

City of Excelsior
Hennepin County, Minnesota

Minutes
Heritage Preservation Commission

Tuesday, May 20, 2014

1. CALL TO ORDER

Chair Schmidt called the meeting to order at 7:01 p.m.

2. ROLL CALL

Commissioners Present: Bipes, Bolles, Brabec, Finch, Nelson, and Schmidt

Commissioners Absent: Macpherson

Also Present: City Planner Smith, Planning Consultant Richards,
Advisor Caron City Attorney Staunton (joined at 7:25
p.m.)

3. APPROVAL OF MINUTES

a) Heritage Preservation Commission Meeting Minutes of April 22, 2014

Commissioner Bolles moved, Commissioner Bipes seconded, to approve the minutes as written. Motion carried 6/0.

4. CITIZEN REPORTS or COMMENTS

None.

5. NEW BUSINESS

a) Site Alteration Permit - Second Floor Addition to 212 Water St. (Martin's Women's Apparel Building)

The Commission tabled discussion of the Site Alteration Permit for 212 Water Street, pending the arrival of the applicant, Larry Martin.

a) Heritage Preservation Commission Review of Planned Unit Development Applications

Smith discussed the proposed Planned Unit Development (PUD) ordinance revisions that were intended to clarify the HPC's role in PUD reviews. Under the existing PUD ordinance, the Planning Commission's review role is clear, but the HPC's role at the various stages of review is not. Staff proposes to extend the time for HPC review of Site Alteration Permits for PUD applications to 60 days from the current 45 days to match the period of time that the Planning Commission has to review applications. The ordinance language would also amend the provision stating that no permit shall be issued if the HPC does not grant a Site Alteration Permit to clarify

5. NEW BUSINESS

- a) Heritage Preservation Commission Review of Planned Unit Development Applications - *Continued*

that this is limited by the ability of an applicant to appeal to the City Council. Schmidt stated that the proposed wording does not seem clear. The Commission noted that the language should be stated with a proviso and eliminate the double negative.

At concept review, the HPC would also be authorized to give recommendations on the PUD application to the City Council, just like the Planning Commission. Richards also stated that City Attorney Staunton feels that there should be clear ordinance review standards for the HPC concept review. Finch stated that the HPC should have input into both the general and final plan as well, to ensure that changes at the final plan stage do not contravene conditions of the Site Alteration Permit approval at the general plan stage. The Commission believes that there should be an HPC review at all three levels of PUD plan review. Richards stated that he is also looking at the required PUD plan submittal requirements, as the information for the recent hotel PUD project was not adequate for effective HPC review.

6. OLD BUSINESS

- b) Ex Parte Communications

City Attorney Staunton stated that he had been asked by Planner Smith to discuss this topic, as he had also discussed it with the Planning Commission. He explained that "ex parte" means "by one party" in Latin. The reason the topic is being discussed with the Commissions is because of their role as quasi-judicial decision-makers for the City. This type of decision-making occurs when a Commission receives a permit application and seeks to apply the City's ordinances to the particular facts of the application. This type of review is similar to what a judge does when reviewing a case. There are established rules of conduct for attorneys about not communicating with a judge about a case when the other side is not present, because of the concern that a judge might make a decision in the matter based on information presented without effective rebuttal and outside the record developed in the courtroom. Commission decisions should be based solely on the information and evidence being presented at its official meetings. The public may lose confidence on the objectiveness of the body's decision-making if information outside the record is being relied upon in making decisions. The Planning Commission had a recent discussion about how it might approach this issue of ex parte communications, and staff decided to also raise the issue with the HPC for consideration.

Staunton stated that City Councilmembers are not asked to refrain from ex parte communications because they are elected officials and need to engage with community members and voters, and any perception of inappropriate

6. OLD BUSINESS

b) Ex Parte Communications - *Continued*

contacts by such officials can, in theory, be disciplined through the election process.

Smith provided the results of his research about what other communities require regarding ex parte communications by commissions. Some cities handle the issue by ordinance or through their commission by-laws. Finch asked what types of provisions are being considered. Staunton stated that a solution might be to define ex parte communications, and require that such contacts be disclosed if they occur, in the by-laws. Nelson questioned how this could work in a small town where people wear many hats. Finch stated that it might be helpful to define ex parte communications as well as conflict of interest and how to deal with these matters, including how they might be cured by disclosure.

Schmidt stated that he has canvassed at least 30 people in town about the Martin proposal because he wanted to know how the residents feel about the issue. He doesn't know how ex parte communications would apply here, but perhaps some guidelines might be appropriate. Finch stated that he does not solicit opinions from residents on pending HPC matters, because he believes that commission decisions should be made based on the facts of the matter and an interpretation of the language of the ordinances, and not public opinion.

Staunton clarified that the purpose of the prohibition is that a decision-making body should not be predisposed to a particular result, and should make a decision only after all information has been presented in a public forum. It is okay for commissioners to ask questions and express concerns, but the Commission should allow all pertinent information to be presented before taking action. He acknowledged that this could be challenging for an HPC because the ordinances and rules are less intuitive and more abstract, and they require expertise to apply. His purpose is to sensitize the Commission to the issue.

Finch stated that all applicants should be treated fairly before the law, but it appears to him that there is currently a wide variance in how commissioners are approaching this subject. Staunton stated that, in his role on the Edina Planning Commission, the question of whether he could meet privately with a developer to discuss his concerns so that they could be addressed by the developer at the hearing sometimes arises, and involves a close question. Bolles said it becomes difficult to refrain from outside contact when friendships with neighbors are involved. Staunton stated that a commissioner needs to be aware of potential bias, and sometimes having a rule on the books can make it easier to avoid communications that are questionable.

6. OLD BUSINESS

b) Ex Parte Communications - *Continued*

Schmidt states he would feel more comfortable with some guidelines on what contacts are appropriate. Schmidt stated that he views his role on the HPC as representing the public, so he believes that soliciting opinions of residents is appropriate, but acknowledges that there appears to be a contrary view.

The Commission determined that it would like to review any proposal for by-law revisions under consideration by the Planning Commission, and changes to the HPC by-laws could be discussed at the next meeting and placed on the agenda.

Bolles asked the City Attorney whether Bolles might have a conflict of interest due to his wife's former lease arrangements in the Martin building 30 years before. Staunton clarified that this would not constitute a conflict of interest.

5. NEW BUSINESS

a) Site Alteration Permit for Second Floor Addition to 212 Water St. (Martin's Women's Apparel Building)

Smith explained that the proposal to add a second story to the historic Wheeler Building had been denied by the Commission at its last meeting for failure to meet the Secretary of the Interior Standards for new building additions. That proposal called for the rooftop addition to be set back 3 feet behind the parapet. Smith noted that this is a significant historic structure in the Downtown Historic District, and the proposed addition was not compatible with the building. The applicant is now proposing to build the addition with no set back, right behind the front parapet. The addition will be 2800 square feet.

Smith stated that he has researched other city historic preservation ordinances to see whether any such ordinances allow a rooftop addition like the one proposed to be built flush with the historic front facade, and was unable to find any cities that permit such an addition. All of the city ordinances, like the Secretary of the Interior Standards, require that any new rooftop addition be set back so that it would be inconspicuous from a public way. He reviewed the language of the ordinances of the cities that follow the Secretary of the Interior Standards. He also stated that other communities have recent examples where an addition has been set back from the front facade so as to be inconspicuous from the front, though not necessarily from a side view.

Smith reviewed each element of the Secretary's Standards that are required to be applied to a new addition and presented staff's evaluation and

5. NEW BUSINESS

- a) Site Alteration Permit for Second Floor Addition to 212 Water St. (Martin's Women's Apparel Building) - *Continued*

recommendation on each. The proposal would convert one of the lowest buildings in the Historic District to one of highest, and it is not compatible with the features, proportions and historic massing of the building. Placing a new addition right behind the parapet violates the Standards that a new addition be clearly differentiated, and that it be set back from the wall plane and inconspicuous from the street.

In addition, Preservation Brief No. 14 lists eight pertinent criteria for HPC determinations of whether an addition meets the Secretary's Standards. Smith reviewed each criterion. The proposed addition is not unobtrusive in design, it is not minimally visible from the public way, it is not subordinate in height and overpowers the historic form of the building, but its proposed brick and other materials do meet the Standards. As noted, it is difficult to design a rooftop addition that meets the Standards unless it is substantially set back **from the front façade of the building**. At least three of the city ordinances reviewed by staff simply prohibit visible rooftop additions on historic buildings, as noted in the staff report, due to this difficulty. In this block of the Historic District, seven buildings are one story and seven are two story. Smith concluded that this would be the only building in the District that would have a new addition built directly behind the parapet and therefore would not be compatible. The staff report recommends denial of the Site Alteration Permit for the reasons contained in the report, and under the Standards, the proposal is not materially different from the plan that was denied at the last meeting. He also noted that Minneapolis bans rooftop additions that are visible from the opposite side of the street. While staff is not necessarily recommending this, it is clear from the Standards that any rooftop addition should be minimally visible from the street. The Commission may wish to consider whether the HPC ordinance should simply prohibit rooftop additions that are visible on historic buildings as other cities do.

Tammy Magney of Magney Architecture, who was present with Larry and Jill Martin, the building owners, stated that she wished to present other ideas for the Commission to think about. She stated that the main challenge with rooftop additions is that many of the ordinances they found do not discuss rooftop additions, as opposed to other types of additions. They believe that the manner of connection to the historic storefront is different in their view.

In their meeting with City Staff after the last HPC meeting, they were under the impression that the 3 foot setback did not seem to make a difference, so they are now proposing no setback from the front. She noted that no changes are being made to the existing historic building except to remove the paint. They chose not to do a straight top on the addition to introduce a whimsical element. The 12'6" height of the addition is now less than before, but would be higher than the Jake O'Connor's building. They

5. NEW BUSINESS

- a) Site Alteration Permit for Second Floor Addition to 212 Water St. (Martin's Women's Apparel Building) - *Continued*

believe that a setback changes the historic massing of the downtown. It also adds a non-existent element with the artificial setback. She showed the Commission a photo of an undesirable setback in another city. Nelson noted that she lived in the town depicted and it is not in a historic district, but agreed that the setbacks are not a good look. Magney stated that she found nothing in the ordinances on rooftop additions on storefronts specifically as opposed to other types of buildings. She would recommend going against the staff recommendation and recognizing the owner's right to build on his property. An addition with a 23 foot setback does not justify the financial investment. The Commission should look at flexibility.

Larry Martin stated that, at the last meeting, the Commission talked a lot about the guidelines and how the downtown is going to look going forward. He said the Commission should be flexible and do what is best for the historic district.

Schmidt says he has struggled with the HPC's ordinance and provisions in the Design Standards. He believes that the Historic District has different parts. The heart and soul is the Water Street block between Second and Third. This is a storefront district built out to the front. The environment should dictate what is appropriate and seek to maintain harmony with other historic structures. No other building has a setback at all. The Commission should look like Galena, Illinois, with no setbacks. He also believes that the Commission needs to respect the property rights of the owners. He understands that denying a second level addition would most likely not result in "inverse condemnation," as the U.S. Supreme Court in the Penn Central decision found NYC's Landmarks Preservation Commission's denial of Penn Central to build above Grand Central station was not an "inverse condemnation". However, Schmidt believes that both and total denial of the right to an addition and/or a 23 foot setback would be an unreasonable restriction of the property rights of the owner. He believes that any setback is unharmonious.

Finch stated that the 23 foot setback suggested by staff is an attempt to accommodate a proposal that doesn't meet the Secretary's Standards or the HPC's ordinance. The Commission should either decide that second story additions in key blocks of our Historic District are not allowed, or say that we won't follow the Standards, in which case we really aren't acting as an HPC. Our City Staff has unique expertise in historic preservation standards and has worked to try and find a possible solution, but he can't see how a second story addition should be allowed in this sensitive area of the Historic District. It is almost impossible to design an addition that would be compatible.

5. NEW BUSINESS

- a) Site Alteration Permit for Second Floor Addition to 212 Water St. (Martin's Women's Apparel Building) - *Continued*

Nelson disagrees and believes that there are multiple truths and many different ways to interpret the Standards. She believes that setbacks alter the character of the City. She thinks we should just decide what is best for our town.

Bolles stated that he believes that the implications of this decision are important enough that all Commissioners should be present. Commissioner Macpherson is not in attendance and is an expert in historic masonry restorations and construction, and he is concerned about the precedent of this decision throughout the District and the extent to which it sets a direction for the future. He stated that this Commission is only here for a short while in the long history of the town, and the HPC is entrusted with the stewardship of this community's historic buildings and should be cautious about setting precedents that might detrimentally affect the future of the Historic District. Bolles stated that there is one building that he believed might support a second story without adversely affecting the integrity of the District, namely the former Tonka Printing building. He also stated that he was concerned about the continuity of the single building facade in this case with its neighboring building. He believes that this decision could jeopardize the integrity of our historic district. He thinks it would be a mistake to permit a second story addition on this building because it is an important historic building and the established Standards should be followed. The new proposed facade also dominates the first level facade and is not appropriate.

Brabec stated that she is a proponent of progress and that there are several buildings in the downtown that are becoming eyesores, and she believes that change should happen. She believes that change like this proposal that respects our heritage will happen. We should embrace the change. The Standards have gray areas, and we should use them to approve this.

Schmidt asked the Commissioners whether they believe that rooftop additions on historic buildings that are flush to the street are appropriate. Brabec stated yes, Bolles and Finch stated no, Bipes stated he was leaning yes but with windows rather than an open parapet, Nelson stated yes if flush or almost flush, and said she also likes the window option. Nelson stated that she hears some on the Commission who want no second floor additions, but she recognizes that they are inevitable and wants to encourage investment. She sees room in the Standards for allowance of second stories. Schmidt asked whether the Commissioners thought that second stories should be allowed on single story historic buildings throughout the district. The majority of the Commission said yes. Finch stated that this discussion is now becoming legislative in nature, and it is

5. NEW BUSINESS

- a) Site Alteration Permit for Second Floor Addition to 212 Water St. (Martin's Women's Apparel Building) - *Continued*

not appropriate to set policy for the district outside the ordinance in the context of reviewing this particular application.

Finch stated that he is concerned that the Commission stated at a recent meeting that it wished to ask the Council to retain an expert in historic preservation to guide proper decision-making, and now that the City has hired one, we are not relying on our expert on historic preservation. He said that Schmidt is raising new ideas that are worthy of discussion, but are not based on the body of interpretation under the Secretary's Standards that has been built up over time by long-time experts in the field.

Commissioner Finch moved, Commissioner Bolles seconded, to follow the staff's recommendation and deny the Site Alteration Permit application for the reasons stated in the report. Motion failed 2/4.

Commissioner Bolles moved, Commissioner Finch seconded, to continue consideration of this item until a full Commission is present due to the importance of this decision. Motion failed 2/4.

Commissioner Brabec moved, Commissioner Bipes seconded, to approve the design concept of a second floor addition with the new addition flush to the sidewalk, with further discussion of the application's architectural details to be discussed at the next regular HPC meeting. Motion carried 4/2-Finch and Bolles objected.

The Commission determined to hold a work session on the application on June 4, 2014 at 7:00 p.m. in the Council Chambers to discuss the two design options of covered patio versus windows on the new addition, with the majority of the Commission indicating that the window option was preferred.

6. OLD BUSINESS

- b) Finalize Goals and Objectives for 2014

Smith asked for feedback on prioritization of the Commission's goals for the year. He described an issue regarding the exterior painting of the Antiquity Rose building on Second Street, in which the owner seemed unaware of the Site Alteration Permit process. He stated that the Commission might wish to consider producing a City pamphlet for property owners about the value of historic preservation. Bolles pointed out that tenants frequently change, and sometimes make changes without checking with the owners, and property owners also change over time, so it can be difficult to make sure that everyone concerned has the information. The Commission determined

6. OLD BUSINESS

- b) Finalize Goals and Objectives for 2014 - *Continued*

that each Commissioner would rank the existing goals and would compare the combined rankings at the next meeting.

7. COMMUNICATIONS AND REPORTS

- a) Exploring Grant Funds for Oak Hill Cemetery
b) Scenic Byway
c) Designate Liaison for Planning Commission Meeting - June 3, 2014
d) Site Alteration Permits Administratively Approved
e) Next Meeting - Tuesday, June 17, 2014

8. MISCELLANEOUS / COMMISSIONER'S COMMENTS

- a) Recent City Council Actions

9. ADJOURNMENT

Commissioner Finch moved, Commissioner Bipes seconded, to adjourn the meeting at 9:35 p.m. Motion carried 6/0.

Respectfully submitted,

Tim Caron
Recording Secretary