



City of Grand Island

Tuesday, August 09, 2005

Council Session

Item E5

**Public Hearing on Amendments to Chapter 36 of the Grand Island
City Code Relative to Massage Therapy**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Regional Planning Commission
Meeting: August 9, 2005
Subject: Amendments to Chapter 36 Zoning Regulations
Item #'s: E-5 & F-2
Presenter(s): Chad Nabity AICP, Regional Planning Director

Background

The City of Grand Island adopted new zoning regulations in July 2004. The changes proposed here pertain to the Home Occupation Standards. A copy of the proposed changes is attached.

This request was brought forward at the request of Ms. Kristi Comer a Licensed Massage Therapist. A copy of her request is attached.

Discussion

The planning staff recommended against the change for the reason outlined in the attached memo to the planning commission. The planning commission has recommended that no change be made to the regulations.

The following testimony was offered during the public hearing before the planning commission:

Kristi Comer said she follows the stringent laws the state has regarding massage therapy, and she only treats five or fewer clients a day with a half-hour between sessions. She said she has great concerns with noise, air pollution, cleanliness and temperature control in areas that are zoned business and commercial.

Sandra Kealy said she is a licensed massage therapist in Hawaii, and runs her business out of her home. She said this is an allowable home occupation in the state of Hawaii, and it offers her clients a more personal setting.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the changes as presented
2. Modify the changes to meet the wishes of the Council
3. Table the issue

Recommendation

A motion was made by Amick 2nd by Miller that no change be made to Chapter 36 Zoning Regulations and that the City of Grand Island make no change to Chapter 36 Zoning Regulations.

A roll call vote was taken and the motion passed with 7 members present (Amick, Haskins, O'Neill, Miller, Eriksen, Ruge, Hayes) voting in favor of the motion and 2 members (Wagoner, Reynolds) voting against the motion.

Sample Motion

Approve the changes to Chapter 36 of the Grand Island City Code as Submitted. Both planning commission and staff are recommending that this motion not pass.

PLANNING DIRECTOR RECOMMENDATION TO REGIONAL PLANNING COMMISSION:

June 21, 2005

SUBJECT:

Concerning amendments to the Zoning Ordinance for the City of Grand Island and its 2 mile extra-territorial jurisdiction. Amendments to be considered pertain to the Home Occupation Standards, §36-99 (D) (C-31-2005GI)

PROPOSAL:

The City of Grand Island adopted new zoning regulations in July 2004 and amended those regulations in May of 2005. The changes proposed here were requested by Kristi Comer of 3112 Brentwood Circle. All areas with changes are highlighted. Additions are *italicized and underlined* and deletions are in ~~strike out~~.

§36-99. Home Occupations

The following are the minimum standards required for a Home Occupation:

(A) There shall be no external or externally visible evidence of the home occupation, business or profession whatsoever. There shall be no signage or advertising, linking the residential property with the home occupation.

(B) No more than 25% of the floor area of any one story can be used for the home occupation

(C) There shall be no machinery other than that normally found in a home

(D) There shall be no contact at the premises with customers or clients other than by telephone or mail, except that music lessons may be given to one pupil at a time and, massage therapy may be performed on one client at a time, and cultural, art, or dance instruction may be given to four pupils at one time

(E) No one other than the resident(s) can work from that site

(F) No retail sales are permitted from the site other than incidental sales related to services provided

(G) No exterior storage (including storage within detached buildings/garage) is permitted

(H) No offensive noise, vibration, smoke, odor, heat or glare shall be noticeable at or beyond the property line

(I) The above listed characteristics of a home occupation shall not be construed to restrict the sale of garden produce grown on the premises, provided, this exception shall not extend to allow the operation of a commercial greenhouse or nursery, or the existence of stands or booths for display of said produce

All businesses related to Child Care Homes and Child Care Centers shall be in accordance with Neb. R.R.S. 1943, Sec. §71-1902.

Amended by Ord. No. 8947, effective 1-5-2005

OVERVIEW:

Ms. Comer has requested that massage therapy with customer contact be allowed as a home based business. Most home based businesses do not allow customers to visit the residence of the business owner. This would be true for architects, lawyers, tax preparation professional and similar occupations.

An exception is made for piano teachers and persons teaching cultural arts. Ms. Comer is asking for a similar exception for persons conducting massage therapy. If approved as proposed this would expand the type of client contact allowed in home based businesses.

The current regulations do not allow other personal services to be conducted within a home. It is not legal to open a: barbershop, beauty or nail salon, pet grooming salon, legal office, insurance office, accountant's office, doctor's office or any other office that includes personal contact with customers at the home of the business owners in a residential zoning district. The planning and building departments often get questions from doctors (psychiatrists or psychologists usually) that would like to open a practice in a residential setting. Any of these can be run from a home provided the business owner travels to the clients home or some other site to conduct business or provided that the service can be provided remotely by telephone, fax, mail or electronic means.

The primary purpose of limiting client contact with regard to these businesses is to discourage non-residential traffic and visitors from entering residential neighborhoods. Other concerns include parity between business owners. Owners of businesses located within the commercial and industrial zones maintain both their business property and their residential property. Another option for people who want to run this type of business from their home is to buy a home in a commercial district. The RO, B1, B2, B3 and M3 zones all allow both commercial and residential uses. It is permissible in these districts to live in one portion of the house and conduct business including client or customer contact in another portion.

RECOMMENDATION:

That the Regional Planning Commission recommend that the Grand Island City Council **not approve** the changes to the Grand Island Zoning Ordinance as requested.

_____ Chad Naby AICP, Planning Director

Massage Benefits

Kristi D. Comer, L.M.T., NCTMB

January 3, 2005

City of Grand Island Zoning
Attention: Chad Nabity
100 E 1st Street
Grand Island, NE 68801

To the City of Grand Island Zoning Committee;

I am a massage therapist licensed by the State of Nebraska, license #1529. My husband and I purchased a home in Grand Island and have been residents at 3112 Brentwood Circle for the past 2 ½ years. I applied for an establishment license with the State of Nebraska and the house has been approved by them, but they asked to see the zoning code, which turned out to be R-1 zoning. After reviewing the zoning ordinance for R-1, it appears that piano lessons, dance lessons and swim lessons are ok. The State of Nebraska informed me that I could ask for a variance to the City's ordinance. I am requesting of your committee to approve the word "massage" to be included in the R-1 ordinance, along with the above occupations, so I can have my business at the above location.

There would be only one client at any given time, which would mean only one vehicle at any one give time sitting in our drive. I want to comply completely with all laws and ordinances both City and State and that is the purpose of this letter. Please call me at 308-398-0385 if there are any other questions that you may want to ask of me.

Thank you for your consideration to this matter.

Sincerely,

Kristi D. Comer, L.M.T.

Kristi D. Comer, L.M.T.

Agenda Item #7

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