

**GREENWOOD PLANNING COMMISSION
WEDNESDAY, JULY 21, 2015
7:00 P.M.**

1. CALL TO ORDER/ROLL CALL

Chairman Lucking called the meeting to order at 7:00 p.m.

Members Present: Chairman Pat Lucking and Commissioners Lake Bechtell, Kristi Conrad, Rick Sundberg and Fiona Sayer

Absent: Commissioners David Paeper and Douglas Reeder

Others Present: Council Liaison Bill Cook, City Attorney Mark Kelly, Zoning Administrator Dale Cooney, and City Contract Attorney Bob Vose.

2. MINUTES – February 18, 2015

Commissioner Bechtell moved to approve the minutes of February 18, 2015 as presented. Commissioner Sayer seconded the motion. Motion carried 5-0.

3. PUBLIC HEARINGS

Chairman Lucking asked if staff had reorganized the agenda to move the 4950 Sleepy Hollow Road Variance to the first public hearing agenda item. Zoning Coordinator Cooney said that the commission needed to amend the agenda.

Chairman Lucking made a motion to amend the agenda to move the 4950 Sleepy Hollow Road Variance to the first public hearing agenda item. Commissioner Bechtell seconded the motion. Motion carried 5-0.

3a. Variance Request and Right-of-Way Encroachment Permit, Brian and Trisha Burdick, 4950 Sleepy Hollow Road – Request for variances of the minimum required exterior and rear yard setbacks for an accessory structure and a request to encroach into the city right-of-way.

Section 1120.15 of the Zoning Ordinance requires a minimum exterior side yard setback for accessory structures of thirty-five (35) feet and a minimum rear yard setback for accessory structures of ten (10) feet.

Section 630.05 of the City Code requires a permit to use publicly owned right-of-ways within the city for any private use or purpose other than the primary purpose of public travel, whether such use constitutes a substantial or incidental use.

City Attorney Mark Kelly recused himself from the meeting at this point. City Contract Attorney Bob Vose was the acting city attorney for this agenda item.

Chairman Lucking stated that a variance cannot be granted in defiance of a city ordinance, nor can a variance be granted to build on a third party's property. Lucking said that the encroachment into the right-of-way, since it was on city property, was not something for which a variance could be granted. He said that the applicant had the option to withdraw the request for a variance until the city vacated the right-of-way, but that a variance could not be granted.

Brian Burdick of 4950 Sleepy Hollow Road, Greenwood, MN 55331 addressed the Planning Commission. He said that he was instructed by City Contract Attorney Bob Vose, in writing, to seek a variance. Burdick says that is in conflict with what he is being told at this meeting, but that he was willing to work with the city. Burdick said that the shed was only two inches into the city's right-of-way. He said that he felt the project met the other requirements for a variance, and that it is a nice looking garden shed. He said he was prepared to show pictures of the new shed as well

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as the old sheds that were there before. Burdick said he will await instruction from the city on how to proceed.

Attorney Bob Vose noted that the City Attorney, Mark Kelly, had a potential conflict of interest and that is why the city hired him for this issue. Vose said that he did inform Burdick that he could pursue a variance and that the shed encroaches both into the setbacks and into the public right-of-way. Vose said that he was retained to have the structure moved or legally approved by the city. Vose said that he instructed the applicant to make the structure legal by either moving the structure or applying for a variance.

Attorney Vose said that while the Planning Commission could not address the right-of-way issue at this meeting, they could address the setback issues. Vose suggested that the Planning Commission address the setback issues at this meeting. He said that the applicant has a right to be heard by the City Council.

Chairman Lucking said that he thinks the issue needs to go before the City Council. Lucking said that he felt the applicant had the option to move the building, or the city could vacate the right-of-way so that the issue could move forward.

Attorney Vose said that he still felt the process should move forward. He said that the will of the Planning Commission could be a denial of the application because the applicant is asking for something that cannot be granted. He said that would be appropriate. Vose said that the Planning Commission could also hear from the applicant and the zoning coordinator about the details of the application and make some recommendations about the other elements of the application.

Chairman Lucking asked Brian Burdick if he was bounded on three sides by right-of-ways. Burdick replied that he was not but he mentioned that the right-of-way was unique in the way it crossed through his property and the neighboring property.

Burdick said that the shed could not be moved. He said that the way it was constructed would make it very impractical to move. Burdick said that there was a natural drainage area to the west of the shed.

Chairman Lucking said that if the property was bounded on three sides by a right-of-way, the city clerk could make a judgement call about the front yard setback, but that if it was only bounded on two sides, the city clerk could not make a judgement call.

Chairman Lucking said that the problem in this case was that it is more of an issue of the applicant was asking for forgiveness, rather than permission. He said that previous Zoning Coordinator Gus Karpas tried to look for a solution based on the fact that the project had already been started. Lucking said that the shed is in the front yard and that the city cannot grant a variance for the shed since it is illegal to have an accessory structure in the front yard.

Burdick disputed how the process with Karpas was handled. Burdick said that it was a confusing situation, and that Karpas was unclear as to which yard was the front yard and what the required setbacks would be. Burdick said that Karpas had given him conflicting information on the yards and the setbacks. Burdick said that he and his son were replacing existing garden sheds and that the shed is a pole barn and does not have a slab, but only post footings with steel frame construction.

Burdick said that he was 80 percent complete on the shed when a neighbor complained and Karpas notified him of the issue. Burdick said that he applied for a permit on June 9, 2014 and that the City of Minnetonka building inspectors inspected the property on June 12, 2014 and approved it with minor changes. Burdick said that he did not hear anything further until the fall.

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Chairman Lucking asked why Burdick, who had previously been on the Planning Commission, did not get a survey. Lucking said that he himself couldn't just go and build a shed on his property. Burdick said that there were two sheds there before. Lucking said that that did not matter. Burdick said that the shed cost approximately \$2,000 and that surveys are costly. Burdick said that Karpas asked him to draw the shed onto an existing survey.

Lucking asked how Burdick could not have known that he was right on the property line, regardless of what he was told about the setbacks.

Burdick said that he estimated the setbacks and that he talked to two of his neighbors and that they had no problem with the location.

Vose asked Burdick if it was correct that, regardless of what the setbacks were, the shed would be encroaching since it is on the lot lines. Burdick confirmed that this was correct.

Vose asked if Burdick was claiming that the new shed would be a legal non-conformity because it was built on the site of two previous sheds. Burdick said that it may likely be grandfathered, and that he was bringing it up today because the new shed conforms better and has a smaller footprint than the two sheds that used to be there.

Vose said that the code would not allow the shed to be a legal nonconformity since the shed was not repaired or maintained. Vose said that replacing two sheds with one shed could not be considered a legal nonconformity.

Brian Burdick presented pictures of the two previously existing sheds and the new shed. He said that the new shed is nicely screened, and that he would understand the issue if it were in front of someone's home.

Commissioner Bechtell said that it was a terrible chain of events, but that the street is still there.

Burdick said that he would like to address that issue with the city and find a solution for it.

Commissioner Bechtell said that it might be best to withdraw the variance application rather than having it denied. Chairman Lucking said that it might be best to withdraw the application until the right-of-way issue is resolved. Burdick said that would be fine.

Commissioner Conrad asked if the picture that Burdick handed out that showed an image of a tent and a shed was the same as the two sheds he had mentioned previously. Burdick said that there was a tent and a shed. Conrad asked if Burdick was comparing a tent to the new structure that looks more like a garage. Burdick said that was correct.

Burdick said that he would follow Chairman Lucking's instructions and come back with the variance application at another time. Burdick added that the new shed allowed him to keep a number of items out of view.

Commissioner Sundberg asked if there was any information on the setbacks of the original structures. Burdick said that he thought the previous shed was closer than five feet to the rear lot line and into the existing right-of-way. Commissioner Sundberg asked how big the previous shed was. Burdick said that the shed was 8 feet by 12 feet, and that the tent structure was 10 feet by 20 feet. Commissioner Sundberg said that Burdick could talk about the tent all that he wanted, but that it was not a structure.

Attorney Vose said that the city has asked him to have the building moved or have a variance granted. Vose said he cannot ask the applicant not to withdraw the variance application, but he did not know of another way to make the structure legal without a variance.

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Chairman Lucking said that a variance could not be granted. He said that as long as the structure is in the right of way, the Planning Commission could not handle the issue.

Brian Burdick said that he would take Chairman Lucking's advice and work with the city on a resolution.

Chairman Lucking opened the public hearing at this time.

A neighbor of Brian Burdick spoke. He said that this building was initiated without a permit of any kind and Burdick continued to build the structure so he brought it to the city's attention. He said that he himself had to get a survey and meet setbacks when he did his projects on his house and that Mr. Burdick doesn't think that those rules apply. He said that how the council decides to resolve this will be an important statement. He said because someone chooses to do things without permission does not excuse them from obeying the rules and regulations that govern Greenwood. He said that he did not believe Burdick was unaware of the rules because Burdick was on the Planning Commission.

Attorney Vose asked if the application was withdrawn. Lucking confirmed that the application was withdrawn.

Vose mentioned that the public hearing should have been opened before Brian Burdick began making his comments. Vose asked Burdick if he stood by his comments made before the public hearing was opened and if they can be considered part of the public record. Burdick said that he stood by his comments.

No action was taken by the Planning Commission.

City Contract Attorney Bob Vose left the meeting. City Attorney Mark Kelly returned to the meeting.

3b. Conditional Use Permit Request, Michael Dvoracek of Signs Unlimited of Plymouth on behalf of Joel Bутtenhoff, 21000 State Highway 7 – Request for the issuance of a conditional use permit for Michael Dvoracek of Signs Unlimited of Plymouth to install new signage to identify a commercial tenant at 21000 State Highway 7.

The applicant was not in attendance at the meeting.

Zoning Coordinator Cooney summarized the application. Signs Unlimited of Plymouth is requesting a conditional use permit to install new signage to identify Allstate Insurance, a new commercial tenant at 21000 State Highway 7.

The sign ordinance does not regulate the number of signs that can be placed on a property; rather it limits the amount of sign square footage permitted to be on the property.

Section 1140.40(3)(2) of the Zoning Ordinance requires a Conditional Use Permit to erect, alter, reconstruct, maintain or move signage.

Section 1140.40(3)(3)(c) of the Zoning Ordinance requires that illuminated signs be shielded to prevent lights from being directed at oncoming traffic. Signs cannot interfere with or obscure an official traffic sign or signal. This includes indoor signs that are visible from public streets.

Cooney said that he had done some calculations on the sign square footage that were incorrect at the time of submitting the staff report. Cooney said that the ordinance required an additional six inches around the exterior of the sign and that would significantly increase the amount of signage calculated. Cooney originally calculated the total signage as 34.3 square feet, and that the owner

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of the building requested that total signage not exceed 37.5 square feet (half of the signage limit) to allow for another tenant in the building.

Cooney said that because of the extra six inches around the sign required by the ordinance, there would be approximately 13 square feet of extra signage in the calculation. Cooney said that the extra square footage would not put it over the total sign limit for the property, but that it would exceed the owner's request of a 37.5 square foot limit.

Commissioner Conrad stated that the six inches needed to be included for signs that were not enclosed within a rectangle and that if the sign were in a rectangle, you would simply calculate the frame of the sign. Conrad said that she pointed this out to Cooney when she read the staff report because her calculations were different than Cooney's.

Cooney said that the Planning Commission could approve the application with the conditions that the signage be reduced to less than 37.5 square feet or that the owner increase his signage allowance for this particular tenant.

Chairman Lucking said that he found it ironic that the sign would get six additional inches added onto it, but that if the same letters were on a billboard that extra area would not be included.

Chairman Lucking asked if there was a motion on the CUP. Commissioner Conrad said that she motioned to approve the CUP with the conditions that the signage be reduced to less than 37.5 square feet or that the owner increase his signage allowance for this particular tenant.

Chairman Lucking said that he would like to include the condition that the applicant be made aware of what the city calculated the square footage to be.

Motion was seconded by Commissioner Sundberg. Motion carried 5-0.

3b. Conditional Use Permit Request, Excelsior Entertainment, LLC 5185 Meadville Street –
Request for the issuance of a conditional use permit for Excelsior Entertainment, LLC, dba as The Old Log Theater, 5185 Meadville Street, in connection with grading on the property.

Section 1140:19(2) of the Zoning Ordinance requires a Conditional Use Permit for grading impacting more than 200 square feet of surface area, and more than 20 cubic yards of soil volume.

Chairman Lucking introduced the request. Chairman Lucking opened the public hearing at this time.

Greg Frankenfield, applicant for the request, spoke to the Planning Commission. Frankenfield said that the flooding from Lake Minnetonka last year inundated his property and removed all of the topsoil. He said he is asking to repair that area to the original grade as it existed before the flooding. Frankenfield said that the other area he is requesting to regrade would be so that he can create drainage away from his building to keep water from coming in when it rains.

Frankenfield said that he has contacted the Minnehaha Creek Watershed District (MCWD) and has submitted a permit with them.

Julie Ekelund of 5135 Meadville Street, Greenwood, MN 55331, said that her property abuts the Old Log Theater and that she wanted to see a plan as to what kind of regrading would be going on. Ekelund asked about how the truck traffic would be handled.

Ekelund was handed the public copy of the plan. She asked Frankenfield about how the dirt would be delivered. He said that he had not made a specific plan as to where and how the dirt

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would be delivered. Frankenfield said some would probably go through the parking lot and some might have to navigate the city streets. He said that, if it helps, his contractor has small trucks and will bring in small loads.

Ekelund asked if it would be possible to go through the parking lot and if that was a reasonable request. Chairman Lucking said that it would be better to do it in the way that would be most expedient.

Commissioner Conrad asked Frankenfield the questions that Commissioner Paeper had submitted via e-mail. Conrad asked where the new drain tile was draining to. Frankenfield said that it is running to a detention pond on the south side of the field.

Commissioner Conrad asked if the regrading was to create a fill area for future use. Frankenfield said that it was dirt for a swale.

Commissioner Conrad said that she contacted the watershed district about the grade and the wetland. She said that she confirmed that the existing grade would be very similar to what was there before. Conrad asked how Frankenfield would ensure that the wetland boundary would be maintained and that soil matches what is around it and doesn't wash away. Frankenfield said that they were planting grass. Conrad asked if Frankenfield would be trying to address future flooding issues. Frankenfield said no.

Attorney Kelly said that wetland grasses would begin to grow in over time and that the wetland boundary would be determined by where the aquatic oriented plants stop.

Frankenfield said that in this area it is mostly cattails and that they make a very defined edge.

Commissioner Conrad asked Frankenfield if he was taking out any soil and if there was any documentation about that. Frankenfield said that his plans only called for bringing soil in. Conrad said that her conversations with the MCWD led her to believe that dead, moldy soil would be brought out. Frankenfield said that any dead, moldy soil was carried out with the flooding.

Commissioner Bechtell motioned to approve the CUP. Commissioner Conrad asked to add that the MCWD approve of the project as a condition of the city's approval. Commissioner Sundberg seconded the motion. Motion carried 5-0.

Discussion Related to Connors' Project at 21650 Fairview Street – The City Council has requested that the Planning Commission review the project and make a recommendation for how to proceed.

Chairman Lucking introduced the issue and opened a public hearing.

Mark Thieroff, Attorney for Amy and Kevin Connors, addressed the Planning Commission. He said that the issue was framed as an accessory structure issue, but that the grill area is not "constructed or erected on the ground" as in the city's definition. Thieroff said that there is a patio, optional frost footings, and the removable grill which is personal property. He also said his clients were open about the project and staff has been on site to view the progress a number of times.

Chairman Lucking asked about the footings and their purpose. Thieroff said that they were optional and the purpose was to reduce frost heave.

Joan Moser of 21670 Fairview, Greenwood, MN 55331, addressed the Planning Commission. She presented several photos of the project including the finished project and the construction of the footings. Moser said that it was a fairly large structure.

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Commissioner Conrad asked what the Planning Commission was requested to determine. Council Liaison Bill Cook said that the Planning Commission should look at this issue in comparison with what the city has done in the past, and if the city should be more specific about the definition of a structure. Cook said he felt that an ordinance modification might be needed since the ordinance is quite broad. He said that the city has some responsibility in this matter since city staff has given the Connors direction about what should have been required of their project. Cook said that this project either requires a variance request or that it does not need to be in front of the city. He said that the Planning Commission needs to make a recommendation about what to do with both the Connors property and similar issues going forward.

Commissioner Sundberg asked if the discussion was just about the frost footings. Commissioner Conrad said that the issue is also about the permanence of the grill area. Council Liaison Cook said that the applicants have gone to great lengths to make the grill area non-permanent and that this is an issue that will likely come before the Planning Commission and City Council again in the future. Cook said that he thinks our ordinance is not up to the challenge on these types of issues.

City Attorney Mark Kelly said that further review may be needed about the definition of structure. Kelly said that at this time, the City Council would like the Planning Commission to advise on this issue, if the project should be considered a structure, and if the project is compliant with the setbacks.

Joan Moser described the structure as having footings, gas and electric connections, and a pergola. She also summarized a version of events regarding this project leading up to this meeting. She said that this is not a temporary structure and that there is not a precedent for this. Moser said that by calling these projects temporary the city would be opening a Pandora's Box, and it will affect the entire city.

Jeannie Bowers of 21600 Fairview Street, Greenwood, MN 55331, addressed the Planning Commission. Bowers described the construction of the grill area and how it is connected to the structure. She said that the law was violated and that this would set a bad precedent for the city. Bowers said that the Connors could have pulled the structure back into their own space, but that they didn't want to obscure their view. Bowers said that the rights of the neighbors were violated by putting the structure in the setback and that if they applied for a variance they would not meet the practical difficulty standard.

Chairman Lucking asked about the construction of the grill area. Mark Thieroff said that the grill area is lighter than it looks and that it was designed to be movable. Thieroff said that the order of events is less important than making the appropriate judgement of the law. Thieroff mentioned that there were many things within setbacks that could also be considered structures including pergolas, swing sets, and hot tubs.

Alan Sandberg of Magnolia Landscaping, the project manager for the Connor's patio and grill project addressed the Planning Commission. He said that he would be happy to address any questions regarding the construction. Commissioner Conrad asked how structure could be moved. Sandberg said that it was not bolted down and that it was built in an L shape to be taken apart. Conrad asked how it would be taken apart. Sandberg said that they would have to separate the grout in the L-shaped structure. Conrad said that they would have to deconstruct it to move it.

Attorney Mark Kelly asked if the grill area was secured to the patio. Sandberg said no. Kelly asked if it sits there by gravity. Sandberg said yes. Kelly asked if it was secured in any way. Sandberg said no. Commissioner Bechtell said that it is connected to the gas line. Sandberg confirmed that there was a gas line.

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Kelly asked if Sandberg was responsible for the landscaping. Sandberg said yes. Kelly asked if there was any grading running up to the patio itself. Sandberg said yes. Kelly asked if the patio sits above the lawn. Sandberg said that they added about one inch of dirt up to the patio.

Commissioner Sundberg mentioned the slabs at the Old Log Theater. Attorney Kelly said that the city has not treated a slab-on-grade as a structure, but that what drew the attention in this case were the footings. Kelly said that the Old Log Theater slabs do not have footings.

Commissioner Conrad asked if there was a list of hot tubs and fish houses within setbacks. Attorney Kelly said that he was not aware of a list of this kind. Conrad asked if a fish house in the side yard is a structure. Kelly said that it would not be a structure.

Chairman Lucking closed the public hearing.

Lucking said that this should have required a variance from the beginning because the property is over 30% hardcover, and that is not the Connor's fault but rather it is the city's fault. Lucking said that there should be a distinction between structural footings and frost footings. Lucking said that his sidewalk has frost footings and that he does not consider it to be a structure. Lucking said that he did not consider the grill area a structure, but that it was simply a grill with a pergola on top.

Attorney Kelly said that he wanted to point out the law cannot be changed if there was an error by city staff.

Commissioner Bechtell said that he hated to see people in this position and that the city dropped the ball. He said he could not see moving backwards and requiring a variance.

Council Liaison Cook said that he thought there needed to be clarification in some of the ordinance language and the city process. He said the city should clean up how the ordinance is written and how the city has interpreted the law.

Commissioner Conrad said that there are a number of structural things like swing sets, playground equipment, and hot tubs that need clarification. Conrad, referring to a photo provided by Joan Moser, said that patios shown in the setbacks seemed problematic.

Zoning Coordinator Cooney asked if the Planning Commission was prepared to issue findings for the City Council on the issues at 21650 Fairview.

Chairman Lucking said that he was not in favor of requiring a variance. Commissioners Bechtell, Sundberg, and Sayer offered similar comments that this particular case would not require a variance and they did not wish to have this come back as a formal application to the planning committee. Commissioner Conrad said that she had more trouble with the grill area since she does not feel that it is moveable.

Commissioner Conrad asked Chairman Lucking if the project had come before the Planning Commission before it had begun, would he have considered it a structure. Lucking said that he would not have considered it a structure.

Commissioner Conrad asked if the city felt that they needed to offer a solution to mitigate the situation. Council Liaison Cook said that he would be reluctant to have the city get involved in that.

Chairman Lucking said, in summation, that the body did not feel the Connors needed to come back for a variance. He said that the Planning Commission would look at the code and propose some changes to make the code clearer. He said that future changes to non-conformities should require variance requests.

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4. LIAISON REPORT

Council Liaison Cook said the Council received bids for Minnetonka Boulevard and other areas in the city. He said that the work would begin in the late summer. Commissioner Conrad asked about how and when sewer patching is done. Cook said that it was a public works issue and an issue for the contractor who does the work.

Commissioner Conrad thanked Bill Cook and the City Council for putting in basketball hoops on the tennis courts. She said the kids in the area were very happy.

5. ADJOURN

Motion by Commissioner Bechtell to adjourn the meeting. Commissioner Conrad seconded the motion. The meeting was adjourned at 8:49 pm.

Respectfully Submitted,
Dale Cooney - Zoning Administrator