

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

**PLANNING COMMISSION MINUTES
July 28, 2009**

The regular meeting of the Mendota Heights Planning Commission was held on Tuesday, July 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, Hennes and Field. 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.

Acting Chair Povolny called the meeting to order and said Chair Lally would be arriving late.

Approval of June 23, 2009 Minutes

COMMISSIONER HENNES MOVED, SECONDED BY COMMISSIONER NORTON, TO APPROVE THE MINUTES OF JUNE 23, 2009 AS PRESENTED.

**AYES: 6
NAYES: 0**

Hearings

**PLANNING CASE #09-27
Thomas Fahey
979 Caren Road
Critical Area Permit**

Planner Steve Grittman reviewed a map showing the location of 979 Caren Road, which is zoned R-1, single family residential.

The applicant is seeking approval for a Critical Area Permit for the installation of a rock wall and landscaping on the property. Mr. Grittman noted that this case is “after the fact” as a rock wall has already been constructed in the northeast portion of the property, beginning approximately 40-ft south from the north property line and 10-ft from the east property line. This wall was constructed of Chilton and Platteville limestone, and approximately 75% of the construction was done by hand by the applicant during the spring, summer and fall of 2008. In April of 2009, the applicant had the remaining 25% completed by a contractor using a Bobcat tractor. There is also a rain garden in this area. There are no bluff zones that would be affected by this wall and the rain garden acts to gather water better than without.

Planning Staff recommends approval of an “after the fact” Critical Area Permit for the installation of a rock wall and landscaping as not paving, soil loss, change in grade, or altering of slopes appear to have occurred, and it appears that the project has not and will not have a negative impact on the aesthetic integrity and natural environment of the Mississippi Critical Area.

Commissioner McManus asked if the current owner has started this process. Mr. Grittman said the previous owner started the project and the current owner is now trying to finish it.

Commissioner McManus asked if there is a known motive for this wall. Mr. Grittman said he is not aware of the motive.

Commissioner Hennes asked how much construction was completed before the applicant was asked to stop work in order to obtain the proper permits. Mr. Gritman said the applicant could better answer this question. Commissioner Hennes asked if a critical area permit would have been needed for just a rain garden. Mr. Gritman said the permit would be required when any grading is done.

Assistant to the City Administrator Jake Sedlacek said the property owner has moved to Atlanta and in his absence, Mr. Sedlacek provided more background on this case. The applicant has been working on this project for some time without a permit, and when they listed their house for sale, they needed to get the project done quicker and brought in a contractor which resulted in a citation for dumping materials in a park which is how the city found out about this project, and since requested that the applicant complete this project. Since that time, the applicant has completed the project and completed the sale, and then moved out of town. Mr. Sedlacek said he does not believe the current property owner is in attendance at this time. Staff left a message for the current owner stating that this project was something that Mr. Fahey, the previous owner did, and should the city need any information, they would contact the current owner as staff did not feel it was necessary to have him attend the meeting. The current owner purchased this home with a completed wall.

Commissioner Hennes asked if the current owner was aware that he was buying a home with this unapproved wall. Mr. Sedlacek said he believes the current owner is aware of the situation, finding it out from a neighbor and a public notice on the property.

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 VIKSNINS, TO CLOSE THE PUBLIC HEARING.

AYES 7
NAYES 0

COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER FIELD, TO RECOMMEND APPROVAL OF THE CRITICAL AREA PERMIT BASED ON THE FINDINGS OF FACT AS OUTLINED ON PAGE FOUR OF THE PLANNERS REPORT.

Further Discussion

Commissioner McManus said he is sympathetic to the new owner and said the materials provided at this meeting were somewhat misleading. The only concern he is at this time is to eliminate Item 4 of the Findings of Fact because it is not known why that wall was built.

Commissioner McManus asked for a friendly amendment to remove Item 4 from the Findings of Fact. Commissioner Norton said he is happy to change the language to say “The project improves the water runoff and drainage on the lot”. Commissioner Norton and Commissioner Field agreed to amend the motion to reflect this change.

AYES 7
NAYES 0

PLANNING CASE #09-28
Arnold Lucke / Ronald Kammueler
1250 Dodd Road
Variance

Planner Steve Gritman reviewed a map showing the property located at 1250 Dodd Road, which is single family home, and zoned R-1. Arnold Lucke, McGuire Courteau Lucke Architects, Inc, is the applicant and is requesting approval for a side yard variance to allow the construction of an attached two-car garage on the property of Ronald KammueLLer's, removing a portion of an existing two-car tandem garage. This existing garage is currently 13.9 feet from the side property line, and the new garage would be located 5-ft. from the south property line. Mr. Gritman explained that the current two-car tandem garage would remain with an additional third stall providing a more traditional two stall garage along the frontage of the home.

Mr. Lucke has submitted a letter of intent stating that the house and one-car garage was built in 1947. The tandem addition to the original garage was built in 1965. Mr. Gritman noted that the original structures were built with a flat room, which caused drainage problems, and Mr. KammueLLer had erected a new hip-style roof framing system in 2003, which corrected the drainage issues, giving a better curb appeal. Mr. KammueLLer would like to continue his efforts in improving the property and needs covered protection storage for vehicles, lawn equipment and maintenance storage. This variance will also improve the appearance of the property and increase the value of the adjacent properties, according to his letter of intent.

Planning staff has found that this case has special conditions on the property (narrow configuration of the parcel, location of the home and garage) which do not allow for an adequate garage expansion. Staff has also found that there are no other reasonable alternatives for either expanding the existing garage or constructing a new one. A traditional two-car garage would not fit on the existing parcel because of the narrow width. Therefore, Planning staff recommends approval of the variance based on the uniqueness of the property.

Commissioner Viksnins asked Mr. Gritman if he has any concerns that this may create precedence that three-car garages are a reasonable use in the community as previous discussions led to the finding that two-car garages are a reasonable use. Mr. Gritman said the ordinance addresses two-car garages as a minimum reasonable use and the unique condition in this case is that the only way the applicant could get a two-car garage is to do the tandem arrangement which is certainly an unusual and convenient use of the property, and the third car stall would remain tandem to stall #1 and #2 in the front along the frontage of the property. The rear portion is in compliance with the setbacks.

Mr. Gritman said staff has received a comment from a neighbor suggesting that they were favorable toward the construction that was proposed here and asked that the cotton wood trees on the applicant's property as the trees are getting old. Mr. Gritman said the construction does not affect those trees in any way.

Mr. Arnold Lucke, talked about how the KammueLLer's have been upgrading their property over many years, and are now asking for a reduction into the setback than they had before to build this addition to their garage. The third garage will act as vehicle storage and storage of other items. The cotton wood trees are right on the property line and are very nice trees, providing nice trees and the KammueLLer's would like to keep those trees. Chair Lally asked if the trees are deteriorating. Mr. Lucke said the KammueLLer's continue to take good care of the trees.

Commissioner Field asked for clarification of the location of the trees in relation to the home. Mr. Lucke explained how the trees are located and how the construction will have to work around those trees.

Commissioner Povolny asked if the garage is going to be detached. Mr. Lucke said the garage will be attached to the home with a breezeway. Commissioner Povolny asked if the garage could be moved closer to the home. Mr. Lucke talked about the location of the entrances into the home both upstairs and into the basement.

Commissioner McManus said the trees look extremely healthy to him, and said while those trees may create a nuisance for neighbors, they are nice trees that people enjoy as he would.

Commissioner McManus said he saw the need for the additional storage as he has seen a lot of stuff lying around outside the existing garage. Mr. Lucke said this work will enhance the property values of the rest of the neighborhood. Commissioner McManus said it will also enhance the aesthetics as well.

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

AYES 7
NAYES 0

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER FIELD, TO RECOMMEND APPROVAL OF THE VARIANCE, BASED IN THE FINDINGS OF FACT IN THE PLANNERS REPORT, AND THAT THIS APPLICATION WILL LEAD TO MORE PLEASING AESTHETICS ON THE AREA.

Further Discussion

Chair Lally said he would agree with Commissioner Viksnins' comments on the precedence of this type of applicant as there seems to be requests every month to expand garages and encroach into setbacks, and depending on the situation, properties with two-car tandem garages, having a single garage frontage, would be considered a unique situation.

AYES 6 (Chair Lally, Commissioners McManus, Norton, Viksnins, Hennes, Field)
NAYES 1 (Commissioner Povolny)

PLANNING CASE #09-29

Maureen Haggerty

790 Ridge Place

Conditional Use Permit and Wetlands Permit

Planner Steve Grittmann reviewed a map showing the property located at 790 Ridge Place, which is single family home, and zoned R-1. The applicant has applied for a Conditional Use Permit to allow the construction of a fence within the required setback area and a Wetlands Permit for the construction of a fence within 100-ft of a designated wetlands. Mr. Grittmann noted that the existing house is only 23-ft from the front property line and is therefore a non-conforming structure.

The applicant received approval for a conditional use permit and wetlands permit for a fence in October 2005. The approval was subject to the condition that the fence be constructed entirely upon the applicant's property and would not encroach into any right of way or neighboring property. A building permit for the fence was never pulled, but the fence was constructed. It has been found that much of it was placed within the right of way of the surrounding unbuilt streets, violating both conditional use permit approvals and ordinance standards, as well as intruding into the front yard setback as well. This fencing also crosses a stream that runs through the property and staff feels that the fence was improperly constructed and should not be crossing that stream. A code complaint was received by staff, triggering the need for the property owner to re-apply for both the conditional use permit and the wetlands permit. The applicant is requesting that a portion of the existing fencing be permitted to remain in the right of way. In addition, when the permits were originally approved, a portion of the fence was to be chain link, with a galvanized finish due to its location in a heavily wooded area. The applicant chose to install a 14-gage welded wire fence with steel posts; this material was not approved as part of any previous permit.

Staff recommends that the portion of the fencing along the back of the property be placed further inward towards the home so that it does not cross over the stream. Staff also recommends that the fence along the front yard setback be moved 7-ft. back toward the house so that it is on the property line and not run into the right of ways. If these fences are moved, they will meet the city's code requirements.

Planning staff recommends approval of the conditional use permit, subject to conditions, and the fence is consistent with others that have been previously approved by the city. Planning staff asks that the city make a determination as to the materials to be used on the southern portion of fence.

Planning staff also recommends approval of the wetlands permit subject to conditions as the proposed project will not result in any negative impacts to the wetland, and will not interfere with wetland water quality.

Commissioner Hennes asked if the portion along the west side needed to be removed. Mr. Grittmann said he would recommend that a portion of that fence would be moved and indicated that portion on the map.

Commissioner McManus asked if the fencing along the west side meets code as far as the construction. Mr. Grittmann said he believes it is taller than 3-ft. and would need the conditional use approval. The fence does meet the city's standards on the materials. Public Works Director John Mazzitello said his staff will look at the fence to make sure the fencing is according to the city's standards.

Commissioner Povolny asked if the existing fencing was ever inspected. Mr. Mazzitello said that the applicant failed to apply for the fence permit in 2005 so the installation was never inspected by the code enforcement officers. The applicant has since been notified that if the conditional use permit and the wetland permit is approved, she will also have to file for a fence permit and the code enforcement officers will then inspect the fencing.

Commissioner Hennes asked for more clarification on the front yard fence where Mr. Grittmann replied that this particular portion of the fence was not included in the original conditional use permit approval of 2005.

Commissioner Viksnins asked Mr. Grittmann to speak about the applicant's presence before the city in 2007. Mr. Grittmann said this particular instance has nothing to do with the fence. Commissioner Norton said he remembers this being in regards to a back addition to the home.

Commissioner Viksnins asked how this non-conformance in the fencing was discovered. Mr. Sedlacek said staff received a complaint that the fence was within the right of way, and upon looking at the conditional use permit and the wetlands permit of 2005, it was found that there was no building permit, which also showed that the fence was in non conformance and this is a result of the enforcement action.

Commissioner Hennes asked if the city is at fault for not seeing this during their review of the application in 2005. Mr. Grittmann said the note in the staff report indicates that the proposed cedar fence was to be 32-ft. from the front property line which would have been conforming to the code; however the actual fence was not built to the approved plan specifications.

Mr. Mazzitello stated that in the field, there are multiple property corner irons around the Somerset right of way, east of the applicant's property. By going with the 1947 plat that was registered with the county, the fence is greater than 6-ft. into the right of way. If going by the irons off Ridge Place, the fence is encroaching by 6½-ft. If the proposed conditional use permit and wetlands permit is approved, the proper property identity corner would have to be identified.

Maureen Haggerty, 790 Ridge Place, said she was aware of the required 30-ft. setback and said she was confused as to where the property line was, thinking the 32-ft. was measured from the street to be flush with the house. She has since learned that the measurement is from the property line and not the edge of the curb. Ms. Haggerty said she is proposing that the cedar fence stay in place not realizing that a portion was not in the setback area. She would also like to keep the fencing as in between 800 Ridge Place and 790 Ridge Place. She would like the help of the city to find the irons in the woods to make sure the welded wire fence is within the property line. Ms. Haggerty asked for clarification on the fencing around the stream and said she would not bother with the proposed fence that is parallel to the stream and also mentioned that she has an invisible fence around her property. The purpose of a fence in that area would be to keep the deer and other wildlife out of her yard, and would be agreeable to a 3-ft. fence. Ms. Haggerty said she would like to keep the welded fencing on the property line as is in the southwest corner, indicating on the map how she would like the fencing to be placed. Ms. Haggerty said the stream is about 4 inches deep and she would rather have about 50- ft of openness instead of 150-ft. of openness, and that it would be better than nothing there at all. Chair Lally said the deer would be able to jump a 3-ft. fence. Ms. Haggerty said the existing 4-ft. fence seems to keep them out. Ms. Haggerty said she is not willing to place a fence along the north side of the stream as the Planner suggested.

Commissioner Field said from the applicant's testimony, he is not convinced that she even knows what she is applying for, given the history of not complying with the approved permits in 2005. Ms. Haggerty said she is hoping to modify the plan now with the new information on the 25-ft setback that she was not aware of before.

Ms. Haggerty explained that she would like to have fencing around the perimeter of her property, maintaining the cedar fencing that is already in place, saying that her ex-husband had measured wrong when he put the fencing in, and making sure that the fencing around the perimeter is within the property line. Ms. Haggerty explained that she wants to keep the welded wire and the black chain link fence along the west side of her property. Ms. Haggerty said she is proposing that the fencing crosses the stream, but not to the floor of the creek.

Chair Lally said the crossing of the creek is not permitted. Ms. Haggerty said that was approved four years ago. Chair Lally said he does not believe that was the case, and suggested placing a gate in the fencing that was recommended by the Planner. Ms. Haggerty said she will probably do that, but will not like the look of it.

Chair Lally asked Ms. Haggerty if she is opposed to the suggestions of the Planner. Ms. Haggerty said it seems she does not have any other choice.

Commissioner McManus said the Planning Commission should not be comparing Ms. Haggerty's plan with Mr. Grittmann's plan, and that the Planning Commission should accept or reject Ms. Haggerty's plan as it is presented.

Mr. Mazzitello said the 25-ft. setback recommendation is just a recommendation and it would be up to the Planning Commission and the City Council to establish a distance from that stream that could be set. Distances have varied from application to application depending on the conditions on the site.

Commissioner Hennes asked Mr. Mazzitello if he visited the site to determine what the distance should be. Mr. Mazzitello said he has visited the site with the applicant, and discussed the situation where the fencing cannot cross the stream, the possibility of running the fence parallel to the creek, as well as bringing the fence back onto her property line. Mr. Mazzitello said he forwarded his comments onto Mr. Grittmann, and staff is recommending 25- ft.

Commissioner McManus said the applicant's plan is more environmentally friendly by having no plans to install a fence along the creek.

Mr. Grittmann said staff does not want to put any fencing on the property, but it is their understanding that the applicant wants to close in the property as much as possible, and by doing so, would have to build a fence across the stream. Mr. Grittmann said they are fine with the fencing, but that the applicant cannot build any fencing with the 25-ft. buffer area on either side of the stream. Mr. Grittmann said if there is not fencing there at all, they would be very fine with that.

Commissioner Field said there is still the matter of the illegal encroachment of the front yard into the right of way that needs to be dealt with. Commissioner Hennes asked the applicant if she was comfortable with moving that portion of the fence. Ms. Haggerty said her written proposal is to keep that portion of the fence in place.

Commissioner Povolny said the Planning Commission cannot approve a fence that is in the right of way, and not on the applicant's property.

Ms. Haggerty said she is agreeable to moving that portion of the fence out of the right of way.

Mr. Mazzitello said the original proposal that was presented and approved in 2005 does show the cedar fencing encroaching into the right of way. The Planning Commission at that time recommended approval, and the City Council at that time granted approval with the condition that the applicant's fence was entirely within the applicant's property line. The applicant is now requesting that this fencing remain, and it is the recommendation of staff that the condition be put on the approval to have the applicant put the fencing entirely within the property line and in compliance with the zoning ordinance.

Ms. Haggerty explained how her ex-husband built the fence and mistakenly measured it out 6-ft further than it should have been.

Commissioner Norton asked Ms. Haggerty what portion of the fencing was constructed under her supervision. Ms. Haggerty said all of it.

Commissioner Viksnins asked who would be doing the work of the removal. Ms. Haggerty said she would probably have a contractor do it. Commissioner Viksnins said given the history and complexity of this case, it would be a good idea to have a contractor do it.

Commissioner Povolny asked about the inner fence. Ms. Haggerty said that is easy to move as the only fencing that has footings is the cedar fencing.

Ms. Haggerty said there will be no other negative impact on the area with any demolition or moving of any fencing.

Commissioner Field asked Ms. Haggerty if she was agreeable to coming back at the next meeting with her plans in writing on the plat map, detailing what work will be done. Ms. Haggerty said she would be.

Chair Lally opened the public hearing. Chair Lally said the Planning Commission received extensive paper work on this case and asked that anyone speaking only speak to anything than what the Planning Commission has received. Chair Lally said the biology is less of a concern now that it has been discussed and decided that there will be a buffer around that wetland.

Mr. John Steenberg, 440 Betty Lane, West St. Paul, said he has Power of Attorney for his parents, Marjorie and Paul Steenberg, 804 Ridge Place. Mr. Steenberg asked to review his presentation which was already provided to the Planning Commission, talking also about his experience in engineering. Chair Lally said the Planning Commission already reviewed this information and for Mr. Steenberg to go through this presentation in detail would not be very useful. The Planning Commission is not here to determine environmental issues.

Mr. Steenberg continued to talk about the environmental issues. Commissioner Field said it is not the use of the yard contained within that fence. Commissioner Norton said environmental issues will remain whether there is a fence or not.

Gerard Jenniges, 800 Ridge Place, the neighboring property owner, said he is not opposed to a fence, but would like to see it constructed as a chain link and would like to not see two different kinds of fencing to the south of his property. Commissioner Field asked if he had any opposition to the fencing that was put there in the first place. Mr. Jenniges said he was glad that a fence was placed to keep the dogs off his property. Mr. Jenniges said he was concerned that part of the fencing was on his property, and had talked to Mr. Haggerty at the time, and was told that the fence would be changed if needed. Since there were no permits, the city never came and inspected it.

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 7
NAYES 0

Commissioner Field said he believes there is much confusion and feels that this is an incomplete application, and suggested voting in denial to continue the discussion.

COMMISSIONER FIELD MOVED, SECONDED BY COMMISSIONER NORTON, TO TABLE THIS APPLICATION UNTIL THE AUGUST PLANNING COMMISSION MEETING SO THAT THE APPLICANT CAN SUBMIT AN ACCURATE MAP OF THE PROPOSED PLANNING INCLUDING THE

AYES **7**
NAYES **0**

Respectfully submitted,
Rebecca Shaffer, Recording Secretary