

**CITY OF MENDOTA HEIGHTS
DAKOTA COUNTY, MINNESOTA**

**PLANNING COMMISSION MINUTES
May 26, 2009**

The regular meeting of the Mendota Heights Planning Commission was held on Tuesday, April 28, 2009, in the Council Chambers at City Hall, 1101 Victoria Curve at 7:00 P.M.

The following Commissioners were present: Chair Lally, Commissioners McManus, Norton, Povolny, Viksnins, and Field. Those absent: Commissioners Hennes. Those present were Public Works Director John Mazzitello, Assistant to the City Administrator Jake Sedlacek, and Planner Steve Grittman. Minutes were recorded by Rebecca Shaffer.

Approval of April 28, 2009 Minutes

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER FIELD, TO APPROVE THE MINUTES OF APRIL 28, 2009 AS PRESENTED.

**AYES: 6
NAYES: 0**

Hearings

**PLANNING CASE #09-11
Dodge Nature Center
555 Huber Drive and 2155 Delaware
Preliminary / Final Plat**

Planner Steve Grittman reviewed a map showing the proposed final plat for the Glenn Toro 3rd Addition in which the Planning Commission had a lengthy discussion at their April 28th meeting. The action was tabled to allow for the applicant to provide more information, purpose, and detail for this application, especially the proposed dedicated right of way (Delaware Court) and how the conservation easement affects some of the other parcels. Mr. Grittman also provided a document for the commissioners of a series of comments that Dodge Nature Center has just submitted this evening. The proposal creates four platted parcels from what are now metes and bounds parcels and the dedicated right of way.

Commissioner Field reminded Chair Lally that while he is President of the board of directors for the Dodge Nature Center, the City Attorney has confirmed that there is no conflict of interest in his participation on this case.

Commissioner McManus asked what a “mete” is. Mr. Grittman said metes and bounds is a way of describing property and indicated on the map how the lot lines are used in this description process. Mr. Grittman explained that over the years, there was some confusion on the placement of the lot lines, and this application is intended to bring that confusion to an end.

Commissioner Povolny asked how long the Dodge Nature Center has owned this property and questioned why they now need title insurance. Mr. Grittman said that question will have to be addressed by the applicant.

Chair Lally asked about the May 21st meeting that was documented on the comments and notes provided by the Dodge Nature Center. Public Works Director John Mazzitello said that meeting was between Mr. VanGundy, his surveyor, Jake Sedlacek and himself. Chair Lally said he was surprised that additional materials were not sent out in the commission packets with this information because the whole purpose of deferring the meeting from last month to this month was to get some more information.

Mr. Sedlacek said the applicant did bring in the comment document from the May 21st meeting, and at that point, the planning packets were already assembled. Mr. Sedlacek said he recommended to the applicant to bring any additional information to this meeting and to walk through it point by point. It was deliberately not in the packets so that it may be presented this evening.

Commissioner Viksnins said he recalled that staff was going to have the surveyor at this meeting to get some sense of who is losing ground and who is gaining. Mr. Grittmann said he does not have that information and believes the applicant can address that.

Mr. Dan VanGundy, Executive Director of Dodge Nature Center, 365 Marie Avenue, West St. Paul said he did bring his surveyor this evening. Mr. VanGundy said in May 2008, Dodge Nature Center entered into a conservation easement with Dakota County to permanently protect open space and natural habitat of approximately 156 acres that is referred to as the "Lilly Property". The city of Mendota Heights was a partner in this endeavor. During the easement process, Dakota County brought it to the attention of the Dodge Nature Center that the approximately 5 acre parcel, known as the "cabin site" could not be included in the conservation easement as originally intended because of title problems and ambiguous property lines that contain gaps and overlaps with the neighbors. Dodge Nature Center wishes to clear up these boundary issues and have an accurate description of their property. Dodge Nature Center has partnered with the neighbors – the Shepard's and the Niehus' – and hired Hedlund Engineering to clear up the boundary problems through the plat.

All three properties are being platted because all three properties have boundary problems. The idea was to correct all the remaining issues at one time. There is no development plan by Dodge Nature Center and to the best of their knowledge; neither do the Shepard's or the Niehus' have any plans.

The plat shows a road right of way in which Dodge Nature Center, the Shepard's and the Niehus' are in favor of dropping from the plat Chair Lally opened the public hearing.

Ms. Thorback, 21 Delaware, Outlot B, is the one who will be affected by this turnaround and asked for confirmation that this is not approved. Chair Lally said it is not approved yet and it's not a part of the application. Chair Lally said it's still part of an easement that currently exists, but the easement is not changing in this application.

Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER NORTON, TO CLOSE THE PUBLIC HEARING.

AYES 6
NAYES 0

COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER POVOLNY, TO RECOMMEND APPROVAL OF THE AMENDED APPLICATION IN ACCORDANCE WITH THE FINDINGS SET FORTH IN THE STAFF REPORT.

Mr. Grittmann asked to have added to the motion that staff receives verification that all three applicants will sign on to the amendment in a written form.

Commissioner Norton said he will accept that friendly amendment. Commissioner Povolny accepted as the second.

AYES 6
NAYES 0

**PLANNING CASE #09-12
Howard Paper
1818 Faro Lane
Variance**

Planner Steve Gritman reviewed a map showing the property located at 1818 Faro Lane, which is single family home, and zoned R-1. The applicant is requesting approval for a variance to allow the construction of a driveway less than the required five foot setback to the side lot line on his property. The need for this variance is directly related to the applicant's intent to construct an addition to his existing two stall garage. The driveway location is desired to provide vehicular access to the expanded garage area. The expanded garage is a permitted use on a single family parcel. The applicant wishes to construct this addition 10 feet from the side lot line, and to accommodate the vehicle, a 10 foot driveway has been proposed on the east side of the existing which would encroach 2 feet within the required 5 foot driveway setback.

While the requested driveway setback variance would be useful in providing access to the additional garage space, it does not appear that the applicant has demonstrated that restriction of the driveway width would deny reasonable use of the property. The driveway is necessitated by the applicant's desire to expand the garage space in this area, and while less convenient, a narrower driveway would provide access to the expanded garage without violating the setback. For these reasons, Planning staff is recommending denial of the requested driveway setback variance. Mr. Gritman said if the Planning Commission believes there are conditions of the property where this is a reasonable use of the parcel with the setback encroachment, the applicant could use a permeable type of paver system instead of solid asphalt or concrete which would avoid drainage issues.

Commissioner Viksnins asked what an 8 ft. driveway would look like. Mr. Gritman explained on the map how it would look. Commissioner Viksnins asked Mr. Gritman if he saw any other alternatives. Mr. Gritman said there are none that would meet the setback requirement.

Commissioner Povolny said he would rather give the applicant a couple of feet as the applicant would drive over it anyway if given 8 feet. Commissioner Povolny said he would rather have blacktop than dirt and he does not have a problem with the application.

Commissioner Norton said it appears that this is a limited amount of the driveway that encroaches on the setback.

Howard Paper, 1818 Faro Lane, said he has specifically built this garage to accommodate his construction work van noting the higher overhead door on the garage and would like to keep his van inside to avoid vandalism. Mr. Paper said he is actually asking for 18 inches rather than 2 feet.

Commissioner McManus said the garage is already built, and asked the applicant if he thought about this when he built the garage. Mr. Paper said when he submitted the application for the garage addition; he received a call from Paul Berg asking what he planned to do with the driveway. Mr. Paper told him that he would be paving along the side of the garage, and was told that a variance was needed. Mr. Paper said he met with Mr. Berg, along with a city staff member and a staff member from the NAC and was told that it would not be an issue with a variance as it would not be out of line.

Commissioner McManus asked what the neighbor next door has to say. Mr. Paper said his neighbor, Mike Lynch, is okay with this proposal and would like to see the actual line of the driveway before anything happened.

Commissioner McManus asked about run off. Mr. Paper said he will be putting gutters on the garage that will lead water to the back. Mr. Paper said he is now driving on the dirt and it is getting worn down.

Assistant to the City Administrator Jake Sedlacek said it would be very unlikely for himself, John Mazzitello, Steve Gritman or Paul Berg to ever give any support for a variance. Mr. Sedlacek said during the meeting, Mr. Paper was advised to apply for the variance.

Commissioner Norton asked Mr. Paper if he would be open to an impervious surface. Mr. Paper said it is cost prohibitive and has an estimate for the replacement of the existing driveway and the new driveway, which would be paved and stamped giving better curb appeal. Mr. Paper said he would not consider using pavers.

Commissioner Viksnins asked Mr. Paper what the unique condition is to create the hardship. Mr. Paper said it would partly be the pie shape of the property and the new garage was built specifically for his van and cannot access through the existing garage due to height limitations. Mr. Paper said he is not asking for a large area across the setback and spoke about the visibility of the van from the neighbor.

Commissioner Viksnins asked how old the original garage is. Mr. Paper said the garage was built in 1976, and the back addition was done in February, 2009.

Commissioner Viksnins asked if the applicant can deal with an 8 ft driveway. Mr. Paper said it is difficult getting around the corner as his vehicle width is 7 ft 6 in.

Commissioner Field said if this proposed variance was approved, the applicant would be going into the utility easement. Mr. Mazzitello said he is not aware of any utilities that run through this easement, as this easement is used for drainage and buffer for the two properties. Commissioner Field asked if utilities could be run there. Mr. Mazzitello said the right of easement could be exercised by the city or by the city on behalf of a private utility and any construction within that easement can be removed if need be. The expense would be to the applicant as the city would be under no obligation to replace it.

Commissioner McManus asked Mr. Paper if he talked to city staff before this garage was built. Mr. Paper said he did and that Mr. Berg had an issue with it. Mr. Paper said they gave him no indication that this would be a rough go.

Commissioner Povolny said he would prefer that the truck is parked inside and not in the driveway. Commissioner Povolny said the hardship is that the truck is an eyesore to neighbors and security of the truck is compromised, and all that is needed is a little bit of blacktop on a pie shape lot which also shows a hardship.

Commissioner McManus asked if the truck would fit into the older garage. Mr. Paper said the truck is too high.

Chair Lally opened the public hearing.

Mike Lynch, 1822 Faro, said he has talked with Mr. Paper about this several times and is concerned about drainage as this slopes toward his property. Mr. Lynch asked if there is a 5 ft. setback all the way down the driveway. Chair Lally and Mr. Gritman explained how that setback would run along the property line and how the drainage would run if this variance was approved.

Mr. Paper showed where the existing driveway runs close to the setback along the curve. Mr. Mazzitello said he has scaled off the sketch saying that the distance from the back of the curve shows the proposed encroachment into the five foot setback begins 50 feet from the back of the curve and would end approximately 71 feet at the back of the curve. Chair Lally suggested that the applicant stake out where the new driveway would run to give a better idea of what it will look like before the next council meeting.

Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER FIELD MOVED, SECONDED BY COMMISSIONER VIKSNINS, TO CLOSE THE PUBLIC HEARING.

AYES 6
NAYES 0

COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER POVOLNY, TO RECOMMEND APPROVAL OF THE APPLICATION BASED UPON THE FINDING THAT THE APPLICANT'S EXISTING DRIVEWAY LIKELY ENCROACHES ON THE FIVE FOOT SETBACK

THAT IS REQUIRED BY THE CITY OF MENDOTA HEIGHTS AND ALSO THAT THE PROPOSED ENCROACHMENT WOULD BE A DIMINUOUS ENCROACHMENT ADDING THE CONDITION THAT ANY PROPOSED CONSTRUCTION OF THE DRIVEWAY WOULD HAVE TO MEET THE REQUIREMENTS OF THE NEIGHBOR AT 8122 FARO LANE REGARDING THE DRAINAGE OF SAID DRIVEWAY AND THAT THE CURVATURE MEET THE APPROVAL OF THE NEIGHBOR AT 8122 FARO LANE REGARDING THE AMOUNT OF ENCROACHMENT PROVIDED THAT IT DOES NOT EXCEED THE TWO FEET THAT IS ALLOWED. THE FINDING OF THE HARDSHIP IS CREATED BY THE LAYOUT OF THE PROPERTY (ANGLE OF PROPERTY LINE) AND THE FACT THAT THE EXISTING DRIVEWAY LIKELY ENCROACHES ON THE FIVE FOOT SETBACK.

Commissioner Field said he is concerned about the condition that Mr. Lynch approve the drainage plan and that is unworkable which would create a standard outside the control of the city, the Planning Commission and the City Council. Commissioner Field said he would rather the city give the approval of the drainage control.

Commissioner Norton said he believes there is a hardship regarding the angle of the property line and the existing driveway already being in the setback. Commissioner Norton said the two neighbors seem amiable to be able to work this out and would be better worked out before the application goes to the City Council. Chair Lally said he feels it is not good that the approval for the garage was given while there was no way to get into it and that this may also be a hardship.

Commissioner McManus asked if Staff was comfortable with the applicant's testimony of prior meetings. Mr. Sedlacek said at the original planning meeting, a number of options were described in terms of this additional garage stall and staff said they were provided information on what would be a legal conforming garage but also inform the applicant at that time that there would be difficulty getting a driveway to that garage stall.

Commissioner McManus asked if the new garage require any type of city approval other than a building permit. Mr. Gritman said it did not as it met all the zoning requirements.

Commissioner Viksnins said he was very sympathetic with the applicant but does not see the unique condition and the Planning Commission should not set a precedent of saying that every pie shaped lot creates a hardship. Commissioner Viksnins said based on the information he has he will not be in favor of this application.

Commissioner McManus said he would only be in favor of the paver blocks.

Commissioner Norton said he would like to withdraw his motion on this application.

COMMISSIONER VIKSNINS MOVED, SECONDED BY COMMISSIONER FIELD, TO RECOMMEND DENIAL OF THE VARIANCE ON THE GROUNDS THERE IS NOT A UNIQUE CONDITION ESTABLISHED.

Commissioner McManus said it is not the small square of encroachment that is the issue, it's the rules that govern the decision making is the issue.

AYES 4 (Chair Lally, Commissioners McManus, Viksnins, Field)
NAYES 2 (Commissioners Norton and Povolny)

PLANNING CASE #09-13
Ron Furchner
1032 Sibley Memorial Highway
Critical Area Permit

Planner Steve Gritman reviewed a map showing the property located at 1032 Sibley Memorial Highway, which is single family home, and zoned R-1. The applicant has applied for a Critical Area Permit in order to construct a 915 square foot addition on to the north side of the existing home and to construct a new driveway on to Sibley

Memorial Highway. The addition will include a tuck-under garage with a 216 sq. ft. crawl space along with living space above the garage, including a new home entrance, family room, laundry room, bathroom, and master bedroom with a master bathroom.

Because the home is located in close proximity to the east property line, and the property is pie shaped. The home is considered a non-conforming structure.

The applicant is also proposing to place a retaining wall made of decorative block. Mr. Gritman said that the submitted site plan includes two different base maps – one from the County that shows the property line clipping a portion of the adjoining property at 1028 Sibley Memorial Driveway. The second base map is a portion of a survey that shows a revised lot line between the houses, but splitting the shared driveway. As a part of the addition and new driveway construction, the applicant will need to restore the previous driveway area to planted front yard. The driveway area serving the adjacent home will continue to exist in its current condition on its separate property.

The applicant has submitted a letter of intent describing the details of the project stating that there will be no change to the run-off on the property, no change to the topography, and little soil removal.

Since the home is non-conforming as it currently does not meet the required 10 foot side yard setback, the proposed addition shall be further away from the side property line than what the existing house is, which is improving the current situation. The proposed setback meets the required 10 foot side yard setback. Planning staff recommends approval of the Critical Area Permit, subject to the stated conditions as outlined in the Planners Report, and based on the fact that the topography is not expected to change, nor will there be any changes to current runoff and soil situations.

Ron Furchner, 1032 Sibley Memorial Highway, was available for questions.

Chair Lally asked why the current shared driveway does not work out. Mr. Furchner said he maintains the driveway which is a dirt driveway. It has gotten to the point where he does not want to impose on his neighbor to split the \$15,000 to build a new concrete driveway. If they want to, he has no problem with this. Only about ¼ of the driveway belongs to him. Mr. Furchner said he spoke to MnDOT about six years ago and they will give him a permit to put the driveway in to the west of where the driveway is now, but he has to have a licensed contractor do the work. Mr. Furchner said he wishes to improve his quality of life, saying he has already put fourth roof on the garage, which still leaks, and he can't get his boat in the garage. He would like to add 915 sq. ft. to the top of the house and is aware of the requirements to the property lines.

Commissioner McManus asked when the house was built. Mr. Furchner said it was built in 1953, where two sisters owned the property and split it, building two homes very close to each other, about 4 feet from the property line.

Chair Lally opened the public hearing. Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER NORTON, TO CLOSE THE PUBLIC HEARING.

AYES 6
NAYES 0

COMMISSIONER FIELDS MOVED, SECONDED BY COMMISSIONER VIKSNINS, TO RECOMMEND APPROVAL OF THE CRITICAL AREA PERMIT SUBJECT TO THE CONDITIONS OUTLINED IN THE PLANNERS REPORT.

AYES 6
NAYES 0

**PLANNING CASE #09-14
James Ries, Buell Consulting
750 Main Street (Mendota Heights Town Center)
Conditional Use Permit**

Planner Steve Grittmann reviewed the application for a conditional use permit to allow the installation of a new wireless facility located within the existing Mendota Heights Town Center. The applicant, James Ries/Buell Consulting, is applying for this conditional use permit on behalf of AT&T Wireless. The proposed facility will include six antennas placed around the inside of the existing clock tower structure and a fenced equipment area located on the bottom floor of the existing parking ramp.

The proposed antennas will surround the existing clock tower face and will be incorporated into the tower design. The proposed antennas will not protrude above the existing roofline of the Town Center building. The accessory equipment will be stored in a locked fenced area within the parking space, and the proposed storage area will be 216 sq. ft.

Mr. Grittmann said that the city strongly encourages new personal wireless service antennas to be located on existing towers or support structures. Based on the review of the applicable zoning ordinance requirements, Planning staff recommends approval of the conditional use permit subject to conditions outlined in the Planners Report.

Commissioner McManus asked if the antennas cannot be seen and the wiring will not be visible from the external viewer. Mr. Grittmann said that appears to be true. Commissioner McManus said he believed that the antenna would take up some of the existing vacant space now existing on the surface of the tower. Mr. Grittmann said he does not believe the antennas will be visible.

Ken Nielsen, Buell Consulting, spoke on behalf of AT&T. Mr. Nielsen said no part of the facility will be visible from off site. The ground equipment will be installed in the parking garage and explained how the cables will be run to the clock tower. Mr. Nielsen showed photos of what the property will look like with this system in. Mr. Nielsen said nothing will show through the glass.

Commissioner Povolny asked if there will be room for additional antennas. Mr. Nielsen said there are other spaces and would all depend on the carrier that would be proposing the facility, and what their technical requirements are. There is not a lot of room of there, and it would all depend as this is a difficult question to answer. Mr. Nielsen said they will be using three sides of the clock tower with antennas inside behind the glass panels.

Commissioner Viksnins asked about the security plans for this project. Mr. Nielsen said the equipment will be in a self contained locked structure and will also have a locked gate around it as well.

Commissioner Field said he would like to see other providers use this facility as this would be better than adding yet another monopole in the area, which is a dead area. Mr. Nielsen said the AT&T antennas would be 100% hidden, and he is not sure how the other users would utilize their equipment, and would probably work very nicely.

Chair Lally said this seems like a good spot since the antennas are being removed from Sibley High School.

Mr. Ross Fefercorn, developer of the Village at Mendota Heights, stood to answer questions.

Commissioner McManus asked if there are going to be green panes of glass in the areas that are now open on the faces all the way around. Mr. Fefercorn said this is a specialty made glass provided from the clock manufacturer out of Boston, MA. This is a tempered glass with a translucent plastic layer in between, being opaque so that one cannot see through it. It is a white-ish hue, not a green-ish one; therefore the antennas will not be seen. Mr. Fefercorn said he was planning on putting additional panels around the clock and this seemed to be a perfect fit, and was hoping to somehow use this as a cell tower. Mr. Fefercorn said he tried soliciting cell phone companies to use this area, but had not received any calls back. About six months ago, AT&T called him scouting for a site. Since then, they have been working together on a plan for this use. Mr. Fefercorn explained how the panels will be situated.

Commissioner Viksnins asked Mr. Fefercorn what his expectations on future use hold. Mr. Fefercorn said he would welcome other carriers if the geometries and economics work out. The reality is that the antennas fit almost perfectly behind the glass panels and there really is no room for any other carriers. It is possible to fit them in, and there will also be another clock tower on the 720 Main Street building that could be used.

Mr. Fefercorn said Verizon is currently a tenant and they have not expressed any interest yet, however that could change. This is a franchise, not a corporate tenant.

Chair Lally opened the public hearing. Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER NORTON, TO CLOSE THE PUBLIC HEARING.

AYES 6
NAYES 0

Commissioner Field asked if there were any way this conditional use permit could contain some wording that would encourage the applicant to allow other carriers to use the same facility. Mr. Grittmann said that could be added to the motion, but he is not sure what impact it would have from the city's perspective.

COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER MCMANUS, TO RECOMMEND APPROVAL OF THE APPLICATION BASED ON THE FINDINGS AS PROPOSED IN THE STAFF MEMORANDUM.

AYES 6
NAYES 0

PLANNING CASE #09-15
Brian L. Christopherson
916 Chippewa Ave
Variance

Planner Steve Grittmann reviewed a map showing the property located at 916 Chippewa Avenue, which is single family home, and zoned R-1. The applicant has applied for a side yard setback variance for the construction of a 527.5 sq. ft. addition onto the attached garage / house. The existing attached garage is currently 19 ft. from the north (side) property line, and if approved, the 11 foot wide garage addition would locate the house / garage 8 feet from the north property line.

Mr. Grittmann said that after analysis of the application, staff found that the existing attached garage does not meet the front yard setback requirement of 30 feet, as it is located approximately 20 feet from the road right of way of Chippewa Avenue. The addition is proposed to be in line with the existing garage and so a front yard setback variance is also required.

Planning staff feels a hardship for the variance is found with the location of the existing home which does not allow for an adequate garage expansion to meet the required setback. The home was built with a single car attached garage in 1957. The property does not offer any other reasonable alternative for either expanding the garage or constructing a new garage. Therefore, Planning staff recommends approval of the variance as requested.

Commissioner Viksnins asked if all the neighboring homes have the same unique condition with their small size. Mr. Grittmann said that may well be the case as other similar requests have come from this neighborhood with these single car garage homes that were built in that era.

Commissioner McManus said the string rule would not work well in that neighborhood as the setbacks are all over the place, and this application is not going to change the aesthetics of the neighborhood.

Commissioner Povolny asked if these homes were built before the standards went into effect. Mr. Grittman said that was correct.

Brian L. Christopherson, 916 Chippewa Ave, said the home and garage was built in 1957 and said he would like to make a correction; the current square footage is actually 272 finished sq. ft. internally. The garage is actually 21 ft. deep and 13 ft. wide.

Commissioner Viksnins asked if the neighboring homes are single family with single stall garage. Mr. Christopherson said he bought this home as a foreclosure and is trying to fix it up, and said that it may be 50-50, and going east on Delaware it is mostly single car homes.

Chair Lally opened the public hearing. Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER FIELD MOVED, SECONDED BY COMMISSIONER NORTON, TO CLOSE THE PUBLIC HEARING.

AYES 6
NAYES 0

COMMISSIONER POVOLNY MOVED, SECONDED BY COMMISSIONER MCMANUS, TO RECOMMEND APPROVAL OF THE VARIANCE FOR A SIDE YARD SETBACK AND A VARIANCE FOR A FRONT YARD SETBACK IN ACCORDANCE WITH THE FINDINGS OUTLINED IN THE PLANNERS REPORT.

AYES 6
NAYES 0

PLANNING CASE #09-16

Diane Foley
2359 Apache Street
Conditional Use Permit

Planner Steve Grittman reviewed a map showing the property located at 2359 Apache Street, which is single family home, and zoned R-1. The applicant has applied for a conditional use permit to allow for the construction of a 6 foot fence within the setback area. This fence would replace an existing chain link fence in order to provide more privacy along the southeast corner of the house along the east side yard to the rear property line. This portion of the proposed fence will be located approximately 28 feet from the street. The proposed fence is a cedar privacy fence, open board, which is commonly seen for residential use, and meets the code requirements for 30% openness. Planning staff recommends approval of the conditional use permit for the proposed 6 foot fence within the side yard setback abutting Pueblo Lane of 2359 Apache Street.

Diane Foley, 2359 Apache Street, stood for questions.

Chair Lally opened the public hearing. Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER FIELD MOVED, SECONDED BY COMMISSIONER VIKSNINS, TO CLOSE THE PUBLIC HEARING.

AYES **6**
NAYES **0**

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER FIELD, TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT FOR THE PROPOSED FENCE WITH THE CONDITIONS THAT THE FENCE MEET ALL THE CITY ORDINANCE REQUIREMENTS

AYES **6**
NAYES **0**

PLANNING CASE #09-17
Charles and Laurie Crutchfield
685 Hidden Creek Trail
Conditional Use Permit

Planner Steve Grittman reviewed a map showing the property located at 685 Hidden Creek Trail, which is single family home, and zoned R-1. The applicant is requesting approval of a conditional use permit to construct a detached accessory building that is over 144 sq. ft. in size on a lot that is approximately 1.5 acres in size.

The parcel is unique in shape and its topography. The home on the property is still under construction and is near completion. The accessory structure is proposed to be located north / northwest of the home, in a location where the grade begins to increase toward the rear of the lot. The porch / gazebo is proposed to be on a floating slab with tempered glass sliding doors, transom windows above the doors, and an aluminum clad foam insulated roof panels.

The accessory structure is proposed to be 12 feet by 16 feet in size and it appears to meet all the requirements. Planning staff believes that the proposed accessory building is compliant with the review standards and therefore is recommending approval of the proposed conditional use permit, subject to the conditions outlined in the Planners Report.

Commissioner McManus asked he assumes there is electricity to this building, and asked if there is any plumbing to this building. Mr. Grittman said he is not aware of any.

Commissioner Viksnins asked why this is a conditional use and not a variance. Mr. Grittman said this is because the code has a specific clause to say that any accessory building more than 144 sq. ft. can be approved by a conditional use permit.

Charles Crutchfield, 685 Hidden Creek Trail, shared an elevation drawing of the structure and picture of his property. Dr. Crutchfield said there will be electricity but no plumbing.

Commissioner McManus asked if the glass panels will be opened and screened. Dr. Crutchfield said it will be.

Chair Lally opened the public hearing. Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER POVOLNY, TO CLOSE THE PUBLIC HEARING.

AYES **6**
NAYES **0**

COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER VIKSNINS, TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT BASED ON THE FINDINGS OUTLINED IN THE STAFF REPORT, AND PROVIDED THAT THE CONDITIONS ON PAGE THREE OF THE STAFF REPORT ARE SATISFACTORILY COMPLETED.

Commissioner Field referred to Conditions #1, and said he feels this would seem like an unnecessary requirement as given the nature of the project, anything put in there would be consistent with the home. Secondly, it does refer to additional landscaping and is the nature of this landscaping known. Dr. Crutchfield said the landscaping consists of the trees that have been planted plus additional evergreen trees that will be planted.

AYES **6**
NAYES **0**

PLANNING CASE #09-19
Sara & Todd Hulse
754 Woodridge Drive
Critical Area Permit and Variance

Planner Steve Grittman reviewed a map showing the property located at 754 Woodridge Drive, which is single family home, and zoned R-1. The applicant has applied for a Critical Area Permit and variance to construct a dog kennel and a stairway.

The applicants are proposing a 22 foot by 24 foot dog kennel. The applicants are also proposing to build an additional stairway from the deck, or move the existing stairs so that they descend into the kennel area. The purpose of this improvement is to enclose a portion of the yard for the applicant's dogs which have been subject to attack from coyotes in this area.

Mr. Grittman explained that the property is rather large in size, 2.54 acres, but is limited in its buildable area by the natural topography. An existing dog kennel is located on the property and is tucked under the deck and porch overhang behind a row of bushes. The proposed kennel would be in the same general area but is significantly larger in size.

Planning staff believes that the test for variance approval has not been met as there are other locations that would not require a variance. As far as the Critical Area Permit is concerned, the request to place a fence on the property does not have any negative impacts on the bluff. Planning staff recommends approval of the Critical Area Permit provided that the fence/kennel is located in an area that meets the 40 foot bluff setback requirement.

Commissioner Viksnins asked where in the parcel the planner would suggest that the dog area be located. Mr. Grittman said somewhere farther to the south of the proposed location or south of the structure or possible to the north but it would be visible to the neighbors.

Commissioner Field said he is struggling with the placement of this on the property and he is assuming it is a fence that contains an animal. Commissioner Field asked if a fence should not be permitted any place in the critical area. Mr. Grittman said anywhere within the 40 foot bluff zone. Commissioner Field asked if MnDOT fences are allowed. Mr. Grittman said the critical area is written to prohibit any type of fence and MnDOT is not subject to the city's zoning.

Chair Lally asked if the prevalence of predatory animals create a unique condition in this area without any recourse. This seems to be a unique condition that the applicants are proposing something that would be a minimal invasion and it does not seem that they are putting in any pad and so it would not seem to contribute to erosion problems or visual problems.

Mr. Grittman said he would agree that this would be a unique condition in this case on the presumption that there is no other way to protect from that condition without violating the ordinance, and this may make a compelling argument.

Commissioner Field asked if the applicant had young children who play in the yard and fencing was the only way to protect them, would the Planner's opinion be the same. Mr. Grittman said from a location standpoint it would be the

same. If reasonable use of the property is to use the yard space, and there is no other way to use the yard space in a safe way without enclosing it with a fence, then there may be a case there.

Sara and Todd Hulse, 754 Woodridge Drive, was available for questions.

Commissioner McManus asked if the applicant has contemplated any alternatives for the location of the dog runs. Ms. Hulse said they have. Mr. Hulse said there is another lot to the south, and that would not be aesthetically pleasing. Commissioner McManus said he is wondering if the applicants can find a more aesthetically pleasing place in their yard that would not be inconvenient for the applicants or their pets, and would feel more comfortable if the applicant would present some other locations that would work.

Ms. Hulse said they were told to take into consideration of the neighbor's concerns of their views of the bluff line. Ms. Hulse said this proposal will shield the fence from the neighbors. Ms. Hulse said they cannot think of any other place where the neighbor's view would not be affected, as it is sheltered by the garage and bushes.

Commissioner Viksnins asked what the problem would be in trying to locate the fencing to the right of where the proposed area is. Mr. Hulse said there is a deck in that area and a retaining wall that would be in the way. Mr. Hulse said there is no other place he would want his dogs kennel. Commissioner Viksnins said that this is not an acceptable reason for a variance. Mr. Hulse said not even with the uniqueness of a dog attack. Commissioner Viksnins said aesthetics is not a reasonable use. Ms. Hulse said their daughter has also been approached by the coyotes, and they have seen up to five on them in the yard within five feet of their home. Commissioner Viksnins said nobody is questioning the need for the structure, but the question is where this structure will be placed. Ms. Hulse asked if they are entitled to a reasonable use of their yard. Commissioner Viksnins said they are. Ms. Hulse said they are talking about a 20 ft. by 20 ft. area within a 2 acre yard, and said that strikes her as a more than reasonable request. Ms. Hulse said this proposal would not impact anything realistically and it's true that it is most convenient, but it is the most hidden place and the most reasonable place.

Chair Lally said it seems that other alternatives have been considered and the issues are respective of the bluff line and respective of the neighbors. The area closest to the bluff line also has minimal impact that being the fence posts. Ms. Hulse said that was correct as they are not planning on putting in a pad.

Commissioner Field asked if the existing deck comes within the 40 ft. setback. Mr. Gritman said it does. Commissioner Field asked when the home was built. Mr. Hulse said it was built in 1942. Commissioner Field said it is an old home.

Chair Lally said he believes there was a similar application for deck posts which would be just as evasive as posts for a dog kennel. The variance was granted in that case because of the minimal nature of the proposal. Chair Lally said the applicants seemed to have balanced the concerns of the neighbor and the concerns of the bluff line in a reasonable fashion given the unique situation with the bluff line and the animals in the area.

Chair Lally opened the public hearing. Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER FIELD MOVED, SECONDED BY COMMISSIONER VIKSNINS, TO CLOSE THE PUBLIC HEARING.

AYES 6
NAYES 0

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER VIKSNINS, TO RECOMMEND APPROVAL OF THE CRITICAL AREA PERMIT AND DENY THE VARIANCE TO THE BLUFF SETBACK, SEEING NO WILLINGNESS ON THE PART OF THE APPLICANTS AND ANY EFFORT HAS BEEN MADE TO USE EXISTING LAND.

Chair Lally asked if these motions were together or separate. Commissioner McManus said he made them together but would accept a friendly amendment to vote on these separately.

Commissioner Field asked if this was one motion or two. Chair Lally said there is only one and said that it might be easier to separate them.

Commissioner McManus withdrew his first motion. Commissioner Viksnins said he will withdraw his second.

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER VIKSNINS, TO RECOMMEND DENIAL OF THE VARIANCE TO THE BLUFF SETBACK.

Commissioner Field said he will vote in opposition to this motion as he cannot see the impact of the fence, while understanding what Mr. Grittmann has said. Commissioner Field said he also feels the neighbors have more impact and frankly for a fence of this scope, it may intrude into the area but he does not see the harm.

Commissioner Norton said he agrees with Commissioner Field as special conditions do apply to the property in regard to the danger of coyotes and other wildlife to the children and pets. Commissioner Norton said he believes that a reasonable use of the property is to have a portion of it fenced, and would even support fencing in a larger part of the yard.

Commissioner McManus asked if that could not be achieved without a variance as he thinks there has been no other aesthetic reason it has even been considered. Commissioner McManus said he should have been there today as he normally visits the properties, and maybe he should have because the applicant could possibly be right. Commissioner McManus said he has no proof that the land is not useful and safe without violating the bluff setback.

Chair Lally said he has visited the property and said this is the most protected area in regard to respecting the neighbor's view and there is not another portion of the property that is more protected from the neighbor's view and the applicant has taken into consideration other alternative spots on the property except for the fact that alternatives would draw opposition from neighbors. Chair Lally said the piece that is compelling to him is that the property he spoke of previously (the O'Shaughnessy) had also received a variance and critical area permit for deck posts for an expansion of an existing deck which was even closer to the drop off. That was merely for the aesthetics of the deck and not for protection of pets. Chair Lally said approving the critical area and denying the variance does nothing to help the applicant protect their pets. Chair Lally said for those reasons, he would vote for the variance as there has been a precedence already set.

Commissioner Viksnins said even though he seconded the motion, he does find that there is a combination of unique circumstances which persuades him to vote against the motion to deny.

AYES 1 (Commissioner McManus)
NAYES 5 (Chair Lally, Commissioners Norton, Povolny, Viksnins, Field)
MOTION FAILED

COMMISSIONER FIELD MOVED, TO RECOMMEND APPROVAL FOR THE VARIANCE TO THE BLUFF SETBACK FOR A BLACK VINYL COATED SEALED FENCE BASED ON THE FINDINGS RELATED TO THE UNIQUENESS OF THE PROPERTY, THE CONSIDERATION OF THE OTHER SITES AS BEING IMPRACTICAL AS THEY RELATE TO THE NEIGHBORS, AND THAT A PRECEDENCE HAS BEEN SET WITH THE APPLICATION FOR A VARIANCE REQUEST AT 731 WOODRIDGE, AND FOR THE PROTECTION OF COYOTES AND OTHER PREDATORS AROUND THE PROPERTY.

Commissioner McManus asked if this motion has been seconded yet. Chair Lally said it was not. Commissioner McManus said the discussion should then wait until the motion has been seconded as a point of order. Chair Lally recognized Commissioner McManus' statement, saying that the commissioners are in the process of refining the motion. Commissioner McManus said this motion could be a claim to almost every home in the city of Mendota Heights. Commissioner Field objects for Commissioner McManus' comments because the yard cannot be fenced in

at the back of the house because of these particularly unique conditions. Commissioner McManus said one certainly can.

Chair Lally said the motion is to grant the variance based on the unique conditions of the property including the predatory nature of large numbers of coyotes in this area near the wooded areas of the bluff and that an adjacent property requested and received a similar variance from this commission within the last two years. In addition, the motion is asking for a black coated vinyl chain link fence. Mr. Sedlacek said this location would also minimize impact to the neighbors as was the first finding of fact.

THE MOTION WAS DULY SECONDED BY COMMISSIONER NORTON

Commissioner McManus said Chair Lally sounds like a defense attorney and the next time Commissioner McManus gets in trouble, he is going to hire Chair Lally!

AYES **5 (Chair Lally, Commissioners Norton, Povolny, Viksnins, Field)**
NAYES **1 (Commissioner McManus)**

COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER MCMANUS, TO RECOMMEND APPROVAL FOR THE CRITICAL AREA PERMIT BASED ON FINDINGS OUTLINED IN THE STAFF REPORT.

AYES **6**
NAYES **0**

Commissioner Norton asked to be excused as he has another appointment.

PLANNING CASE #09-18
United Properties LLC / Bituminous Roadways
1520 Commerce Drive
Conditional Use Permit

Planner Steve Grittman reviewed the application request from United Properties, on behalf of Bituminous Roadways, to construct a new office and warehouse building on a 5.9 acre site located within the Mendota Heights Industrial Park. As part of the proposal, the applicant is requesting to use a portion of the site for outdoor storage of equipment. The subject property is zoned I (Industrial) and business offices and warehousing is a permitted use. Contractor's yards are allowed upon approval of a conditional use permit.

The proposed two-story building measures approximately 27,000 sq. ft. including 9,600 sq. ft. of warehousing/shop area. The applicant is requesting a conditional use permit to allow for approximately 40% of the site be used for outdoor storage. The remaining area is proposed to be used for outdoor storage as well as the existing storm water pond.

The proposed office building is to be finished with rock face block. Decorative block accents are proposed as well as awnings above most windows. These materials are consistent with ordinance requirements.

The submitted landscaping plan indicates a series of shrubs and perennial plantings along the front perimeter of the building as well as within the parking lot islands and front driveway entrances.

Planning staff believes that the proposed development may not entirely be compatible with the other uses in the business park as most of the existing uses are office / research type facilities and do not contain large outdoor storage areas. The submitted plans are generally acceptable; however additional landscaping to screen and buffer the outdoor storage area as well as the limitations on the types of equipment and materials that can be stored outside may be necessary in order to be compatible with existing uses.

Planning staff would not recommend approval of the proposed conditional use permit without a detailed description of the proposed storage uses, and intensified landscaping intended to enhance the aesthetic impact of the site.

Chair Lally asked if a taller, 8 or 10 foot fence, and a combination of a more detailed landscape plan change the Planners recommendation. Mr. Grittmann said it is possible that something in the 8 to 10 feet range would be acceptable, but there needs to be conversation with the applicant to get a better understanding of the types of equipment that they expect to store out there. If it meets the condition of screening, then there is not a lot of room to deny. A conditional use permit is intended to be allowed uses here so if they can meet the conditions, there is a presumption that the applicant is allowed to have the permit. Chair Lally asked who the screening would be for. Mr. Grittmann said traffic on Highway 13 and on Commerce Drive would be the two view primary areas.

Commissioner Povolny asked if it is Old Highway 13. Mr. Grittmann said that was correct.

Commissioner McManus said at this time of the year, one cannot see from that road to the proposed site as it is heavily wooded.

Commissioner Field said MnDOT has its maintenance facility and do they get to play God in that role also? Mr. Grittmann said they do.

Commissioner Viksnins said the reading of the ordinance means that fully screened means this cannot be seen. Mr. Grittmann said that was correct.

Commissioner Povolny asked if MnDOT has a conditional use permit. Mr. Grittmann said he does not believe they do. Commissioner Povolny asked if the commission is supposed to pass these evenly, so if the guy on the left and on the right has one, the guy in the middle should have one too. Mr. Grittmann said MnDOT is an agency of the state and the state is not subject to the city's zoning regulations. Mr. Grittmann said he does not believe that there are any other conditional use permits for outside storage at least in this immediate area and does not remember seeing an application for one in the past ten years.

Commissioner McManus said there is no shielding at the state's site and it's just hanging out right there.

Commissioner McManus asked if the fence were not as pervious as a chain link fence; there are some chain link fences that have products that close them up. That would be a cheap way of doing it. The expensive way would be to construct a tall board fence. What types of fences are permitted? Mr. Grittmann said the city permits pretty much any type of fence in this district. Commissioner McManus asked if this meets the intent of the code. Mr. Grittmann said he thinks the clear reading of the code says it needs to be fully screened, which means if someone was standing on the roadway, they would not be able to see any of it.

Eric Simmer, United Properties, 3500 American Boulevard, Bloomington, MN and Derek Johnson, Anderson Engineering, Civil Engineering for the site thanked the commissioners for hearing this application.

Mr. Simmer said this is a contractors yard with a little bit of industrial space. The majority of the space is occupied by a two-story office building of about 14,000 ft. and about 10,000 ft. of shop space. Bituminous Roadways, who is currently located in Inver Grove Heights was founded in 1946. The Peterson family has been involved with it since about 1958 and annually, they do about \$45 million in construction. They have historically done work for the City of Mendota Heights as well as a lot of other local cities. Seventy percent of the revenue comes from public projects. They have 120 full time employees, 85 of those are union members with average wages of \$30.00 per hour.

Mr. Simmer said Mendota Heights is ideally suited for their location based on the fact that their three asphalt plants are currently in Shakopee, Minneapolis and Inver Grove Heights. The freeway infrastructure for they are doing here on this site is ideal and of course, the outside storage being permitted as a conditional use is also very beneficial.

Mr. Simmer said the primary points he wants to make is that on site, and generally during the winter when the equipment is not in the field, there will be between 50 and 70 pieces of heavy equipment. The tallest of which is about 11' 6" tall (a loader) and there are as small as some bobcats.

The site was laid out to screen as best as possible, and United Properties is open to accepting conditions and suggestions for height of fence. They picked 6 ft. because that is what is permitted without a conditional use. United Properties would gladly build a taller fence. The building is situated to serve as intervening screening from Highway 13 and also to take advantages from the office area of the long views over the Minnesota River Valley and to provide a patio area over the pond.

The fence is intended to be a solid decorative cedar fence that one would not be able to see through. Mr. Simmer said he does not believe it would be accurate to say universally that one cannot screen objects higher than 6 ft. with a 6 ft. fence. Mr. Simmer showed a picture of a 6 ft cedar fence in the same business park to give the commission an idea of what they are going to see.

Mr. Simmer said the new condition with the appropriate screening would be better from the Associated Bureau's property standpoint as when the leaves are down, they can see right through MnDOT's chain link fence into their storage yard. United Properties will act as intervening screening.

Commissioner McManus said this sounds like a pretty good deal to him.

Commissioner Povolny said he pretty much understands what is going on.

Chair Lally said it looks like the fence that was shown was on a slight berm and asked the applicant if they would consider some combination of landscaping including berming and an 8-ft fence. Mr. Simmer said they would be open to that.

Commissioner Viksnins asked how tall of a fence would they go. Mr. Simmer said they would go as high as the city would like.

Commissioner Viksnins asked if all of this equipment would be outside at the same time. Mr. Simmer said some will be in the shop for maintenance from time to time. The fenced area is 2.35 acres in perimeter; the overall site is about 5.9 acres.

Commissioner Field said he believes most of this equipment is down on Highway 49 at the current facility, and asked if the expectation be that the volume of equipment that one might see in the winter would be comparable to that. Mr. Simmer said that is correct. Mr. Simmer pointed out that there will be no material stored on the site; this is only for the equipment.

Commissioner Povolny said his business is just down the road from Bituminous Roadway's Shakopee site and said that particular property is very clean and organized.

Commissioner Field said it is a nice operation.

Mr. Simmer said this will be a relocation of that facility.

Commissioner Field asked Chair Lally if the commission is to vote on this tonight, or shall they direct the applicant to come back with some ideas on fences and other landscaping.

Mr. Simmer said he would like a "yes" vote with the understanding that he will work with staff diligently between now and the City Council meeting to come up with a screening plan that would be satisfactory based on the comments he has received tonight. The berm and the fence will not be an issue, and they are wide open to a taller fence. The total parking area will be done in blacktop.

Mr. Sedlacek said staff can give the applicant a recommendation on the site plan in the conditional use with a requirement that they come back with a subsequent conditional use permit for a fence higher than 8 ft.

Chair Lally asked if the fee can be waived for the second application. Mr. Sedlacek said the commission can do that but there may be a nominal fee for another publication and staff analysis, and the city would not likely mind paying for this as the applicant has shown good faith effort.

Chair Lally opened the public hearing. Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER POVOLNY MOVED, SECONDED BY COMMISSIONER FIELD, TO CLOSE THE PUBLIC HEARING.

AYES 5
NAYES 0

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER POVOLNY, RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT.

Commissioner Field asked if there should be anything added relative to the fence height. Chair Lally said it seems as though the issues with the fence would be for a later discussion if the fence is higher than 6 ft. Commissioner Field said it was his understanding that something additional was going to be on the motion as a condition regarding the fencing and the possible berm.

Commissioner McManus asked to amend his motion.

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER VIKSNINS, TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT WITH THE CONDITIONS LISTED IN THE PLANNERS REPORT, ALONG WITH THE ACCEPTABILITY OF THE PROPOSED ACCESS POINT SHOULD BE SUBJECT TO COMMENT AND RECOMMENDATION OF THE CITY ENGINEER.; AND THAT ADDITIONAL LANDSCAPING ALONG THE EXTERIOR OF THE PROPOSED FENCE SHOULD BE PROVIDED SUBJECT TO REVIEW AND APPROVAL OF CITY STAFF; AND ISSUES RELATING TO GRADING, DRAINAGE, UTILITIES ARE SUBJECT TO REVIEW AND APPROVAL OF THE CITY ENGINEER; ALL BASED ON THE FINDINGS OF THE PLANNERS REPORT.

AYES 5
NAYES 0

Verbal Review

Mr. Sedlacek gave the following verbal review:

- | | | |
|----------------------|---|------------------------------------|
| PLANNING CASE #09-09 | Matt and Julie Brooks | Conditional Use Permit |
| • | Approved by the City Council as recommended by the Planning Commission adding the condition that the structure cannot be used for any form of vehicle storage. | |
| PLANNING CASE #09-10 | Ross Fefercorn/Mendota Heights
Town Center | Zoning Ordinance
Text Amendment |
| • | Approved by the City Council as recommended by the Planning Commission. Licensing language was heard and the feedback from the Planning Commission was much appreciated. The Council approved a change to the licensing language as well. | |

CHAIR LALLY ADJOURNED THE MEETING AT 10:15 PM

Respectfully submitted,
Rebecca Shaffer, Recording Secretary