

**--UNAPPROVED --**

**MINUTES OF THE  
MARSHALL PLANNING COMMISSION MEETING  
JULY 10, 2019**

**MEMBERS PRESENT:** Fox, Schroeder, Steen, Edblom, Lee, Knieff and Carstens

**MEMBERS ABSENT:**

**OTHERS PRESENT:** Ilya Gutman, Jason Anderson, Dennis Simpson and Glenn Bayerkohler

1. The meeting was called to order by Chairman Edblom. He asked for the approval of the minutes of the June 12, 2019, regular meeting of the Marshall Planning Commission. Fox MADE A MOTION, SECOND BY Lee, to approve the minutes as written. ALL VOTED IN FAVOR OF THE MOTION.
  
2. Gutman said to start out he wants to explain “Finding of Facts”, that is part of the packet. It is basically a summary of all the information; it is required by statutes but before we looked at our minutes as a “Finding of Facts”, but by City Attorney advice we changed our practice and now we will be adding a “Finding of Facts” to all packets. It is subject to change so if something comes up it can always be changed but it is background for Planning Commission to work with. Gutman also offered the background of variances for parking. The City had plenty of them until 2013, in 2010 to 2013 there were 10 requests for parking variances. In 2013 the ordinance was changed, and the requirements were significantly reduced so from then to now this is the 3<sup>rd</sup> request. Gutman went on to explain this is a request by Brian and Kim Swalboski of Marshall for a Variance Adjustment Permit to provide 11 parking spaces in lieu of required 15 spaces for their daycare facility located at 702 East Southview Drive. The owners are building an addition to their existing daycare facility which will require full compliance with parking regulations of the Zoning Ordinance since the addition is larger than 50% of the existing building. Parking requirements for daycare facilities are based on the number of employees and children (1 per employee and 1 per 10 children). Based on the numbers provided by the owner, 15 off street parking spaces are required. It appears that 11

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parking spaces may be accommodated in front of the building with some minor adjustments (no parking may be located within 10 feet of the front property line). Even when the State requirements for outside playground area are taken into consideration, it seems that it would be possible to fit the remaining four spaces in the back yard (along Southview Court). The Zoning Ordinance states that a variance applicant “shall prove that the literal enforcement of the provisions of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and the granting of the variances will be in keeping with the spirit and intent of this chapter.” It explains that the term "practical difficulties," as used in connection with the granting of a variance means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality.” It further clarifies that “economic considerations alone shall not constitute practical difficulties if reasonable use for the property exists under the terms of this chapter.” Considering that the site can accommodate all required parking spaces, staff does not see practical difficulties in this case. Staff recommends to recommend to the City Council denying a variance to provide 11 parking spaces for the daycare facility instead of the required 15 spaces. Fox asked if they need that many spaces. Mr. Swalboski said no, but to be fair no one is going to argue that we have too many spaces. The spaces we have now have served us well. I do agree with everything said: we understand we probably are short 3 or 4 spaces. One of our largest concerns is that with putting this in the back, I have to fit this playground in here and there is certain requirements and we want space from the end of the new building; we need this for the playground. Additional parking in the back takes away from the playground. Employees could park there but parents would not be parking there. Lee asked how they would park in the back; would you put in another driveway. Swalboski said yes, they would

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put in another driveway. Edblom asked if there is a minimum required playground area?

Swalboski said yes, they do have required minimum required playground area per child, but we are well over the minimum. The minimum we need is 1500 square feet and the current fenced in area is 1400 square feet. Edblom asked about the maximum number of children at this daycare.

Swalboski said we will be at around 70. Knieff said if I understand this right, you will put some parking spaces in the backyard. Swalboski said we would prefer not to. Fox asked if anybody would use them? Swalboski said not for parents, it would be used for employees, but I am here asking for forgiveness from this requirement. Schroeder asked if the parking in the back would be blacktop or gravel. Swalboski said he assumes blacktop. Gutman said it would have to be paved per the ordinance. Edblom asked if most of the children are dropped off in the morning.

Swalboski said yes but not as much as you think; it is not fixed, people have different schedules.

Edblom said he is just wondering if all the spaces would be filled during the day or just pickup and drop off times. Swalboski said yes, they will be filled during pickup and drop off a couple hours in the morning and afternoon. Right now, we have the employees parking on the street and that is not counted in here. Schroeder asked if parents have complained about parking? Swalboski said no, not to him; they complain more about the traffic on Southview. Schroeder asked if the neighbors complain about street parking. Swalboski said no and explained where there are rentals, duplex and the distance to the neighbors. Edblom asked where in the back the parking would be.

Swalboski showed where he would locate it. Knieff asked if the driveway in the back would be a problem. Anderson advised no. Fox said it would look silly and no one would use it and we really need daycare in this town. Bayerkohler asked Dennis Simpson, the City Attnorey, if meeting practical difficulties condition is necessary and otherwise it should be denied. Simpson said yes, there must be practical difficulties to meet the requirements on this specific piece of property. Bayerkohler said then these other issues are irrelevant, practical difficulties is the main issue.

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Simpson said yes, if you determine this meets the practical difficulties test, then you must grant it; if not, you must deny it. Bayerkohler thanked Mr. Simpson for being here because that is important since it is a legal type thing. Simpson said that the term practical difficulties came about from a lawsuit several years ago; it was undue hardship before. Fox asked if a practical difficulty would be 6 feet of snow and where would they move that snow, and would people have to walk on the road? Carstens asked how you define a practical difficulty? Edblom said if he remembers right, cost is not a practical difficulty. Simpson said that cost is not the primary or the only reason.

Anderson said there is a 3 factors test; you would be checking for reasonableness, uniqueness, and essential character: uniqueness of condition for the property, keeping essential character of the area, and reasonable use intent for the property. Gutman said those are the ones listed in item four of the Findings of Fact document. Steen said for a daycare with an additional driveway, someone (a bad actor) has additional access to the property. Swalboski said entry is restricted, you would not be able to get in the back unless you have a key. Right now, the front entrance would be keypad. Schroeder MADE A MOTION, SECOND BY Steen, to close the public hearing. ALL VOTED IN FAVOR OF THE MOTION. Fox MADE A MOTION, SECOND BY Knieff to recommend to City Council an approval of the variance. Carstens said he was stuck in between until Fox asked about the snow. Schroeder said no one showed up to protest. ALL VOTED IN FAVOR OF THE MOTION.

3. A MOTION WAS MADE BY Steen, SECOND BY Schroeder to adjourn the meeting. ALL VOTED IN FAVOR. Chairman Edblom declared the meeting adjourned.

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Respectfully submitted,

Chris DeVos, Recording Secretary