

**APPROVED JUNE 8<sup>TH</sup>**

**CITY OF EDMONDS  
PLANNING BOARD MINUTES**

**May 25, 2011**

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Chair Lovell called the meeting of the Edmonds Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5<sup>th</sup> Avenue North.

**BOARD MEMBERS PRESENT**

Philip Lovell, Chair  
John Reed, Vice Chair  
Kevin Clarke  
Todd Cloutier  
Bill Ellis  
Kristiana Johnson  
Valerie Stewart  
Neil Tibbott

**STAFF PRESENT**

Rob Chave, Planning Division Manager  
Jen Machuga, Planner  
Karin Noyes, Recorder

**READING/APPROVAL OF MINUTES**

**BOARD MEMBER CLOUTIER MOVED THAT THE MINUTES OF MAY 11, 2011 BE APPROVED AS AMENDED. BOARD MEMBER TIBBOTT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**ANNOUNCEMENT OF AGENDA**

The agenda was accepted as presented.

**AUDIENCE COMMENTS**

There was no one in the audience.

**REVIEW OF EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) 17.75 –OUTDOOR DINING**

Ms. Machuga said staff has recently received inquiries from a few small downtown businesses regarding establishing or expanding outdoor dining areas. She explained that, under the current code (ECDC 17.75), outdoor dining is permitted outright as a secondary use for an additional 10% of the existing interior seating of the establishment or 8 seats, whichever is greater. However, a conditional use permit is required for businesses that wish to provide outdoor dining in excess of the 10% or 8 seats. She reminded the Board that a conditional use permit is a Type III-A decision, which is reviewed by the Hearing Examiner. The total fee for such a review is over \$1,500, which makes it cost prohibitive for many small businesses who only want a few seats over the number that triggers the requirement. In addition, staff believes the process is counterproductive if the City's goal is to encourage an active street life in downtown Edmonds.

Ms. Machuga pointed out that there are some potential issues related to outdoor dining including noise, hours of operation, screening, and proximity of the dining area to residential properties. She advised that concerns about noise and hours of operation can be addressed through the City's noise ordinance and though limiting the hours of operation. If the location of outdoor dining is of concern, conditions or design standards can be built into the code to address the impacts, such as

limiting outdoor dining when directly adjacent to residential zones. Another alternative would be a simple review process such as an administrative conditional use permit, which would be a Type II decision that includes public notice and a total fee of under \$600. She suggested the Board consider the following questions when discussing revisions to the outdoor dining provisions:

1. Should outdoor dining be permitted outright as an allowed use or should outdoor dining be reviewed through the conditional use permit process?
2. If the conditional use permit process is utilized to permit outdoor dining, should applications be reviewed by the Hearing Examiner as a Type III-A decision, or should they be reviewed administratively as a Type II decision?
3. Should a conditional use permit be required if a proposed outdoor dining area has certain characteristics such as being located directly adjacent to a residential zone or being open past a specified time?
4. Should outdoor dining be allowed within all zones that allow for service uses or should outdoor dining be prohibited in certain zones? For example, the Planned Business (BP) zone is not currently listed within ECDC 17.75 as allowing outdoor dining.

Ms. Machuga said an additional item for the Board to consider is that Section 17.75.030 addresses requirements for establishments with nonconforming seating. However, due to changes elsewhere in the zoning code over the years, there are no longer limits within the zoning code to the number of seats allowed within an eating establishment. Staff is recommending that this section be removed as it appears to no longer be applicable.

Mr. Chave explained that the purpose of tonight's discussion is to solicit feedback from the Board so that staff can prepare draft language for a public hearing. He said the City has received inquiries recently from business owners who want to expand or establish outdoor dining, and the current conditional use requirement is a significant hindrance. Not only is it a multi-month process, but the cost is significant, as well. He suggested the conditional use requirement is an outdated provision. He said one option is to permit outdoor dining outright, except those that are located adjacent to residential zones. In these situations, a conditional use permit could be required. Another option would be to require a fence or small wall to separate the outdoor dining from residential zones. This would help buffer impacts such as noise.

Mr. Chave pointed out that the isolated BP zones along Edmonds Way are unique because they typically back up against residential properties. He reminded them, that at this time, Section 17.75 does not list the BP zone as a place where outdoor dining is allowed. He questioned if small restaurants or cafes would even locate in the BP zones; and if so, would there be sufficient space for outdoor dining. He noted that no one has approached the City for this type of use in the BP zone, so it might not be necessary for the change to apply to the BP zones, as well.

Chair Lovell asked if the current language in Section 17.75 is congruent with other sections of the code. Mr. Chave said the language works to the degree that it provides guidance for reviewing outdoor dining applications. However, the question currently before the Board is whether or not a conditional use permit is necessary in most situations. He said staff's logic is that because there are no parking and side and front setback requirements in the downtown zones, the conditional use permit requirement would not really serve a purpose. However, he acknowledged there could be impacts when outdoor dining is located at the rear of a property that is adjacent to a residential zone. He explained that there is already code language to address noise, hours of operation, etc. If the Board believes these impacts can be addressed based on the existing code requirements, they could merely insert a requirement for screening without an additional review process. He pointed out that a buffer area is already required when a commercial zone abuts a residential zone, and no outdoor dining uses would be permitted in this setback (buffer) area.

Board Member Ellis asked how many businesses in Edmonds already have outdoor seating and how many of them were required to obtain a conditional use permit. Ms. Machuga said she has not collected this information, but the City has recently approved conditional use permits for Five Restaurant and Bistro, Scotts Bar and Grill and Panera Bread. Board Member Ellis asked how much outdoor seating each of these applicants were permitted. Ms. Machuga said the Five Restaurant and Bistro had 98 seats inside and they were permitted 40 outdoor dining seats for a total seating increase of 41 percent. Scotts Bar and Grill has 290 inside seats, and the conditional use permit allowed 64 seats outside for a total increase of 36 percent. Panera Bread has been permitted 104 seats inside, and the conditional use permit allows an additional 39 seats outside for a total increase of 38 percent. Board Member Ellis observed that the increases associated with each of these

conditional use permits are substantial. Ms. Machuga noted that none of the outdoor seating associated with the three businesses is located adjacent to residential zoning. Mr. Chave reminded the Board that outdoor seating is a seasonal use.

Chair Lovell observed that the current code language in Section 17.75 does not address the need to preserve enough sidewalk width to provide pedestrian access. He questioned how the City would prevent outdoor dining from encroaching into the sidewalk areas. Mr. Chave explained that outdoor dining must be located on private property. Bistro dining, which occurs within the public rights-of-way, is addressed in another section of the code.

Board Member Tibbott asked if there is anything in the code that addresses the issue of safety. Ms. Machuga answered that the current code language does not address the issue of safety, and neither would a conditional use permit. However, when buildings are constructed, developers must meet all building and fire code requirements. Board Member Tibbott pointed out that there could be safety issues if outdoor dining is placed in parking areas. Mr. Chave said it is not likely a business would locate outdoor dining in parking lots because their servers must have easy access to the tables from the kitchen. The outdoor dining is almost always located next to the building. He said any changes of this type would also require review to consider the impacts to traffic circulation, etc., and safety would be one element of the review. He noted that business owners do not typically make changes that will create traffic and circulation problems that make it difficult for their customers to access their business.

Board Member Cloutier pointed out that the existing code language includes numerous provisions to address impacts when commercial zones are located adjacent to residential zones. He suggested staff identify these provisions for the record so the Board does not spend unnecessary time trying to address impacts that are already covered in other chapters of the code.

Board Member Cloutier said he is not a fan of using the Hearing Examiner to conduct reviews of this type. He said he would support an amendment that makes outdoor dining a Type II review.

Board Member Clarke asked if the current code language addresses noise and music when outdoor dining is located adjacent to residential zones. The residential property owners should not have to listen to an unreasonable amount of noise coming from the outdoor dining areas. Ms. Machuga said the City's noise ordinance limits the amount of noise to a certain level. In the past, outdoor dining has been limited to certain hours of operation via a conditional use permit.

Board Member Clarke questioned how the City would ensure there is adequate parking when a business increases their seating by a substantial amount via outdoor seating. Ms. Machuga reminded the Board that the BD zones do not require parking for the commercial uses. Mr. Chave pointed out that it behooves a business to provide adequate parking in the General Commercial zones because there is not a lot of pedestrian activity. It is not practical for them to create more seating than they can accommodate in their parking areas. He noted that outdoor seating does not necessarily increase the patronage significantly. During nice weather, people want to sit outside rather than inside. Chair Lovell agreed that when considering outdoor dining opportunities, businesses would likely consider parking as an important element.

Board Member Clarke suggested that outdoor dining should be allowed outright on commercial properties that are not adjacent to residential zones. That would mean no additional review of any kind would be required. Rather than a conditional use permit, it would be appropriate to require a staff review for outdoor dining on commercial properties located adjacent to residential zones. He expressed his belief that outdoor dining should be encouraged in the commercial zones.

Board Member Ellis asked where the current limit of 10 percent or 8 seats came from. He questioned if it would be productive to adjust the limits to deal with smaller business that want a little more seating and require some type of hearing process and review for larger expansions. Mr. Chave said this approach would still be a problem for smaller businesses. The idea is to allow small businesses to provide outdoor seating without requiring a lengthy and costly review process. Typically, the impacts are minimal. In his experience, even the larger proposals that have gone before the Hearing Examiner for a conditional use permit have not been an issue. Ms. Machuga added that the City has received inquiries from several small businesses that have between 20 and 30 indoor seats and want to add approximately 15 outdoor seats. While the percentage increase would be large, the number of outdoor seats would not likely have a significant impact. Mr. Chave suggested the numbers are less important than location. For example, the code should provide specific guidance for outdoor dining that is located adjacent to residential zones.

Mr. Chave agreed with Board Member Clarke's recommendation. However, he suggested that no additional review be required for properties adjacent to residential zones as long as the outdoor dining is located in front or to the side of the business and not directly adjacent to the residential uses. Vice Chair Reed reminded the Board that whenever a commercial zone abuts a residential zone, a 15-foot setback is required. Mr. Chave agreed and said the setback requirement is even greater in some cases. The setback area must be maintained and outdoor dining would not be allowed.

Vice Chair Reed questioned if it would be appropriate for the Board to also review the bistro dining provisions. Mr. Chave responded that the bistro dining provisions are fairly well defined right now, in that the use is allowed with minimal review. A street use permit is required, and adequate space on the sidewalk must be maintained for pedestrian access.

Board Member Ellis voiced concern about allowing outdoor dining outright in all commercial zones without tying it to a percentage of the indoor seating. Board Member Clarke said he has done numerous economic analyses for restaurants and he has learned that a high ratio of outdoor seats to indoor seats is not feasible in the Puget Sound climate. He suggested the free market would regulate the number of outdoor dining seats. In addition, if there is not sufficient parking for their patrons, restaurants would likely reduce the number of outdoor spaces, recognizing that the indoor spaces provide more revenue because they can be used year round.

Board Member Clarke asked if it would be possible to consider the use of sidewalk space for outdoor dining as part of their discussion about development agreements in the BD zones. Perhaps outdoor dining could be recognized as a potential incentive of a development agreement. Mr. Chave replied that nothing would prevent the City from integrating outdoor dining into the development agreement option. However, he questioned whether this would really be an incentive since the current code already allows for outdoor dining and for bistro dining if there is space available. He explained that because bistro dining involves the public rights-of-way, the City would not have the ability to waive the review requirement. However, the review could run concurrently with the development agreement process.

Mr. Chave asked for feedback from the Board about whether the proposed changes should apply to the BP zones, as well. He reminded the Board that most of the business zones require that all uses be contained within the building, and outdoor dining is one exception. He explained that many of the BP-zoned properties are adjacent to residential zones, but including a provision that requires a more thorough review process would allow the City to address impacts associated with outdoor dining in these situations. He suggested that the BP zone not be excluded from the outdoor dining provision, and the Board concurred.

The Board directed staff to prepare draft code language that would amend Section 17.75 to make outdoor dining in all commercial zones a Type II decision, unless the proposed outdoor seating is located adjacent to a residential zone. In these situations, additional scrutiny should be required. They also asked staff to provide information about other existing code language that addresses impacts such as noise, hours of operation, etc. Mr. Chave indicated the amendments would be scheduled for a public hearing in June.

Board Member Clarke asked how outdoor dining associated with retirement homes or assisted living facilities would be regulated. He questioned if these establishments would be permitted to have outdoor dining areas for their residents. Mr. Chave answered that this use is not regulated, and retirement homes and assisted living facilities that are located within multi-family residential zones would be allowed to have small areas for outdoor dining for their residents. He noted that these areas are usually multi-purpose areas and are not set aside solely for outdoor dining.

#### **REVIEW OF EXTENDED AGENDA**

Mr. Chave announced that a public hearing on the proposed adjustments to the downtown Business District (BD) zones is scheduled for June 8<sup>th</sup>. He advised that two press releases have been published to announce the hearing, and the draft language has been forwarded to various groups, including the Downtown Edmonds Merchant's Association.

Mr. Chave announced that at the Citizens Economic Development Commission's (CEDC) June 15<sup>th</sup> meeting, the University of Washington/Cascade Land Conservancy Team will present a summary of what they heard at the last presentation. They

will consolidate the preferred options into plan proposals for both Five Corners and Westgate. They will also explain how the proposed plans can be translated into code language. The Planning Board has been invited to attend the meeting, which will start at 6:00 p.m. Chair Lovell pointed out that the Planning Board Members were invited guests at the last presentation before the CEDC, but they were not allowed to vote on the preferred options. He asked if the same format would be used for the June 15<sup>th</sup> presentation. Mr. Chave said he anticipates the process would include an agreement by the Planning Board and the CEDC to move the presentation forward to the City Council with a request that they refer the matter to the Planning Board to conduct a formal public review process.

Chair Lovell recalled that the Port of Edmonds presented their proposal for a Harbor Square Master Plan to the CEDC on May 18<sup>th</sup>. The CEDC voted to endorse the process and encouraged the Port to move forward. While the Planning Board Members did not participate in this formal action, those in attendance also indicated their support for the Port to move forward. He asked how the Port would proceed with formal adoption of a final master plan proposal. Mr. Chave answered that the process for final adoption is still not clear, but the Port is working with Mr. Clifton to identify the best approach.

Board Member Clarke recalled that when the original CEDC was formed, a member of the Planning Board was appointed as a voting member. Mr. Chave pointed out that Mr. Bowman was appointed by the City Council to serve on the CEDC, but there was no specific Planning Board position. Chair Lovell noted that the CEDC is currently seeking applications to fill the vacant positions. Board Member Johnson advised that she is currently serving as the Planning Board's liaison to the CEDC, but she is not a voting member.

Board Member Stewart expressed concern that the last time the University of Washington/Cascade Land Conservancy Team made a presentation to the CEDC, many of their members were absent. She questioned the CEDC's ability to come up with a plan that will satisfy all of their members when so many are not in attendance. She said she hopes there will be more in attendance at the next presentation on June 15<sup>th</sup>. Rather than reviewing a single plan for each area, she expressed her hope that there would be choices for the CEDC to consider. Mr. Chave recalled the exercise in which the CEDC members were asked to identify the aspects of each of the concepts that they liked. He explained that this activity was intended to help the team move forward with a consolidated option for each of the areas by blending all of the preferred options into a single plan proposal.

Board Member Clarke asked the staff to explain what the Board's role in the Westgate and Five Corners processes will be and what ability they will have to make changes to the plans. Mr. Chave said he anticipates the Planning Board will make some changes to the plans, but he hopes the changes would not be extensive. He reminded the Board that a lot of good work has been done to this point, and the team will provide their source materials so that changes can be made prior to final approval. He reminded the Board that when the plans are presented to them for the final hearing process, they will also have the benefit of the City Council's preliminary comments.

#### **PLANNING BOARD CHAIR COMMENTS**

Chair Lovell did not have any comments to share during this part of the meeting.

#### **PLANNING BOARD MEMBER COMMENTS**

Board Member Clarke referred to Vice Chair Reed's written comments about the proposed amendments to the setback requirements in the Neighborhood Business (BN) zone, which he submitted because he was unable to attend. The comments were entered into the record and included in the minutes. He said he was also unable to attend and did not realize it was appropriate to submit written comments on items that come before the Board for public hearing. Mr. Chave explained that it is appropriate for Board Members to submit written comments regarding legislative items, but not quasi-judicial items. Board Member Clarke said he appreciated all of the thoughtful comments put forth by the Board Members during their discussion, and he was pleased that Vice Chair Reed submitted his thoughts in writing. He encouraged the Board members to do the same when they are unable to attend meetings in the future.

Mr. Chave announced that the proposed amendment to change the setback requirements in the BN zone is scheduled for public hearing before the City Council on June 7<sup>th</sup>.

**APPROVED**

Board Member Stewart updated the numbers she presented at the last meeting about the types of uses currently located in the BD1 zone. She earlier reported that there were 84 store fronts, when there are actually 81. She reviewed the data and invited the Board to provide additional direction on what the categories should be. She reminded them that the purpose of the inventory is to illustrate the need to amend the development code for the BD1 zone to either encourage or mandate retail and restaurant uses.

The Board discussed the best way to categorize the uses. They specifically discussed that some service uses have a retail component. Mr. Chave explained that the best approach is to consider the primary use. For example, the primary use at a hair salon would not be retail, even though products are often sold. Therefore, a hair salon would be considered a service use rather than a retail use. The Board agreed to categorize the uses as follows: retail, food/restaurant, general service, and professional offices. They agreed it might also be appropriate to call out art and real estate uses separately.

Vice Chair Reed thanked Board Members Stewart and Johnson for conducting the inventory. He asked if they anticipate the percentages would change if they were measured based on square footage as opposed to number of doorways. Board Member Stewart acknowledged the percentages would likely change, but a square footage inventory would be very time consuming. It was discussed that service uses often have larger spaces than the retail uses.

Vice Chair Reed clarified that he does not always submit written comments on public hearing items when he is unable to attend a meeting. However, the proposed amendments to the BN zone setbacks were of particular concern to him. He said he appreciates the back and forth conversation that took place amongst the Board Members as they reached a compromise. Although he is not sure how he would have voted on the final action, he felt the discussion was good and he was pleased with the compromise solution that was forwarded to the City Council as a recommendation.

Board Member Johnson reported that she attended a grand opening on April 30<sup>th</sup> for the Schack Arts Center at 2921 Hoyt Avenue in Everett. She explained that the project was initiated in 2006 as a capital campaign to build a permanent home for their organization. They created a partnership with Artspace Projects Inc. to build a multi-use regional arts center. The street level is a visual art education center, with an emphasis on glass. It has a hot shop and a flame and kiln studio. Above the arts center are three floors of affordable live/work space for artists called "Artspace Everett Lofts," which consist of 40 units for individuals and families. The units include one and two-bedroom spaces that range from 800 to 1,300 square feet. All units feature open floor plans and durable surfaces. The roof area is open for the residents and will feature a green roof. The space is now fully leased and they are accepting applications for a waiting list. She summarized that the Everett Lofts have a green living guild that incorporates healthy, indoor air quality, energy and water conservation, and reduce/reuse/recycle following LEED guideline principles.

Board Member Johnson noted that this process has been done in over 80 cities throughout the United States. The projects are highly subsidized and are not market based. They are not intended to be for profit, and there is no commercial component. She reported that Artspace made a presentation to the City of Edmonds several years ago, when they were looking for a large industrial type space. Ms. Chapin, Edmonds Cultural Services Manager, has suggested that there may be opportunities for a smaller project in Edmonds, and she agreed to provide more information on how to proceed.

Board Member Johnson reported that she also attended a Mountlake Terrace Planning Board meeting on May 23<sup>rd</sup> for a workshop on Transfer of Development Rights (TDR). The Cascade Land Conservancy led the workshop. It was reported that numerous jurisdictions have successfully implemented TDR programs in King County. However, the TDR concept has only been utilized in Snohomish County. She reported that the Washington State Department of Commerce is exploring how this concept could be utilized better Snohomish County. They awarded grants to the Cities of Everett and Mountlake Terrace to find ways to make the concept work in both urban and suburban areas. She suggested the City of Edmonds keep an eye on these projects as they move forward. She announced that she received notice of a TDR workshop on June 9<sup>th</sup>.

## **ADJOURNMENT**

The Board meeting was adjourned at 8:25 p.m.

**APPROVED**