

# CITY OF WEST CHICAGO

WHERE HISTORY & PROGRESS MEET

Approved 12/15/20

## MINUTES

### PLAN COMMISSION/ZONING BOARD OF APPEALS DECEMBER 1, 2020 7:00 P.M.

#### 1. Call to Order, Roll Call and Establishment of a Quorum

Chairperson Laimins called the meeting to order via “Zoom” at 7:00 p.m. Roll call found Chairperson Laimins, Commissioners Dettman, Hale, Kasprak, Henkin, Devitt, and ex-officio Commissioner Banasiak present. Commissioner Faught was excused. A quorum was established. All members were participating through “Zoom”.

Staff in attendance through “Zoom” were City Planner John Sterrett, Community Development Director Tom Dabareiner, George Georgis of B&F Inspections, and Attorney Pat Bond of Bond, Dickson, and Associates, P.C.

#### 2. Chairman’s Comments

Chairperson Laimins stated Mayor Pineda has determined that in-person meetings at this time are not practical nor prudent. Chairperson Laimins also stated that all votes would be by roll call and that all discussion on an item, including the recommendation, would occur during the public hearing. Also, no new evidence may be entered into the record during the hearings.

#### 3. Public Hearing and Review of Case PC 20-20, Administrative Appeal

Commissioner Hale made a motion, seconded by Commissioner Dettman, to open the public hearing. A roll call vote found Commissioners Hale, Dettman, Kasprak, Henkin, Devitt, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the public hearing was opened at 7:02 p.m.

John Sterrett, City Planner and Tom Dabareiner, Community Development Director, were sworn in.

Mr. Sterrett stated that this is an administrative appeal filed by Scooby’s Red Hots, Inc. III for the property at 1020 East North Avenue in the ER-1 Estate Residence District. The property is currently being used a legal nonconforming commercial use consisting of a dine-in/drive thru restaurant.

The property owner, on or about October 19, 2020, received a notice of ordinance violation that a recreational vehicle was being stored on the site. The City’s inspectors documented that the RV does not move from its location, but is permanently stored on the site. Staff therefore considers this outside storage. Outside storage is not listed as a permitted use in the ER-1 Estate District, and is therefore prohibited, per Section 6.7 of the Zoning Code, which states “Whenever any use is not specifically listed as permitted or special within a particular zoning district, such use shall be deemed prohibited in that district.”

475 Main Street  
West Chicago, Illinois  
60185

T (630) 293-2200  
F (630) 293-3028  
[www.westchicago.org](http://www.westchicago.org)

Ruben Pineda  
MAYOR  
Nancy M. Smith  
CITY CLERK

Michael L. Guttman  
CITY ADMINISTRATOR

The property owner was instructed to remove the stored RV but did not and as a result, a Notice to Appear in court was issued on October 27, 2020.

The property owner has appealed this notice, stating that as an ER-1 zoned property, they are able to store the RV on the lot per Section 13.1-13(A)(14) of the Zoning Code, which provides regulations for the keeping of recreational vehicles on residential zoned lots. Staff believes that this section applies to recreational vehicles when they are considered ACCESSORY to a principal use on the property.

The City's Zoning Code defines parking areas as being either a principal use or an accessory use. The *principal* use of the subject property is clearly the legal nonconforming dine-in/drive-thru restaurant. Section 6.17 of the Zoning Code states that an Accessory Use is a use that is "*Necessary or contributing to the comfort and convenience of the occupants (whether individuals or a commercial enterprise) of the principal structure or use served.*"

The parking area on the property is an accessory component for the use of the restaurant and provides necessary support for the use, such as parking for employees, customers, and a loading area necessary for deliveries associated with the business. These are necessary uses for the principal use of a legal nonconforming commercial restaurant. The use of storing the RV on the property is not necessary for the existing commercial use and is therefore not considered accessory to the principal use of the property. In other words, the storing of the RV is not accessory to anything on the property. The use of storing the RV on the property, therefore, in the opinion of staff does not qualify it for the regulations existing in Section 13.1-13 (A)(14) of the Zoning Code.

The parking of an RV in a residential district is permitted as an accessory use to the principal use of a single-family dwelling but is not accessory to a legal nonconforming commercial business such as this.

The storage of the RV on the property would be considered accessory only if it were necessary and contributing to a use permitted in the ER-1 Estate Residence District, such as a single-family dwelling. If the property owner begins to add accessory uses that are supportive of a permitted principal use in the ER-1 District, such as a single-family dwelling, then the legal nonconforming use of the dine-in/drive-thru restaurant must cease and the property must then be brought into full compliance with the ER-1 District, in accordance with Section 8.8(C) of the Zoning Code.

If storing the RV is not considered accessory to the principal use, the storage must be treated as its own principal use, which such principal use is prohibited in an ER-1 Estate District. Furthermore, the existing use as a legal nonconforming restaurant, as previously mentioned, is legal nonconforming and is permitted to remain provided that no expansion of the legal nonconforming use occur, such as adding outside storage, per Section 8.8(A) of the Zoning Code. The RV, therefore, should be removed from the site, as stated in the Notice of Violation Order.

The property owner has also referenced section 13.1-13(A)(15) of the Zoning Code as the basis for allowing the RV. This section is irrelevant as it applies to commercial vehicles and the property owner has already acknowledged this is an RV, not a commercial vehicle. The property owner has also referenced Section 10.3-3 and 10.3-7(D) of the Zoning Code as a basis to allow the RV as a

delivery vehicle. These sections do not reference delivery vehicles but regardless, the RV is not a delivery vehicle.

The Plan Commission, in its capacity as the Zoning Board of Appeals, is being asked if Section 13.1-13(A)(14) of the Zoning Code, allows a non-residential, legal nonconforming commercial use to store a recreational vehicle on the property. Staff does not believe that this section would be applicable for this scenario and therefore recommends that the Zoning Board of Appeals deny the appeal and affirm staff's interpretation of the Code.

In accordance with Section 5.3-4 of the Zoning Cod and state statutes, a notice of public hearing was published in the November 16<sup>th</sup> edition of the Daily Herald.

Attorney Bond stated that the counsel for Scooby's Red Hots, Attorney Bruce Kelsey was having technical difficulties and not able to unmute his Zoom. Attorney Bond suggested that the Plan Commission recess the public hearing until such time Attorney Kelsey is able to participate in the hearing without technical difficulties.

Commissioner Dettman made a motion, seconded by Commissioner Henkin, to recess the public hearing. A roll call vote found Commissioners Dettman, Henkin, Hale, Kasprak, Devitt, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) "yes" and zero (0) "no", the motion carried and the public hearing went into recess at 7:16 p.m.

#### **4. Public Hearing and Review of Case PC 20-14, Zoning Text Amendment**

Commissioner Dettman made a motion, seconded by Commissioner Kasprak, to open the public hearing. A roll call vote found Commissioners Dettman, Kasprak, Hale, Henkin, Devitt, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) "yes" and zero (0) "no", the motion carried and the public hearing was opened at 7:17 p.m.

John Sterrett, City Planner, was sworn in.

Mr. Sterrett stated that Abundantia Investments d/b/a iGarage, represented by Walter Lang is proposing a Zoning Text Amendment to Section 4.1 of Article 4 and to Section 10.3-4 of Article 10 of the Zoning Code. The amendment will provide a definition for the use of "Private Garage Vehicle Condominiums" and will add this use to the list of Special Uses in the B-2 General Business District.

The petitioner is proposing to develop the vacant property at the northeast corner of Roosevelt Road and IL Route 59 with luxury car condominiums. They intend to construct five (5) buildings containing a mix of one and two car garages and the concept of these garages is to give a place for car enthusiasts to keep their vehicles within. It is not intended to be used to rent out units for self-storage, which is permitted only in the M Manufacturing District and only as a Special Use.

The property is located in the B-2 General Business District and the City's B-2 District does not contain a use category that would allow this type of use. The petitioner is therefore seeking approval of a Zoning Text Amendment that would amend the text of the Zoning Code to include the use of a "Private Garage Vehicle Condominium" as a special use in the B-2 District. The petitioner sought

feedback on the concept form the City's Development Committee in November of 2019, which was supportive of the proposal.

*The proposed definition of this use is Attached structures designed as units capable of individual ownership and used for the shelter and protection of personal motor or recreational vehicles, and watercraft as well as the keeping of ancillary or related personal property, but not for human habitation or occupancy, such as for office or dwelling use, or for the storage of dry goods, perishable items, crops or animals. Private Garage Vehicle Condominiums do not include Self-service Storage Facilities nor do they include outside storage.*

Staff is supportive of the proposed text amendment and recommends that the Plan Commission pass a motion recommending approval of the zoning text amendment to the City Council. If the Zoning Text Amendment is approved by the City Council, the petitioner will proceed with a public hearing at a later date to review the proposal for the Special Use Permit for the development and operation of the site as a Private Garage Vehicle Condominium.

A notice of public hearing was published in the October 20<sup>th</sup> edition of the Daily Herald, in accordance with Section 5.6-2(B) of the Zoning Code and State Statutes.

Attorney Mark Daniel, representing the petitioner, was sworn in. Mr. Daniel provided background and information regarding the proposed Zoning Text Amendment and the proposed use of the property.

The Commission discussed the possibility of including a clause in the definition of "Private Garage Vehicle Condominium" that prevents any type of auto repair. The Commission decided that this aspect should be reviewed on a case by case basis with each special use application for this type of use.

Commissioner Hale made a motion, seconded by Commissioner Kasprak, to recommend approval of the Zoning Text Amendment as presented. A roll call vote found Commissioners Hale, Kasprak, Dettman, Henkin, Devitt and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) "yes" and zero (0) "no", the motion carried.

Commissioner Dettman made a motion, seconded by Commissioner Kasprak, to close the public hearing. A roll call vote found Commissioners Dettman, Kasprak, Hale, Henkin, Devitt, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) "yes" and zero (0) "no", the motion carried and the public hearing was closed at 7:56 p.m.

##### **5. Public Hearing and Review of Case PC 20-20, Administrative Appeal**

Commissioner Dettman made a motion, seconded by Commissioner Hale, to resume the public hearing of Case PC 20-20. A roll call vote found Commissioners Dettman, Hale, Kasprak, Henkin, Devitt, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) "yes" and zero (0) "no", the motion carried and the public hearing was resumed at 7:58 p.m.

Attorney Bruce Kelsey representing Scooby's Red Hots, Inc. III was sworn in. Attorney Kelsey claimed that the property owner was not made aware of the charges being brought forward in the

violation notice. Mr. Kelsey further stated that the RV is permitted to park on the property. Mr. Kelsey stated that the RV will be used as an advertising vehicle.

Attorney Bond stated that based on the definition of outside storage in the Zoning Code, the RV is being stored on the property, which is not permitted. Mr. Sterrett stated that, based on the description of an accessory use, the RV does not qualify as an accessory use because it is not necessary or contributing to the principal use of the property. Mr. Sterrett explained the provisions of parking an RV on a residential property. Attorney Kelsey stated that the RV is parked, not stored. Attorney Kelsey stated that the vehicle is licensed as an RV. Attorney Kelsey also stated he would work with staff depending on the outcome of the appeal.

Commissioner Dettman made a motion, seconded by Commissioner Devitt, to deny the appeal. A roll call vote found Commissioners Dettman, Devitt, Kasprak, Henkin, and Chairperson Laimins voting in favor and Commissioner Hale voting against. With a roll call vote of five (5) “yes” and one (1) “no”, the motion carried and the appeal was denied.

Commissioner Kasprak made a motion, seconded by Commissioner Henkin, to close the public hearing. A roll call vote found Commissioners Kasprak, Henkin, Dettman, Hale, Devitt, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the public hearing was closed at 8:30 p.m.

## **6. Public Hearing and Review of Case PC 20-18, Special Use Permit Amendment**

Commissioner Dettman made a motion, seconded by Commissioner Devitt, to open the public hearing. A roll call vote found Commissioners Dettman, Devitt, Hale, Kasprak, Henkin, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the public hearing was opened at 8:31 p.m.

John Sterrett, City Planner, was sworn in.

Mr. Sterrett stated that this is a request from Keith Parks of Frank’s Automotive to amend the existing special use permit at 927 West Washington Street in the M Manufacturing District.

The property received a special use permit in 2017, to develop the site and operate an automotive repair facility, self-storage facility, and outside storage. The development of the site included the construction of a 4,955 square foot automotive building, eleven (11) parking stalls to serve the facility, and an outside storage area comprising of roughly 20,000 square feet. This construction has been completed and a temporary certificate of occupancy has been issued for the building.

As part of the special use approval in 2017, an 8 foot tall cedar board on board fence was to be installed around the perimeter of the back half of the property to screen the outside storage area. The petitioner installed an 8 foot black coated chain link fence with slats in lieu of the approved fence. Staff discovered this deviation from the approved plan during a final inspection.

The property owner was aware of the change and sought to correct the fence with the approved cedar fence but requested a temporary certificate of occupancy while arrangements were made for

this correction. A cash bond for the fence was submitted to the City in exchange for the Temp C of O with the understanding the fence would be corrected. Since this time, the property owner desires to leave the fence in place and is seeking approval of a special use permit amendment to allow this fence to remain rather than the approved cedar fence.

Staff does not believe the chain link fence should remain and recommends that it be replaced with the approved wooden board on board fence. The City has typically required wooden fences, not chain link, for outside storage. Wood fences recommends that the existing fence be replaced with the approved fence and that the proposed special use amendment be denied.

In accordance with Section 5.5-3 of the zoning code and state statutes, a public notice was published in the November 16<sup>th</sup> edition of the Daily Herald, all property owners within 250 feet received notification, and a public hearing sign was installed on the site.

Keith Parks, petitioner, and David Sabathne, representing the petitioner, were sworn.

Mr. Parks stated that he believes the chain link fence was more appropriate for the site and that he had received approval for the fence. Mr. Sterrett stated that no such approval was given. Mr. Sabathne stated that there was confusion over which fence would be installed which is why the chain link was installed. Mr. Sabthne stated he disagreed with staff's findings of fact.

Matt Garling was sworn in to speak during public comment in support of the petition.

Mr. Sterrett stated he received an email from the neighbor to the west of the subject property, Alex Carbonara, in support of the petition.

Commissioner Hale made a motion, seconded by Commissioner Henkin, to adopt the following findings of fact:

1. *Is necessary for the public convenience at that location or, the case of existing nonconforming uses, a special use permit will make the use more compatible with its surroundings:*

True. The uses of the property will not change from the originally approved Special Use Permit. The uses that were previously approved include an Automotive Repair Facility, Self-storage Facility, and Outside Storage.

2. *Is so designed, located and proposed to be operated that the public health, safety and welfare will be protected:*

True. The existing black coated chain link fence with slats is a more appropriate screen for the property than a wooden board-on-board fence.

3. *Will not cause substantial injury to the value of other property in the neighborhood in which it is located:*

True. The existing black coated chain link fence with slats will not cause substantial injury or harm to property values in the neighborhood and will be compatible with surrounding properties.

4. *The proposed special use is designated by this code as a listed special use in the zoning district in which the property in question is located:*

True. The previously approved uses of the property will not change. The use of outside storage requires fencing to screen the storage area from adjacent view, per Section 11.2-1(C)(2) of the Zoning Code.

A roll call vote found Commissioners Hale, Henkin, Dettman, Kasprak, Devitt, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the findings of fact were adopted.

Commissioner Kasprak made a motion, seconded by Commissioner Hale, to recommend approval of the special use amendment. A roll call vote found Commissioners Kasprak, Hale, Dettman, Henkin, Devitt, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried.

Commissioner Kasprak made a motion, seconded by Commissioner Henkin, to close the public hearing. A roll call vote found Commissioners Kasprak, Henkin, Dettman, Hale, Devitt, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the public hearing was closed at 9:12 p.m.

## **7. Public Hearing and Review of Case PC 20-17, Zoning Text Amendment**

Commissioner Hale made a motion, seconded by Commissioner Devitt, to open the public hearing. A roll call vote found Commissioners Hale, Devitt, Dettman, Kasprak, Henkin, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the public hearing was opened at 9:13 p.m.

John Sterrett, City Planner, was sworn in.

Mr. Sterrett stated that Staff is proposing a zoning text amendment to Articles 4, 6, and 9, of the Zoning Code to create regulations for the use of Short-Term Home Rentals within single-family homes, also known as Airbnbs.

This type of rental has become prevalent throughout the Chicago suburbs and the City does not currently have any codes to regulate this use. Staff is of the opinion that without any codes regulating this use, the rentals pose a risk to the community. Some concerns that could have a detrimental impact in residential areas include noise, traffic, and public safety. Staff would like to be proactive in establishing regulations in anticipation short-term rentals become more common throughout the City.

Periodically, homeowners within the City limits inquire about using their homes as this type of rental unit. Staff does not believe the use of short-term home rentals should be outright prohibited in the community, as there are some economic benefits to them. Staff does, however, believe they should be regulated in such a way to eliminate negative impacts on surrounding properties and the community as a whole.

Staff is proposing adding a definition of Short-Term Home Rentals as well as other terms associated with this type of use, such as Short-Term Home Rental Contract, Short-Term Home Rental Hosting Platform, and Short-Term Home Rental License. The amendment would also add regulations to Article VI (Zoning Districts Generally).

A registration process for Short-Term Home Rentals will be implemented so staff is aware of the locations of these rentals. The use of a Short-Term Home Rentals would be permitted only in single-family residential districts and only within a single-family detached home. The use of a short-term home rental in attached and multi-family dwellings, such as townhomes, duplexes, apartments, and condominiums, would be prohibited. Staff has researched short-term home rental regulations from other communities in the Chicago suburbs for guidance in creating regulations for this type of use.

Staff recommends that the Plan Commission pass a motion recommending approval of the zoning text amendment to the City Council.

A notice of public hearing was published in the November 16<sup>th</sup> edition of the Daily Herald, in accordance with Section 5.6-2(B) of the Zoning Code and State Statutes.

The Plan Commission discussed allowing Short-Term Home Rentals in multifamily and/or two family dwellings. Mr. Sterrett stated these were not included because of factors dealing with noise and parking.

Commissioner Dettman made a motion, seconded by Commissioner Henkin, to continue the public hearing to January 5, 2021. A roll call vote found Commissioners Dettman, Henkin, Hale, Kasprak, Devitt, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the public hearing, at 9:23 p.m., was continued to the January 5, 2021 meeting.

#### **8. Public Hearing and Review of Case PC 20-11, Zoning Text Amendment**

Commissioner Devitt made a motion, seconded by Commissioner Henkin, to open the public hearing. A roll call vote found Commissioners Devitt, Henkin, Hale, Dettman, Kasprak, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the public hearing was opened at 9:24 p.m.

Commissioner Devitt made a motion, seconded by Commissioner Dettman, to continue the public hearing to January 5, 2021. A roll call vote found Commissioners Devitt, Dettman, Henkin, Hale, Kasprak, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the public hearing, at 9:25 p.m., was continued to January 5, 2021.

#### **9. Public Hearing and Review of Case PC 20-12, Zoning Text Amendment**

Commissioner Kasprak made a motion, seconded by Commissioner Devitt, to open the public hearing. A roll call vote found Commissioners Kasprak, Devitt, Henkin, Hale, Dettman, and

Chairperson Laimins voting in favor. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the public hearing was opened at 9:26 p.m.

Commissioner Devitt made a motion, seconded by Commissioner Henkin, to continue the public hearing to January 5, 2021. A roll call vote found Commissioners Devitt, Henkin, Dettman, Hale, Kasprak, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the public hearing, at 9:27 p.m., was continued to January 5, 2021.

**10. Approval of Draft Minutes of the November 4, 2020 Plan Commission Meeting**

Commissioner Dettman made a motion, seconded by Commissioner Hale, to approve the November 4, 2020 Plan Commission meeting minutes. A roll call vote found Commissioners Dettman, Hale, Kasprak, Devitt, Henkin, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the minutes were approved.

**11. Other Commission Business**

None.

**12. Previous Petitions and General Development Update**

Mr. Sterrett stated that the zoning text amendment that was recommended for approval by the Plan Commission at the November 4, 2020 related to legal nonconforming uses was approved by the City Council on November 16, 2020.

**13. Adjournment**

Commissioner Devitt made a motion, seconded by Commissioner Hale, to adjourn the meeting. A roll call vote found Commissioners Devitt, Hale, Henkin, Dettman, Kasprak, and Chairperson Laimins voting in favor and no one voting against. With a roll call vote of six (6) “yes” and zero (0) “no”, the motion carried and the Plan Commission, at 9:30 p.m., was adjourned.

Respectfully Submitted by: John Sterrett, City Planner