

**MINUTES  
PLANNING COMMISSION MEETING  
APRIL 28, 2016**

The meeting was called to order at 6:31 p.m.

Present: Artner, Denn, Griffin, Kotilinek, Flann, Patrick; Town Board Liaison: Prudhon; Planner: Riedesel.

Absent: Ulbrich with notice.

**APPROVAL OF AGENDA (Additions/Deletions):** Artner moved approval of the agenda as submitted. Griffin seconded. Ayes all.

**APPROVAL OF MINUTES OF MARCH 24, 2016:** Artner moved approval of the Minutes of March 24, 2016. Kotilinek seconded. Ayes all.

The Chair conducted the swearing in of new member, Zachary Flann. The members introduced themselves and welcomed Flann.

**CONSENT AGENDA: PETER SALISBURY – 2609 SOUTH SHORE BOULEVARD – REQUEST FOR A 42’ LAKESHORE SETBACK VARIANCE TO ALLOW AN EXISTING HOME/CABIN TO BE INCREASED IN HEIGHT BY 4’-5’:** The Planner reported that Mr. Salisbury is requesting approval of a 42’ lakeshore setback variance which would allow the home to be raised in height by 4’-5’. The footprint of the home would not change. Currently the basement of the home is not considered habitable living space as the low floor elevation is not 3’ above the 100 year high water elevation. The basement ceiling height is 4’10”. Mr. Salisbury would like to increase the basement height to allow workshop and storage space. Once the home is raised in height, an above grade deck will be more than 50’ from the ordinary high water of the lake and no closer to the 100 year high water elevation than the existing home. The Salisbury property is considered a “flag” lot and abuts the lakeshore. It is accessed by easement over the property at 2605 South Shore Boulevard. The 2605 South Shore property is 120’ wide and is also flag shaped. The width of this lot is 30’ at the lakeshore. The home at 2605 South Shore Boulevard is close to South Shore Boulevard. The Salisbury home is between the lake and 2605 South Shore Boulevard. The Planner reported that the Variance Board has reviewed the 42’ lakeshore setback variance and recommends approval.

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Artnr moved, based on Variance Board review and recommendation to recommend to the Town Board to approve Peter Salisbury, 2609 South Shore Boulevard request for a 42' lakeshore setback variance to allow an existing home/cabin to be increased in height by 4'-5'. Kotilinek seconded. Ayes all.

**KEN & ERIKA ARNDT – 2577 COUNTY ROAD F – REQUEST FOR A 6.375' SIDE YARD SETBACK VARIANCE TO ALLOW CONSTRUCTION OF A NEW GARAGE:**

The Planner reported that the Arndt's are requesting approval of a 6.375' side yard setback variance which would allow them to construct a new 22' x 28' garage on their property at 2577 County Road F. The new garage is proposed to be constructed 3' from the side lot line. The width of the property is 75' and requires a side yard setback of 9.375'. The Arndt's single family garage was demolished the week of April 4<sup>th</sup>. The former 308 square foot garage was located 4' from the side lot line. The Arndt's have also applied for an administrative driveway setback variance to replace their existing driveway in its current location. The Arndt's home is located on the south side of the Town where 5' side yard setback variances have been approved for several garages. The Arndt's are proposing to shift the location of the requested garage further into the back yard away from the home so they can navigate a vehicle into the garage. There is proposed to be a jog in the driveway to access the new garage behind the home. The garage is also proposed to be approximately 6" taller than the existing home. A member of the Variance Board noted that the overhang appears to be 16" which would encroach an additional 4" into the setback area. Ken Arndt was unaware of the setback requirement to the eave and will modify the design so there is a one foot overhang. The Variance Board discussed the height of the garage vs. the height of the home and the consensus was a 6" difference is not significant and the height of the garage does not need to be modified. The Variance Board noted that a 5' side setback for a garage in the Bellaire/Eastwood Manor neighborhood has been consistently recommended for variance approval. Anything less than that would be inconsistent with the Town's past practice which would be to confer to this applicant a privilege that has been denied to others. The Town likes to see a new structure further from a property line than the existing non-conforming structure. The request for a 5.375' side yard setback variance was recommended for denial. The recommendation of the Variance Board is for approval of a 4.375' side yard setback variance since a 5' setback is consistent with the other side yard setback variances approved by the Town in this neighborhood, the garage would be constructed further from the side lot line than the previous garage and the variance as requested meets the standards set forth by the Zoning Ordinance to approve.

Riedesel noted that he was contacted by Mr. Arndt after the Variance Board meeting and noted that they have modified their plan so the new garage is 5' from the side lot line.

Artnr moved, based on Variance Board review and recommendation to approve Ken & Erika Arndt's request for a 4.375' side yard setback variance to allow construction of a new garage at 2577 County Road F. Kotilinek seconded. Ayes all.

**NEXTERN INC., 1185 NORTH BIRCH LAKE BOULEVARD – REQUEST FOR PERMITTED USE STANDARDS PERMIT, ZONING ORDINANCE AMENDMENT TO ALLOW CONSTRUCTION OF AN OFFICE/MANUFACTURING BUILDING:**

The Planner reported that Nextern, Inc. is requesting approval of a Permitted Use Standards Permit to allow construction of an office/manufacturing building on the old Lake Sanitation site at 1185 North Birch Lake Boulevard. The site was purchased from the Town recently. Tecweigh purchased and developed the other buildable parcel on the property. A stormwater treatment pond was constructed as part of the Tecweigh project which serves both the Tecweigh and Nextern parcels. In addition to the Permitted Use Standards Permit, Nextern is also requesting zoning ordinance amendments which would allow part of their parking lot and drive lanes to encroach into setback areas. Since the site is undeveloped, the property would not meet the standards for approving variances, therefore zoning ordinance amendments are requested. If the Zoning Ordinance amendments are approved, the setbacks on the north and west sides of the property will be 5' from the lot lines. The parking lot setback on the east side is proposed to be 10.84'. Currently the side setback requirement is 15' and the rear setback requirement is 30'.

The Planner noted that at the February Planning Commission meeting, the Commission reviewed a concept plan for Nextern. The proposal included encroachments into the side and rear setback areas. Town Zoning Ordinance amendments were considered in concept, and if approved, would allow encroachments into the setback area. The following Zoning Ordinance amendments were discussed:

7-1.2(h). A 5' side yard setback is permitted when an industrial structure is proposed abutting an undevelopable property containing a stormwater treatment pond or wetland, provided that the distance from the structure to the wetland or ordinary high water level of the storm pond is no less than 15'.

7-1.2(i). A 5' rear yard setback is permitted when a structure is proposed abutting stormwater treatment pond located on a fully developed property provided that the distance between the structure and the ordinary high water level of the storm pond is no less than 30'.

If approved, the proposed encroachments would be allowed on the east and north sides of the site. An amendment to address the west side of the site was not reviewed at the February Planning Commission meeting. However the encroachment was discussed. The Planning Commission consensus at the February meeting was to support the staff proposed amendments to the Zoning Ordinance. Staff was asked to continue to review the west side of the property for a possible Zoning Ordinance amendment.

At the March Planning Commission meeting Nextern proposed the following amendment for Planning Commission consideration:

7-1.2(h). Paved parking areas and driveways in the I-1 Light Industrial Zoning District may have minimum side and rear yard setbacks of at least 5' provided that the

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front yard setback exceeds 60', green space exceeds 50%, all adjacent properties are zoned I-1 Light Industrial, and the parcel area is 5 acres or less.

The underlined wording was added after the March Planning Commission meeting based on discussion at the meeting. This amendment would replace the staff proposed amendments above and would allow encroachment on three sides of the site. Based on previous zoning ordinance amendments discussed in March, several light industrial properties may have qualified for reduced setbacks. They include: Comstock site on North Birch Lake Boulevard; Cortec on White Bear Parkway; Heraeus on Centerville Road; Veeco on Constellation Drive; Herold Precision Metals and Pentair on Hammond Road; and other undeveloped Light Industrial sites.

With the addition of the five acre site area maximum, only the Comstock property and undeveloped parcels in the Leibel Addition appear to qualify for the reduced setbacks as defined above.

The Planner stated that if this amendment is supported by the Planning Commission, the complete amended wording recommended by staff which will include a minimum setback from a treatment pond or wetland is:

7-1.2(h). Paved parking areas and driveways in the I-1 Light Industrial Zoning District may have minimum side and rear yard setbacks of at least 5' provided that the front yard setback exceeds 60', green space exceeds 50%, all adjacent properties are zoned I-1 (light industrial), and the parcel area is 5 acres or less. The parking area/driveway shall be set back a minimum of 15' from the ordinary high water elevation of a stormwater treatment pond or the edge of a delineated wetland.

**Easement Vacation:** The Planner reported that Nextern submitted a request to vacate the portion of the drainage and utility easements along the property lines for the area greater than 5' from the north, east and west lot lines. Staff research has determined that there are currently no 10' drainage and utility easements along the property lines. Nextern will work with the Town to establish perimeter easements based on the proposed setbacks.

**Permitted Use Standards Permit:** The Planner reported that Permitted Use Standards Permit approval is required to allow the site improvements and construction of the Nextern building. The building is proposed to have tip up walls complimented by stone on the office portion. Office space is proposed in the southeast portion of the building with manufacturing space next to the offices. Warehouse space is planned on the northerly portion of the building where the dock doors are located. Possible tenant space is located on the westerly portion of the building. Access is proposed around the building with parking on the north, south and east sides. The existing stormwater treatment pond is east of the proposed building. Sixty parking stalls are proposed. The Zoning Ordinance requires one parking stall for each employee on the maximum working shift plus one for each company owned vehicle plus adequate visitor parking or one space per 500 square feet of gross floor area, whichever is greater. If there is a

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difference in the number of stalls required based on the two formulas, the difference can be shown as proof of parking. Based on the square footage requirement 44 parking stalls are required.

The Planner reviewed Section 9-3.4 of the Zoning Ordinance which sets the standards which must be met in order to approve a Permitted Use Standards Permit. The Planner reported that the Town's Fire Inspector has reviewed the proposed plan and offers the following comments: 1) the fire hydrant location is okay as proposed; 2) PIV (post indicator valve) shall be installed where the proposed watermain intersects with the water service connection to the building.

Kotilinek asked if there was any way to move the building to the east. The Planner stated that the storm water pond is there with a slope which prevents moving the building. Flann asked if there would be a retaining wall. The Planner stated that there will be a retaining wall on the east and north sides where the setback is 15'. Denn stated that approval should be subject to the establishment of a utility easement and that Nextern be responsible for any damage to the easement.

Melissa Douglas reported that there was a quality issue with the panels from the manufacturer. The panels will be similar in color and material as the Tecweigh building. The project has been pushed out a few days because of the rain.

Artner moved to recommend to the Town Board to approve the request for Zoning Ordinance amendment to allow construction of an office/manufacturing building at 1185 North Birch Lake Boulevard as follows: Add Section 7-1.2(h) to the Zoning Ordinance as follows: 7-1.2(h). Paved parking areas and driveways in the I-1 Light Industrial District may have minimum side and rear yard setbacks of at least 5' provided that the front yard setback exceeds 60', green space exceeds 50%, all adjacent properties are zoned I-1 (light industrial), and the parcel area is 5 acres or less. The parking area/driveway shall be set back a minimum of 15' from the ordinary high water elevation of a stormwater treatment pond or the edge of a delineated wetland. Kotilinek seconded. Ayes all.

Kotilinek moved to recommend to the Town Board to approve the request for Permitted Use Standards Permit to allow construction of an office/manufacturing building at 1185 North Birch Lake Boulevard, subject to standards set forth in Section 9-3.4 of the Zoning Ordinance which must be met in order to approve a Permitted Use Standards Permit including and subject to staff recommendations, including 1) a utility easement be established; and 2) the owner held responsible for any damage to the easement. Artner seconded. Ayes all.

**LARRY ALM, SOUTHWIND HOLDINGS LLC, 5960 HIGHWAY 61 – REQUEST FOR CONDITIONAL USE PERMIT & PERMITTED USE STANDARDS PERMIT TO ALLOW SITE MODIFICATIONS:** The Planner reported that Larry Alm, owner of the Bald Eagle Quick Stop is requesting approval of a Permitted Use Standards Permit and Conditional Use Permit to allow remodeling of the exterior of the strip center. Bald Eagle Quick

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Stop consists of a convenience store, liquor store, scuba shop, hair stylist, and pizza shop. Convenience store, scuba and pizza shops are considered permitted uses in the B-2 Zoning District. The hair salon and liquor store are considered conditional uses in the B-2 Zone. As a result improvements to the exterior of the building will require approval of a Permitted Use Standards Permit and a Conditional Use Permit. No changes to the existing businesses are planned. The exterior of the building is planned to be remodeled. The remodel will include modifications to the roof line, the addition of canopies and posts to the entry ways, and new siding. Three sides of the building are proposed to be improved with the rear of the building to remain as is. Mr. Alm/Southwind Holdings purchased the property and made building improvements in 2002. The improvements included a strip center, car wash, and liquor store. The Planner reviewed the conditions which were adopted when the building improvements were made in 2002. Flann asked if the Township has design standards. The Planner stated that there are no specific design standards with the exception that the Town prohibits pole barns with corrugated metal siding. He reported that the request is primarily for façade improvements.

Patrick moved to recommend to the Town Board to approve the request from Larry Alm, Southwind Holdings, LLC for Conditional Use Permit and Permitted Use Standards Permit to allow site modifications at 5960 Highway 61, subject to existing conditions which were adopted in 2002 when the property was purchased and improved. Flann seconded. Ayes all.

**VIKING AUTO, 4415 OTTER LAKE ROAD – REQUEST FOR SPECIAL HOME OCCUPATION PERMIT RENEWAL:** The Planner reported that Mr. Lawrence is requesting Town approval of a Special Home Occupation Permit which would allow him to continue to run an auto repair business from his property at 4415 Otter Lake Road. The Town reviewed his original request for the permit in 2000. Approval was granted subject to a number of conditions including application for renewal of the permit in 2001. The Special Home Occupation Permit was approved in 2001 and again in 2002 (2 year permit); 2004 (2 year permit); 2006 (5 year permit); 2011 (5 year permit).

The Planner reported that Mr. Lawrence runs his business from a garage located at the rear portion of his property. The garage was constructed in the summer of 2000. At that time staff memo indicated that this Special Home Occupation Permit would likely be temporary until a commercial location could be found. Mr. Lawrence would like to continue operating the business from his property. He would like the Town to approve his Special Home Occupation Permit for another five year period. The Town received one complaint from a neighbor relative to the auto repair business in 2001. In addition, there was an area resident who attended the 2001 and 2002 public hearings who was opposed to the Special Home Occupation Permit. No complaints have been received since that time.

The Planner reviewed the standards set forth in Section 7-11 of Ordinance No. 35 which must be met in order to permit a Special Home Occupation. The requirements were incorporated into the Zoning Certificate and are the requirements under which Mr.

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Lawrence must operate his business. Staff recommends that Mr. Lawrence continue to pursue a commercial site to operate his business. Approval of the Special Home Occupation Permit is recommended for a limited period of time in order to permit Mr. Lawrence time to relocate his business.

Mr. Lawrence reported that he has added a mechanic and would like a bigger sign in the front of his property. He reported that most of his customers are by referral and the location of his business is hard to find. He stated that with the Water Gremlin expansion the area is light industrial and a sign would not be out of place. He stated that he would like to have a small monument sign 3' x 18" tall, similar to the one the auto repair business south on Otter Lake Road used to have. The Planner stated that the Town has a Sign Ordinance but it would have to be amended to allow a sign for a Home Occupation or a variance from the Zoning Ordinance would have to be granted.

Artnier moved to recommend to the Town Board to approve the request for Special Home Occupation Permit renewal at 4415 Otter Lake Road for five years, subject to requirements previously incorporated into the Zoning Certificate. Patrick seconded. Ayes all.

**ORDINANCE NO. 35 AMENDMENT – DEFINITION OF “INITIATE”**: The Planner reported that the Town was recently asked to define “initiate” relating to approval of a Conditional Use Permit. Currently the Zoning Ordinance does not define the term “initiate”. He reported that staff contacted several surrounding communities and asked them how they define initiation of a permit. A survey from surrounding communities was provided for review. The Planner reported that at the Town’s February Town Board Executive Meeting, the Board discussed adopting a definition of “initiate”. He provided the following Zoning Ordinance amendment defining initiation as follows: Add Section 3-34.A. **INITIATION OF A PERMIT**: “Initiation of a permit means a permit must be applied for, determined by the Town to be complete, and paid for to be considered initiated”.

Artnier moved to recommend to the Town Board that Ordinance No. 35 be amended by adding Section 3-34.A. **INITIATION OF A PERMIT**: “Initiation of a permit means a permit must be applied for, determined by the Town to be complete, and paid for to be considered initiated”. Griffin seconded. Ayes all.

**CHAIR / VICE CHAIR – APPOINTMENTS**: **Chair**: Patrick moved to recommend to the Town Board to appoint Ronald Denn, 5655 Portland Avenue, as Chair of the Planning Commission for the coming year. Griffin seconded. Ayes all.

**Vice Chair**: Patrick moved to recommend to the Town Board to appoint David Kotilinek, 5245 Division Avenue, as Vice Chair of the Planning Commission for the coming year. Griffin seconded. Ayes all.

The meeting adjourned at 7:37 p.m.

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Respectfully Submitted,

Joan J. Clemens  
Recording Secretary