsel found was not legal within the framework of the state enabling legislation and sets that before the board of zoning appeals and rectifies that error.

Mr. Crossman said that essentially they are asking that the planning and engineering departments be given the authority to handle some site plans administratively if there are no problems and they wish to do so; the ordinance is not saying

that they have to handle certain plans administratively and they may.

Councilman De St. Croix moved that Ordinance No. 73-39 be amended by expanding the first paragraph of section 09.05, Appeal, to read as follows:

"Any person feeling himself aggrieved at any action of the Commission upon any proposed development plan, may apply in writing to the Board of Zoning Appeals, within five (5) days of the decision by the Plan Commission or the City Engineer, prior to its regular monthly meeting, for modification of the action complained of and such application shall be considered by the Board of Zoning Appeals at such time and in such manner as it may determine. No permit shall be issued by the City Engineer's office prior to the termination of the five-day (5) appeal period."

and that section 09.04 be expanded by adding a subsection to read as follows:

"D. Any person who is not in agreement with the decision of the Planning Department or the Engineering Department may apply to the Plan Commission as set forth in this ordinance."

Councilman Behen seconded the motion.

There was discussion of the amendment by the Council.

THE MOTION WAS CARRIED BY A ROLL CALL VOTE OF AYES 5, Nays 0.

Councilman De St. Croix moved that Ordinance NO. 73-39 as amended be adopted.

Councilman Behen seconded the motion.

The motion WAS CARRIED BY A ROLL CALL VOTE OF AYES 5, Nays 0.

Councilman Behen moved that the meeting be adjourned.

Councilman De St. Croix seconded the motion.

The motion was carried by a unanimous voice vote.

The meeting was adjourned at 8:20 p.m.

ADJOURNMENT

Charlotte T. Zietlin
Charlotte t. Zietlin
Council President

ATTEST:

Amy G. Mann
Amy G. Mann, Council Secretary

Councilwoman Zietlow said that she had a question about the amendment...do you have it there Tom 01.0502 Any residential lot of record zoned for single family purpose having frontage on the existing street shall be excluded from these regulations. Will that be a single family residential lot of any size?

Mr. Crossman said that providing it is a lot on record and not open unplotted acreage and it has frontage on a single street, I mean on the existing street. In other words we cannot create a new lot without...as a matter of fact we cannot create a new lot without going through the sub-division procedures. But this does grant the authority to build on a single family lot, yes.

Councilwoman Zietlow: of any size.

Mr. Crossman said yes.

Councilwoman Zietlow said larger than 15,000 square feet.

Mr. Crossman said providing it is one dwelling on one lot.

Mr. Istrabadi said and of course if there is no problem of.... in the street or any kind of complex. Otherwise... could be taken to the plan commission technical adviser.

Mr. Crossman said that the key to this is not that we are asking a mandatory administrative approval but we are asking that the ordinance be written so that having completed such review and determination the planning department may act in one of the following manners. We are not saying that we shall handle the thing administratively. We are asking that we have the authority to do it if there are no problems. If there are problems of course we will then bring it before the planning commission as the original intent.

Councilman Behen requested that two members of the audience speak to this and he presumed that it would take all of the council's votes to pass this. It is an instrument that the city engineer, the planning department needs to operate efficiently. I do want to question the city engineer as to whether he has any feelings as to whether some of these situations should be retroactive. You and I visited a site on west second street some months ago. Those people below the parking lot of the drug store on West Second Street, the doctor's complex there, are still being totally by water. I have had several phone calls from those people and they know that you and I were out there and they want to know are we going to do something about it. Is there any way that this thing can revert back. My question simply is can we help these people whose homes are being flooded every time we have more than a slight shower.

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Mr. Istrabadi said that what happened ^{was} and he wrote the order. ~~that~~ We gave them a month to correct the situation and then we wrote them another letter and finally they came up and said that in ~~the~~ spring they are going to submit a plan of reconstruction or correcting the situation. We have it in our record it should be the 15th of May or the 20th I don't know exactly. That is the time they are going to come to the office and show us their ~~ne~~ plans.

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Councilman Fix asked for a clarification of item four A. Where not more than two structures are proposed to be built. What is a structure.

Mr. Crossman said that he might have to have Mr. Istrabadi answer this but in the frame work of most of the development regulations that we have on the books now a structure would be any building. In fact it would not have to be a building. Theoretically an advertising sign could be a structure.

Councilwoman Zietlow asked if it was defined according to the building code.

Mr. Istrabadi said that anything that is put on the ground is a structure.

Mr. Crossman said yes to Councilwoman Zietlow's question.

Councilman Fix said that in other words we could have a 50 unit apartment complex.

Councilwoman Zietlow said that would require new streets and driveways.

Mr. Crossman said that technically that would be possible but to be practical a structure like that would involve new streets, new drives and would involve sewer and water problems. If we had something of that scope there would be no question and we would take the option of presenting it to the planning commission. Technically it would be possible yes. I do not see how it could happen.

Councilwoman Zietlow said that anything having significant drainage, sewage, topographical problems ~~would have~~ would automatically go to the planning department from there to the planning commission.

Councilman Fix said that one of the problems and one of the reasons for the site planning regulations is that many of these problems are recognized as being significant.

Councilman Fix asked what is a drive.

Councilwoman Zietlow said that was defined in the ordinance.

Mr. Crossman said that we define drive as any private way then, in turn, we required that it be built and maintained to the same standards as the city streets. That is clearly defined in the original ordinance.

Councilman De St. Croix said that in section 0905 in its rewriting that we drop one of the corporate protections and that was specifying an exact period of time during which an appeal could be made for the decision. As I understand the writing here ... it would include people not submitting plans, people opposed to plans for example. I think it is unfair to the builders, not to give a specified period of time in which an appeal can be made. It is also unfair to people who might be protesting a decision to not specify the time an appeal can be made. The appeal could be made to the board of zoning appeals and we could have a building going up while the appeal procedure is going at the same time.

Councilman De St. Croix made a motion to amend the ordinance which is on the official set of minutes.

DISCUSSION ON THE AMENDMENT

Councilman De St. Croix said that it appears to him that we are protecting everybody. The person requesting the appeal knows exactly how long somebody can appeal.

Councilwoman Zietlow asked how people will know that this approval has been given. Will that be advertised in the paper. If the person seeking the permit wanted to appeal he would know. But if the person wasn't seeking a permit how would he know. How do we know who is going to want to appeal it.

Councilman Davis said that usually a person that would want to appeal would... and would not pick it up from a newspaper advertisement.

Councilman Behen said that often times they would not be aware of it until construction was under way.

Councilwoman Zietlow said that does happen.

Councilman Davis said that all he was saying is that a newspaper advertisement will not do it.

Councilman Behen said that we could use signs like the rezoning signs.

Mr. Register said that anyone interested in any proceeding in reference to construction would be following it in the administrative ... they are public records.

Councilwoman Zietlow said that if there was a big plot of land down the street and it had been there for six years without ever having been touched. I really would not know if the owner would have gone to apply for a permit. Maybe I won't mind but maybe I would.

Mr. Crossman said that he sees this as a technical difficulty and not a practical difficulty because if we are talking about anything significant other than existing lots on existing streets we are going to bring it before the planning commission. If in fact it is a large development on existing lots on existing streets we are going to bring it before the planning commission. The other sort of things I can see can pose the sort of difficulty that has been proposed here. But I would doubt that there would be the level of concern that there would be in large new developments.

Councilwoman Zietlow said that she was sure that was true. But was wondering if there was some sort of apparatus that could be used that would be cheap and easy and fool proof and anything else.

Councilwoman Zietlow asked if there was a listing in the newspapers regularly of approval of building permits.

A member of the audience said no.

Councilman Behen said that if its controversial it certainly is.

A member of the audience said that he did not know of any notification process for every building permit. There were 128 building permits issued in April.

Councilman Behen said that the neighbors would not know that they were going to have a serious drainage problem until construction was completed.

Mr. Crossman said that the neighbors may not know that they are going to have a drainage problems but when Mr. Istrabadi reviews it he will know that they are going to have a drainage problem. If there are these kinds of problems it will definately come before the planning commission.

Councilwoman Zietlow said that was one of the major points of the original ordinance.

Councilman Fix asked Mr. Crossman if he would allow this latitude without contacting plan commission members.

Mr. Crossman said that if you recall this ordinance was originated by city council in the first place so the amendment authority rest with the council also. The plan commission did discuss it last night however. So they are in concurrence to the amendments to the ordinance.

Councilwoman Zietlow said that we are discussing the amendments to 09.05 which has to deal with the ten day appeals period.

Councilman De St. Croix expanded his motion to add to his amendment in section 09.04 (this amendment is in the official minutes)

Councilman Davis asked why is ... as opposed to the appeal. That is just the appeal of the administration.

Mr. Crossman said that the planning commission felt last night that those people who are agrieved by their decisions, by statement of this ordinance have a right to appeal to the BZA AND IN fact anybody who is agrieved from an administrative decision in accordance to the authority of the BZA has that right but it is not clearly stated. They felt in many cases either the developer or the neighbors would rather take the case to the planning commission rather then directly to the BZA. If it were decided administratively they felt that would be an additional protection for those who are developing the land or those who may be opposed to development. It does not mandatorily require that they take it before the planning commission. It merely gives them the right to do so if they wish.

Mr. Owens asked the Council from what are they amending the appeal process from the planning commission, from the engineering or planning department.

Councilwoman Zietlow said that there are two appeal processes one is the appeal in the original ordinance after the appeal in the plan commission would have been to the city council. We have to move that to the board of zoning appeals that is one amendment. Brian's amendment to that was to make it possible to hold that appeal up for ten days after the decision was made by the planning commission or the city engineer so that there would be a clearly defined period in which somebody would have to register a complaint.

Mr. Owens said by the plan commission or the city engineer.

Councilwoman Zietlow said that the basic elements of this amendment of this ordinance is to make it possible for smaller projects to go directly to the engineer and the plan department not having to go through the plan commission for approval so that people will not have to wait so long on smaller projects. Brian's motion also includes an appeal right after the plan department or the engineering department makes a decision to the plan commission before the whole thing goes to the BZA.

Councilman De St. Croix said that we have taken it out of the full process to expedite the process for smaller projects. Essentially what we are doing with these two amendments is to protect the community interest and the builder with this clearly defined period of appeal so that people can know exactly what to expect and when they can expect it when the project is started.

Mr. Owens asked if he was to apply administratively for a building permit would he have to wait ten days.

Councilwoman Zietlow said that it would be granted as long as he complied with the regulations.

Councilman Behen said that it was only the ones that are in dispute and if they didn't grant it and you felt that they should have had it granted to you you will have another area to pursue.

Councilwoman Zietlow said that if you would go with your larger development to the plan commission, to the plan department they would say that this would have to go to the plan commission first for site plan approval. If that were not approved you could appeal to the board of zoning appeals.

Councilman De St. Croix said that the ten day period would apply to the granting of any building permit under the provisions of 73-11 as amended to ordinance 73-39.

The difference here is that in 09.04 we are protecting people from arbitrary decisions on the part of staff perhaps and in our attempt to expedite the process by taking small projects out of the full blown hearing procedure. What we are saying is if I came in and I had a one mark project that I wanted to start on and Mr. Istrabadi said no I don't want that project and I felt that he was just being unfair to me you can go through the whole planning commission procedures and if you still feel that the planning commission was unfair you can go before the BZA. The ten day period applies to the letting of all permits.

Councilwoman Zietlow said that she wonders about that. Would that in effect undercut what we are doing in the ordinance itself.

Councilman De St. Croix said that it appears to me that if we do not adopt a 10 day period, ten days maybe to long five days maybe fairer. Is five days too short a period of time?

Mr. Crossman said that the whole site plan ordinance is dealing with property, it has to be correctly zoned in the first place so that the developer of that piece of land has the right to put on it the use that is being proposed. The site plan regulations are merely a development control to insure that all the mass community services are adequate. What we are saying in essence in this amendment is that in many of the smaller lots it is entirely possible for a technical staff, engineering or planning, to determine whether or not somebody has complied with all of the facets of these regulations. If they have complied then in accordance with the zoning ordinance they have the right to develop that land. So perhaps the shortest appeal time possible would be the best approach.

Here is where the amendment was changed to five days instead of ten days.

The vote on the amendment was AYES 5; Nays 0.

The vote on the ordinance as a whole Ayes 5 Nays 0.