



CITY OF NOVI CITY COUNCIL FEBRUARY 27, 2023

SUBJECT: Consideration of appeal by Singh Development LLC for JSP 20-35 Townes of Main Street from the Planning Commission's denial of a Wetland Permit. The subject property is located east of Novi Road, north and south of Main Street in Section 23. The applicant proposes to develop 192 multi-family residential units on a vacant 17.69 acre site in the Town Center One District.

SUBMITTING DEPARTMENT: Community Development Department - Planning

BACKGROUND INFORMATION:

On May 23, 2022, the applicant received City Council approval of the Preliminary Site Plan to develop vacant parcels located north and south of Main Street in the TC-1 Town Center One zoning district. Thirty-two townhouse-style buildings are proposed with a total of 192 units.

The wetland delineation report provided by the applicant identifies seven wetland areas on the site, ranging from 0.01 to 1.9 acres in size, with a total wetland area of 2.287 acres. These wetlands have been determined to be regulated by EGLE and the City due to their location within 500 feet of a river or stream (Michigan Admin. Rule 281.921). The plan proposes permanent wetland impacts totaling 0.4 acre. The habitat quality is not high for the impacted areas, according to the City's wetland consultant.

At the time of Planning Commission and City Council consideration, the applicant was evaluating its options for providing the required wetland mitigation, and the wetland permit was approved with the condition that mitigation plans prepared in accordance with Chapter 12 of the Code would be provided at the time of Final Site Plan submittal. The Wetland and Watercourse Ordinance requires mitigation of all impacts over 0.25 acre. The applicant previously proposed to provide a conservation easement over an approximately 5-acre area on a parcel they own south of the Twelve Oaks Lake rather than constructing wetland mitigation. No land or tree survey of the area to be preserved had been provided, so no analysis of the benefit of this plan was completed. However, this alternative is not permitted by Chapter 12 of the Code.

The applicant now proposes to purchase of wetland mitigation credits in a wetland bank outside of the City of Novi in order to fulfill EGLE's requirements for mitigation, and seeking approval for a wetland bank outside of the City of Novi to be considered for the City's requirements for mitigation. Chapter 12 of the Code of Ordinances requires mitigation be provided within the City. The City does not currently have any wetland banks within its jurisdiction. This request to deviate from that requirement cannot be granted by the Planning Commission. Any such authorization would require the approval of City Council.

Planning Commission Action

On February 22, 2023, Planning Commission held a public hearing and denied the revised Wetland Permit based on the motion shown in the action summary attached. As the proposed purchase of wetland mitigation bank credits would be for wetlands outside of the City, the Commission could not approve the request as proposed.

Appeal to City Council

Section 12-173(f) of the Wetlands Ordinance relates to appeals from the denial of a permit:

The applicant may request an appeal of the decision to deny a use permit to the council. A request for appeal must be filed within ten (10) calendar days following the grant or denial. If an appeal is requested during such ten-day period, the issuance of any permit shall be suspended pending the outcome of the appeal. The council, upon review, may reverse, affirm or modify the determination and/or permit issued. *** (Emphasis added.)

While the language in Section 12 does not specifically refer to "variance" authority, that authority is implied by the emphasized language, particularly relating to the authority to "modify" the determination of the Planning Commission. If the Council determines to consider exercising that authority, reference may be made to Section 1.12 of the City Code—the general appeal/variance section of the Code—which contains standards for considering variance relief from provisions in the code:

1. A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
2. The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and
3. The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question."

Singh has argued that a modification/variance should be granted because these wetlands are of low quality and are regulated by the City primarily by virtue of the

fact that they are also under the jurisdiction of the state (EGLE), which has encouraged the applicant to purchase off-site credits rather than to build a small wetlands mitigation area within the City.

RECOMMENDED ACTION:

DENIAL

In the matter of the appeal by Singh Development LLC of Planning Commission's denial of a revised Wetland Use Permit for JSP 20-35 Townes of Main Street;

1. City Council determination per Chapter 12, Section 12-173(f) of the Code to affirm the Planning Commission's denial for the requested Wetland Use permit, on the basis that mitigation outside the City does not provide the benefits to the City contemplated under the ordinance.
2. The applicant shall comply with Chapter 12 of the code to provide the required wetland mitigation within the City limits.

OR

APPROVAL

In the matter of the appeal by Singh Development LLC of Planning Commission's denial of a revised Wetland Use Permit for JSP 20-35 Townes of Main Street:

1. City Council determination per Chapter 12, Section 12-173(f) of the Code to modify the Planning Commission's denial for the requested Wetland Use permit;
2. A modification/variance is hereby granted to permit the applicant to purchase Wetland Mitigation Bank credits outside of the city in an approved EGLE mitigation bank, based on (1) the location of the small, scattered, and relatively low-quality wetlands being within the largely developed Main Street area and on a property that has been a source of blight and regular City code enforcement efforts for years; (2) the City's interests in having the property developed to reduce the ongoing costs to the City of monitoring the area. Under these unusual circumstances, the Council finds that it is sufficiently within the public interest to acknowledge the purchase of the credits outside the City but within the Ann Arbor Moraine ecoregion, or adjacent watershed if necessary, as a lesser deviation from the goals and objectives of the City Code than would result in other instances.
3. The findings of compliance with Ordinance standards in the staff and consultant review letters and the conditions and the items listed in those letters being addressed on the Final Site Plan.

This motion is made because the plan is otherwise in compliance with Article 3, Article 4, and Article 5 of the Zoning Ordinance, and with Chapters 1 and 12 of the Code of Ordinances, and all other applicable provisions of the Ordinance.