

CITY COUNCIL STAFF REPORT

1. **FILE NAME:** Saint Paul Tennis Club Appeal **FILE #** 16-097-208
 2. **APPELLANT:** Cheryl Baldwin et al **HEARING DATE:** December 7, 2016
 3. **TYPE OF APPLICATION:** Appeal of a Planning Commission Decision
 4. **LOCATION:** 1055 Osceola Ave., between Oxford and Lexington Pkwy.
 5. **PIN & LEGAL DESCRIPTION:** 02.28.23.33.0132, Bryants Park Addition No. 4, Lots 7 & 8, Block 1
 6. **PLANNING DISTRICT:** 16 **PRESENT ZONING:** R4
 7. **ZONING CODE REFERENCE:** § 61.702, § 65.235, § 61.501, § 61.502, § 61.503(d)
 8. **STAFF REPORT DATE:** November 29, 2016 **BY:** Jamie Radel
 9. **DATE RECEIVED:** November 7, 2016 **DEADLINE FOR ACTION:** December 8, 2016
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- A. **PURPOSE:** Appeal of Planning Commission approval of a conditional use permit for replacement of existing clubhouse and pool facilities.
- B. **PARCEL SIZE:** 12,196 sq. ft. (0.28 acres)
- C. **EXISTING LAND USE:** Swimming pool and tennis club
- D. **SURROUNDING LAND USE:** Residential
- E. **ZONING CODE CITATION:** § 61.702 specifies standards and procedures for appeal of Planning Commission decisions. § 65.235 defines *noncommercial recreation* and lists standards and conditions for this use in residential zoning districts. § 61.501 lists general conditions that must be met by all conditional uses. § 61.502 provides for modification of special conditions. § 61.503(d) requires a new conditional use permit if the building containing a conditional use is torn down and a new building is constructed.
- F. **HISTORY/DISCUSSION:** On July 27, 2016, the St. Paul Tennis Club applied for a conditional use permit for replacement of existing clubhouse and pool facilities. On September 22 the Tennis Club extended the 60-day deadline for City action under MN Stat. 15.99 to October 9. On September 27 City staff sent a letter extending the deadline for action an additional 60 days, to December 8, 2016, as permitted under MN Stat. 15.99. On October 28, 2016, the Planning Commission approved the conditional use permit.
- G. **FINDINGS:** Zoning Code § 61.702 provides that the City Council shall have the power to hear and decide appeals of Planning Commission decisions where it is alleged by the appellant that there is an error in any fact, procedure or finding made by the commission. The appellants allege three general errors in findings, three factual errors, and three procedural errors. Following are findings in response to these alleged errors that are the grounds for the appeal.

Alleged Errors in Findings

1. The appellants allege that the application should have been for expansion of a nonconforming use rather than for a conditional use permit.

Zoning Code § 66.221 lists *noncommercial recreation* as a conditional use allowed in the R4 one-family residential district. § 65.235 defines *noncommercial recreation* as a use “including private, noncommercial recreation areas ... and nonprofit swimming pool clubs” such as the Tennis Club.

§ 61.503(d) requires a new conditional use permit if the building containing a conditional use is torn down and a new building is constructed, even if the new building contains the same or less floor area. The Tennis Club is proposing to replace its current clubhouse and pool facilities with new buildings and facilities. Therefore, a new conditional use permit is required.

§ 65.235 lists three standards and conditions for *noncommercial recreation* in residential zoning districts that are specific to this use: access to an abutting thoroughfare, provision and maintenance of landscaping in yards, and protective fencing whenever a swimming pool is constructed. § 61.502 provides for modification of such special conditions as part of Planning Commission approval of a conditional use permit. In this case, modification of the special condition regarding access to an abutting thoroughfare was unnecessary because the proposed replacement of clubhouse and pool facilities does not change site access and location, which pre-date this special condition. Protective fencing will be provided around the new pool as required.

2. The appellants allege that site plan review required under Zoning Code § 61.402 has been inadequate.

The Tennis Club has made a separate application for site plan review (Site Plan Review File # 16-063142).

3. The appellants allege that the use does not meet three of the general conditions in Zoning Code § 61.501 that all conditional uses must meet:

- It does not provide adequate ingress and egress to minimize traffic congestion because it doesn't have a parking lot.

The parking requirement for this use (1 space per 1,000 sq. ft. of gross floor area) would be 1 space if it were a new use, but this use has existed for over a century with no parking. The small increase in gross floor area proposed is not enough to require a parking space, and not enough to create traffic congestion.

- Proposed significant expansion of the existing use will endanger the public health, safety and general welfare.

The proposed clubhouse and pool facility replacement is substantially similar to what has existed since the 1960s.

- The proposed expansion and future work on the tennis courts will impede normal and orderly development and improvement of surrounding property.

The Planning Commission reasonably found this not to be the case.

Alleged Errors in Fact

1. The appellants allege that the proposed changes represent expansion, not just continuation of the use.

The size of the site is not changing. New buildings can be larger as long as they meet the dimensional standards of the zoning district. The proposed new buildings conform to R4 standards and eliminate the nonconformities associated with the existing buildings.

2. The appellants allege that the Tennis Club is not a *noncommercial recreation* use.

§ 65.235 defines *noncommercial recreation* as a use "including private, noncommercial recreation areas ... and nonprofit swimming pool clubs" such as the Tennis Club.

3. The appellants allege that a diagram presented by the applicant misrepresents how sound would travel from a rooftop deck.

There is no evidence that sound generated by this use would violate City noise regulations, which are not part of the Zoning Code.

Alleged Errors in Procedure

1. The appellants allege that the Zoning Committee consideration of this matter took place without a quorum, in violation of a Planning Commission's By-Laws and Rules of Procedure requirement that action may be taken by the commission upon a vote of a majority of the commission only when a quorum is present.

The Planning Commission took action to approve the conditional use permit, upon a unanimous vote of the commission, at its October 28, 2016, meeting, at which there was a quorum present. The Zoning Committee is advisory to the commission, does not take action on zoning applications on behalf of the commission, and does not need a quorum.

2. The appellants allege that the City Attorney incorrectly advised the Zoning Committee that the deadline for action imposed by MN Stat. 15.99 did not provide enough time for a lay-over.

The deadline for final City action on the Tennis Club conditional use permit application under MN Stat. 15.99, including a possible appeal to the City Council, had already been extended by the City the maximum additional 60 days, to December 8, 2016, as permitted under MN Stat. 15.99. Without a layover, an appeal of the Planning Commission decision would get to the City Council on December 7, 2016. Therefore, any layover by the Zoning Committee could have resulted in an appeal getting to the City Council after the December 8, 2016 deadline for action, and resulted in automatic approval of the conditional use permit application by action of MN Stat. 15.99.

3. The appellants allege that the public hearing notice was incorrect because it included a variance of front yard setback for a pergola as well as the conditional use permit, and was insufficient because neighboring property owners received the notice seven days before the hearing.

The Tennis Club withdrew its variance application, which it has a right to do, just as the City could have denied the variance application while approving the conditional use permit application. The requirement in Zoning Code § 61.303 for a public hearing notice to be sent to all owners of record of property within 100 feet of the premises in question was met. The notice was mailed according to regular practice, generally ten days prior to the hearing. § 61.303 does not control mailed notice delivery time.

- H. **STAFF RECOMMENDATION:** Based on the findings above, staff recommends denial of the appeal of the decision by the Planning Commission to approve a conditional use permit for replacement of existing clubhouse and pool facilities at 1055 Osceola Avenue.