

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, March 16, 2021 - 7:00 p.m.
REMOTE MEETING

Chair Maggi called the Planning Commission meeting to order at 7:00 p.m.

Commissioners Present: Elizabeth Niemioja
Annette Maggi
Brett Kramer
Dennis Wippermann
Pat Simon
Scott Clancy
Kate Challeen
Joan Robertson

Commissioners Absent: Jonathan Weber (excused)

Others Present: Allan Hunting, City Planner
Heather Botten, Associate Planner

APPROVAL OF MINUTES

Chair Maggi advised that approval of the meeting minutes from the February 16 meeting should be tabled as there is a resident who would like to provide feedback on the minutes regarding the M/I Homes application.

Motion by Commissioner Niemioja, second by Commissioner Simon, to table approval of the February 16, 2021 Planning Commission minutes to April 6, 2021.

Motion carried (8/0).

Chair Maggi advised that an agenda item has been added regarding officer elections.

OTHER BUSINESS

CITY OF INVER GROVE HEIGHTS - CASE NO. 21-17X

Steve Dodge, Assistant City Engineer, advised that the Planning Commission is being asked to review Project 2016-09F for its consistency with the comprehensive plan. He explained that the project is a street reconstruction, watermain system replacement, sanitary sewer system replacement and storm sewer system upgrade for the Carleda Way area. including 63rd and 64th Court East. The project also includes a sidewalk connection to the adjacent Prairie Estates. The project was approved by the City Council in the 2020 CIP and was originally scheduled for 2021. Due to the time it will take to acquire the necessary easements, it is now projected to be a 2022 construction project. A public hearing will be held on April 12, 2021 and a virtual neighborhood meeting is scheduled for March 30, 2021.

Motion by Commissioner Wippermann, second by Commission Simon, to find the capital expenditures for Carleda Way Improvements per City Project 2016-09F to be consistent with the Comprehensive Plan.

Motion carried (8/0).

APPLICANT REQUESTS AND PUBLIC HEARINGS

DAVID AND PAULINE NOVACK - CASE NO. 21-11V

The public hearing notice was read at the March 2, 2021 Planning Commission meeting.

Presentation of Request

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that the subject property contains the principal home, a 760 square foot detached garage, and a small shed. The applicant is proposing to add a 512 square foot building; however, the zoning district allows only one detached accessory structure over 120 square feet. The applicants have started construction of the structure but stopped work once they were made aware that a permit was required. They then applied for a permit, but it is on hold until the variance process is complete. The property does not have an attached garage. Some may say it is a disadvantage to have a detached garage because homes constructed with an attached garage would be allowed to have one additional detached structure. There do not appear to be any unique circumstances on the lot not created by the landowner. It appears that there are other lots in the area that contain more than one accessory structure but from looking at aerial photos some of those structures are believed to be less than 120 square feet. Staff recommends denial of the request for the reasons stated in Alternative B of the report. Staff received two emails from neighbors; one was included in the report and the other was emailed to commissioners this afternoon.

Commissioner Simon asked for clarification of a resident's concern regarding a utility box in the alley easement.

Ms. Botten replied that it is considered a private easement, which is not something the City typically gets involved in.

Commissioner Niemioja referenced a note in the staff report about a July 2020 discussion, stating her recollection was that it was a debate over whether you could use a detached garage as a practical difficulty.

Ms. Botten replied that the discussion last July was about changing the ordinance, but it stemmed from an application for just one detached structure larger than 1,000 square feet.

Commissioner Niemioja stated her understanding was that later at Council it was stated that this would not apply to multiple structures.

Ms. Botten stated her recollection was that Council reviewed that request and then directed staff and the Planning Commission to review a potential ordinance change, which occurred in July 2020. At that time what was presented to the Planning Commission was that overall, there have not been many variances for urban lots for accessory structures. During that discussion a couple commissioners brought up that homeowners without an attached garage are different than people that have an attached garage but ultimately the consensus was to leave the code as is and to review it periodically. That information was passed on to Council and they did not formally discuss it anymore; it was just stated they would look at it again if it came up in the future.

Opening of Public Hearing

David and Pauline Novack, 8775 Bacardi Avenue, advised they were available to answer any questions.

Chair Maggi asked Mr. Novack if he read and understood the report.

Mr. Novack replied that he had not seen the report in its entirety but may have missed it as they have been dealing with COVID in their household. He asked if he would be able to add this structure if he attached his current detached garage to his house.

Ms. Botten replied in the affirmative but added that it would have to be physically attached to the house and not just by an open-air breezeway or something similar.

Mr. Novack referred to a concern from one of the neighbors about building in the easement. He advised they would be 16 feet from the easement and are trying to enclose their hot tub because his wife has a bee allergy and they have also caught neighbors using the hot tub and therefore want to secure it for liability reasons. Regarding the complaint about the utility box, he advised that it was installed by Dakota Electric when they buried the utility transmission line from the pole to the house. It passed all State inspections, and he does not believe it is in the way as it is directly underneath the transmission pole.

Commissioner Robertson noted that the proposed building appeared to already be substantially finished on the outside.

Mr. Novack noted that it did not yet have shingles or siding.

Commissioner Robertson asked how they planned to use the building as it seemed much larger than what would be needed to enclose a hot tub.

Mr. Novack replied that half of the building would be used to enclose their 9' x 9' hot tub. The other half would be for a sunroom with an interior wall separating the two areas.

Commissioner Robertson asked what the distance was between the detached garage and the house and whether it would be feasible to attach the two.

Mr. Novack replied that it was shaped like a wedge V and was between 6 and 15 feet from the house, depending on where you measured.

Commissioner Robertson asked at what point Mr. Novack realized a permit was needed because the lot seemed to be quite densely covered in structures.

Mr. Novack replied that when they originally installed the floating deck, they were told by the City that they did not need a permit. He thought he had documented on the permit that they would be enclosing the structure, but he now understands that he did not do that. Their intention was always to enclose the hot tub because of his wife's bee allergy. He noted that perhaps he could enclose just the hot tub portion and leave the rest open.

Commissioner Niemioja stated she appreciated the applicants trying to keep their hot tub safe and secure. She asked if this would comply with city code if it became a gazebo-like structure with screens.

Ms. Botten replied that it would still be considered an accessory structure.

Mr. Novack stated they had originally looked at screening it in but ultimately decided to enclose it with hard side.

Commissioner Robertson noted that the applicant currently had an oversized garage and a small shed behind it.

Mr. Novack advised that he might remove the small shed if he could build the proposed building.

Commissioner Robertson asked if the applicant would be in compliance if he removed the small shed and attached the proposed hot tub enclosure to his existing accessory structure.

Mr. Novack replied that it could be done but it would create additional square footage because of the walkway between the two structures.

Ms. Botten replied that would require a variance as well from maximum size allowed.

John and Linda Wendt, 8804 Argenta Trail, stated they own the property directly west of the subject property and have some concerns about the request. There is a 16' wide private alley running between the homes and anyone with property abutting that easement has the right to utilize it. Mrs. Wendt's grandparents created the easement over 70 years ago. One of the concerns is that the utility box is in the alley easement on the west side of the Novack's house and can impede the use of the alley by others. The utility box needs to be moved out of the private easement.

Chair Maggi asked who maintains that easement since it is not a public easement.

Linda Wendt replied that it is maintained by the property owners that abut the easement. It is kept as lawn and whomever lives along the easement cuts the grass in the easement abutting their property. She is concerned about the precedent this variance would set and if other neighbors put things in the easement, they would lose the integrity of the alley.

John Wendt stated they were asking that if the variance was granted, that the Novack's move the utility box out of the easement and onto their property. He stated the box is not directly underneath the pole but actually goes out about three feet into the easement.

Linda Wendt stated that the Novacks have quite a few structures on their 4/10ths of an acre lot and she was concerned about the amount of impervious surface. She noted that attaching their house to the garage would only add additional impervious surface. She is concerned also about the structural integrity of the proposed building because it does not have appropriate footings.

Chair Maggi asked staff if the applicant would have to work with the inspections department if the variance were to be approved, which would address the structural integrity concern.

Ms. Botten replied in the affirmative.

Commissioner Robertson asked if the alley easement was a recorded easement or just a gentleman's understanding.

John Wendt replied that it was recorded with the Dakota County Recorder's Office and is included in the Novacks' recorded deed (#1650520) and the other property owners' deeds on the block.

Ms. Botten clarified that the proposed shed is located outside the easement.

John Wendt stated that the utility pole is located outside of the easement in the Novack's property, but the electrical box that they put in is located inside the easement and they are requesting that it be moved inside of the fence line of the Novack's property.

Ms. Botten showed a diagram of the location of the utility pole and utility box, stating that typically utilities are located within perimeter drainage and utility easements.

Mr. Novack stated that putting the utility box outside their fenced yard gives the utility company continuous access to the box.

Ms. Botten asked Mr. Novack to verify that the utility box was located on his property, just within the easement area.

Mr. Novack replied in the affirmative. He stated the utility pole is on his property as well so if the neighbor is saying the box should be moved, perhaps the pole should be moved as well.

Linda Wendt questioned where the electric comes from. Does it come directly off the pole or from the Novacks' garage? If the power comes from the garage the box could be moved east onto their property just outside of the fence. The other option would be for the Novacks to reconfigure their fence line at an angle so the box could be moved east of the light pole and out of the easement.

Commissioner Robertson questioned why they were taking so much time discussing the electrical box since the planning commission had no purview over it and it was not related to the request.

Chair Maggi agreed.

Chair Maggi closed the public hearing.

Planning Commission Discussion

Chair Maggi asked if anyone could define a practical difficulty for the variance request.

Commissioner Kramer asked if precedent would be considered a practical difficulty as there were several properties in the neighborhood with multiple structures larger than 120 square feet.

Commissioner Robertson stated her understanding was that neighbors having multiple structures would not qualify as a practical difficulty and she was concerned about the precedent using such a basis would set. She noted that many of the neighboring sheds she saw were not large enough to require a variance.

Commissioner Niemioja agreed that others in the neighborhood being out of compliance was not a practical difficulty and she also felt that the additional sheds in the neighborhood were fairly small. Part of the problem is that our city has reactive enforcement, not proactive. She thinks something worth discussing is whether detached garages in a certain age home is a practical difficulty. This issue came up last July and she believes it is a legitimate question, but she is reluctant to use it in this case since historically they have not used that as a practical difficulty.

Commissioner Robertson agreed that it is a question the City Council should look at because it does impede homes built prior to a certain time. The Planning Commission looked at a similar issue a couple months ago and the challenge was that the detached garage was substantially larger than average, such as in this case. She is open to having that discussion, but many other variables would have to come into play before she would use this one as a practical difficulty.

Planning Commission Recommendation

Motion by Commissioner Robertson, second by Commissioner Wippermann, to deny the request for a variance to allow more than one detached accessory structure on the property located at 8775 Bacardi Avenue, due to lack of a practical difficulty and the precedent it would set.

Motion carried (8/0). This item goes to the City Council on March 22, 2021.

CARAGH O'BRIEN BARTNESS - CASE NO. 21-13S

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for a preliminary and final plat for a two-lot subdivision, for the property located at 1248 - 90th Street. 45 notices were mailed.

Presentation of Request

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the applicant is proposing to subdivide the property creating one new 2.5-acre lot around the existing homestead. The 19-acre balance of the property would include the applicant's home and be used agriculturally. Both houses use the same existing driveway and easement to get to 90th Street. The applicant will record a new section of easement that will connect Lot 1 to the existing driveway easement over Lot 2. Staff recommends approval of the request.

Commissioner Niemioja asked if the 2.5-acre lot would be considered non-conforming because of the number of accessory buildings it contained.

Mr. Hunting replied that it was currently legal non-conforming and would remain legal non-conforming.

Commissioner Robertson asked if the existing buildings would remain in place.

Mr. Hunting replied that the applicant could best answer that question.

Opening of Public Hearing

Caragh O'Brien Bartness, 1260 - 90th Street East, advised she was available to answer any questions.

Chair Maggi asked the applicant if she read and understood the report.

Ms. Bartness replied in the affirmative. She advised that all the existing structures (house, barn, etc.) would be staying.

Alison Doane, 1182 90th Street East, stated she lived directly across the street from the subject property and was concerned about potential additional traffic, rental turnover, or condition of property if it became a rental situation.

Erin Hall, 1246 90th Street East, asked for clarification that she would still have access to her well via an easement.

Chair Maggi asked Ms. Hall if she had discussed this with the applicant.

Ms. Hall replied she had not.

Ms. O'Brien Bartness advised that currently the Halls need to come onto her property to get into the pump house to access their well. A simple solution would be to put a door on the back of the building so they can access it from their own side. She stated they have no intention of keeping the Halls from accessing the well.

Jay Austad, 8971 Aralia Court, advised that the property currently is being rented; the main house has about 10 people living in it and a milk house has been converted to house other non-related persons. They have heard rumors that the barn was going to be converted to a dwelling as well and that a housing development was planned for the property. He asked if the requested subdivision was for the purpose of creating additional rental property, would it set a precedent for additional subdivision, and, if so, would the roads support the resulting additional traffic.

Chair Maggi advised that the property was not zoned for a housing development.

Commissioner Robertson asked the applicant if she intended to rent the properties.

Ms. O'Brien Bartness replied that the purpose of this lot split is to sell the 2.5-acre parcel to the persons who are currently renting the property.

Commissioner Robertson asked if the buyers would also be purchasing the buildings on the lot.

Ms. O'Brien Bartness replied in the affirmative.

Commissioner Robertson clarified that the intent was not to make this a rental property.

Ms. O'Brien Bartness stated the purpose of the lot split was so that the people currently living on the property could purchase the property rather than renting it.

Chair Maggi closed the public hearing.

Planning Commission Discussion

Commissioner Niemioja referred to the existing buildings on this property and noted that this is a good example of how properties change over the years and can look inconsistent with current codes. All properties are unique.

Planning Commission Recommendation

Motion by Commissioner Niemioja, second by Commissioner Challeen, to approve the request for a preliminary and final plat for a two-lot subdivision, for the property located at 1248 - 90th Street.

Motion carried (8/0). This item goes to the City Council on April 12, 2021.

CITY OF INVER GROVE HEIGHTS (FENCE ORDINANCE) - CASE NO. 21-14ZA

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for an ordinance amendment to Title 10, Chapter 15-12 Fences of the City Code zoning regulations to allow a fence to be 48 inches in height on a side street of a corner lot. No notices were mailed.

Presentation of Request

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that at the January 11 City Council meeting Council directed staff to review the current city ordinance relating to fences located in the front and corner front yards of residential properties. She noted that one of the requirements is that fences in the front yard area shall provide no less than 75% clear visibility and shall be no higher than 42 inches. No fencing shall be located where it would obstruct a safe view from any driveway and no solid fence shall be closer than 15 feet from the face of a curb. The outside corner of any corner lot is required to be free from any fence unless it provides a 75% clear visible opening. The 'outside corner' is described as 30 feet from the property line in each direction at an intersection. Staff believes the maximum fence height requirement of 42 inches in the front yard is for public safety and likely stems from the MNDOT Road Design Manual which states that the assumed height of both the driver's eye and the object to be seen are 3-1/2 feet above the respective roadway surfaces. A second reason could be aesthetics of uniformity and visual appeal. Over the past five years the City has reviewed eight fence variances; six of which have been on corner lots. All six were asking to exceed 42 inches and three were asking for a 48-inch chain link fence. Staff researched the fence requirements of five other cities and about half allowed fences in the front yard to be up to 48 inches in height. Various methods were used to measure the visibility triangle. Staff also reached out to Midwest Fence and Dakota Unlimited Fence, who stated that 42-inch fencing is available, but 48-inch is a more standard height. Staff continues to find a benefit to the maximum fence height of 42 inches with 75% clear visible opening within a normal front yard setback. Residential properties on corner lots are at a disadvantage as they have more than one front yard where the maximum fence height of 42 inches is required within the front setback. Staff would support an ordinance change to allow a 48-inch fence height with 75% clear visible opening for the street side of a corner lot that abuts another front yard. The proposed code amendment was published in the paper and staff has not received any public comment.

Commissioner Challeen asked on a corner lot with a front yard abutting another front yard, how far could the 48-inch fence be extended to the corner.

Ms. Botten replied that it would have to be 30 feet back from the property line.

Commissioner Robertson asked if the 75% visible open space requirement would apply to both 42- and 48-inch fencing.

Ms. Botten replied in the affirmative.

Opening of Public Hearing

There was no public testimony.

Chair Maggi closed the public hearing.

Planning Commission Discussion

Chair Maggi stated she would support the proposed ordinance change as it allows homeowners more flexibility in corner situations. The fact that 6 of the 8 variances were on corner lots indicates that this is primarily where the issue is.

Commissioner Challeen asked if 48 inches would be enough to resolve this issue and align with what people are looking for.

Chair Maggi replied that the vast majority of requests received were for 48-inches which indicates to her that that is primarily what is available in the marketplace. It is a balancing act of how tall a fence can be while still providing safety, which is why the 75% visibility is key.

Commissioner Niemioja questioned if this amendment goes far enough. She suggested perhaps allowing 48 inches all around the yard with 75% visibility.

Chair Maggi asked if she was suggesting that all front yards be allowed a fence 48-inches in height, regardless of whether they were on a corner.

Commissioner Niemioja replied in the affirmative.

Commissioner Robertson stated she saw the benefit of specifying one height, but on the other hand if she was the adjoining property owner and that fence ended at her property line, she might not appreciate the 48 inches. She could vote either way but wanted to honor the impact it could have on the adjoining property where the intersection becomes their front yard.

Commissioner Kramer agreed with Commissioner Niemioja's suggestion to allow 48-inches on all front yards as it would provide continuity. It would not make sense for the house behind a corner lot to have to drop their fence down to 42 inches when the corner lot could have a 48-inch-high fence.

Chair Maggi asked Commissioner Kramer if he was suggesting that essentially all front yard street facing fencing could be 48-inches high.

Commissioner Kramer replied in the affirmative.

Commissioner Challeen supported allowing 48 inch overall both for economy and aesthetics.

Chair Maggi asked for clarification that a 7-foot height was allowed on the side and rear property lines.

Ms. Botten replied that on a corner lot that is a rear yard to rear yard it could be up to 7 feet high.

Chair Maggi asked if homeowners would be allowed a 7-foot-high fence on non-street facing sides of their yard.

Ms. Botten replied in the affirmative. To Commissioner Challeen's question earlier, she stated the recommended change would likely take care of a majority of fence variances but there still could be some due to unusual circumstances or people wanting more screening.

Chair Maggi asked Commissioners Kramer and Niemioja to clarify if they were in favor of allowing street facing fences up to 48 inches high.

Commissioner Kramer stated he had no issue with allowing a 48-inch-high chain link fence as it does not raise any kind of a safety issue being that you can see through it.

Commissioner Niemioja recommended 48 inches as well as long as they did not change the material or density requirements of the fence.

Commissioner Robertson asked for clarification of the setback from a side property line.

Ms. Botten advised that fences can go right up to the property line.

Chair Maggi asked Commissioners their recommendation regarding the ordinance amendment proposed by staff or to allow all front yard fencing to be 48 inches in height as proposed by Commissioners Niemioja and Kramer.

The remaining commissioners replied that they would be comfortable with allowing all front yard fencing to be 48-inches high with 75% clear visibility.

Commissioner Simon noted that it was imperative that they do not put slats in the chain link as drivers could not see over it.

Chair Maggi asked staff if they were comfortable with their recommendation.

Ms. Botten replied in the affirmative.

Planning Commission Recommendation

Motion by Commissioner Clancy, second by Commissioner Robertson, to approve the proposed ordinance amendment to City Code 10-15-12B Fences to state that 'Fences in the front yard area shall provide no less than 75% clear visibility and shall be no higher than 48 inches with the remaining proposed language being unchanged.'

Chair Maggi noted that the proposed language was written specifically to corner lots.

Ms. Botten suggested striking through 42 inches, replacing it with 48, and removing the underlined language from her proposed language in the report.

Chair Maggi asked Commissioner Clancy if he was comfortable amending his motion per staff's recommendation.

Commissioner Clancy replied in the affirmative.

The restated motion is to approve the proposed ordinance amendment to City Code 10-15-12B Fences to 'Fences in the front yard area shall provide no less than 75% clear visibility and shall be no higher than 48 inches. All fences constructed in other areas than the front yard and corner lot side yard clearance areas may be no more than seven feet in height.'

Motion carried (8/0). This item goes to City Council on April 12, 2021.

OTHER BUSINESS

Officer Elections

Chair Maggi advised that she is stepping down as Planning Commission Chair and therefore they need to elect a new chair. The positions of Vice-Chair and Secretary are currently held by Liz

Niemioja and Pat Simon.

Motion by Commissioner Wippermann, second by Commissioner Simon, to nominate Liz Niemioja as Chair of the Planning Commission.

Motion carried (8/0).

Chair Maggi noted that there was now a vacancy for the Vice-Chair position. She advised that while he was not able to attend tonight's meeting, Commissioner Weber indicated he would be interested in this role.

Motion by Commissioner Niemioja, second by Commissioner Kramer, to nominate Jonathan Weber as Vice-Chair of the Planning Commission.

Motion carried (8/0).

Pat Simon will be continuing in her role as Secretary of the Planning Commission.

Chair Maggi stated that it has been a pleasure serving as Chair and she advised that the officer changes will take place at the next meeting.

The meeting was unanimously adjourned at 8:35 p.m.

Respectfully submitted,

Kim Fox
Recording Secretary