

## PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, August 21, 2018 – 7:00 p.m.  
City Hall Chambers - 8150 Barbara Avenue

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

Commissioners Present: Tony Scales  
Dennis Wippermann  
Pat Simon  
Brett Kramer  
Armando Lissarrague  
Joan Robertson  
Annette Maggi  
Elizabeth Niemioja  
Jonathan Weber

Commissioners Absent:

Others Present: Allan Hunting, City Planner

### **APPROVAL OF MINUTES**

The minutes from the August 7, 2018 Planning Commission meeting were approved as submitted.

### **CHRISTOPHER CHAVEZ – CASE NO. 18-43V**

#### **Reading of Notice**

Commissioner Simon read the public hearing notice to consider the request for a variance to allow a solid fence higher than 42 inches in the front yard, for the property located at 3462 – 70<sup>th</sup> Court East. 4 notices were mailed.

#### **Presentation of Request**

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the applicant is requesting a variance to allow a solid fence higher than 42 inches within the front yard. The ordinance states that fences within front yards are to be no higher than 42 inches and should be at least 75% open visibility. The fence was installed in 2017 without a permit and is roughly six feet from the front property line. Staff does not believe the criteria for a variance has been met and recommends denial of the request.

Commissioner Simon asked if the existing fence was built the same as the original design that was submitted and found not to meet code.

Mr. Hunting replied his understanding is that the applicant applied for a permit, staff notified the owner that it did not meet code, and nothing further was done with it because the City could not issue the fence permit as it did not meet code requirements.

#### **Opening of Public Hearing**

Christopher Chavez, 3462 – 70<sup>th</sup> Court East, advised he was available to answer any questions.

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

Mr. Chavez replied in the affirmative. He advised that he would like to correct the record on the background for this case. He advised that he came in to fill out the paperwork for a fence permit in

2015. When he read the 42-inch requirement he stopped filling out the paperwork and left before finishing or submitting the permit application. When he got home he read through the ordinance and discovered it was enforced on a complaint basis. He already had the materials and assistance lined up, so he went ahead and built the fence figuring if someone complained he would take it down. Two years later someone cleaning off their desk found the unfinished permit, and he was contacted by the City. He advised that no one ever denied the permit because he did not actually turn it in. He stated the fence is not entirely solid as the top portion is a one-foot lattice. He advised that his wife has been clinically diagnosed with PTSD and this fence provides much needed privacy from the foot and vehicle traffic on 70<sup>th</sup> Street. He stated the fence does not obstruct anything and his neighbors are in favor of it.

Commissioner Niemioja stated she may have been more likely to support this had the applicant come to the City in 2016 asking for a variance rather than building the fence without a permit knowing there was a process he must go through.

Mr. Chavez stated when he saw it was not going to meet code requirements he felt there was nothing else to do except try to get by without anybody calling in a complaint. He noted that it went unnoticed for over two years before someone found the paperwork; there were never any complaints. He did not feel he should be punished for going about it this way.

Commissioner Niemioja was concerned that approval of this would encourage others to ignore the code and hope they did not receive any complaints.

Mr. Chavez questioned whether this situation was common.

Commissioner Robertson replied that this exact situation probably does not come up often because most residents go through the required permit process and do not feel like they are being punished for having to do so.

Commissioner Lissarrague advised that they do not have the power to punish anyone.

Mr. Chavez stated that his fence must be very unobtrusive as Commissioner Lissarrague was out to the house and questioned his wife as to where the fence was going to be built.

Commissioner Lissarrague advised that he did not believe he said that. Rather, he wanted to know why the fence was put up and Mrs. Chavez shared the same information as Mr. Chavez. He advised that the Planning Commission cannot approve the request without a practical difficulty; however, the City Council has more latitude and makes the final decision.

Chair Maggi closed the public hearing.

### **Planning Commission Discussion**

Chair Maggi noted that the fence is not obtrusive, and it does not seem like it has a large impact on the neighbors; however, in order to approve this they must define a practical difficulty.

Commissioner Robertson was concerned about setting a precedent of allowing solid fences over 42' in height in the front yard, and of people ignoring the code and hoping no one complained.

Commissioner Lissarrague asked if PTSD could be considered a practical difficulty.

Commissioner Simon replied that the Planning Commission could not consider medical conditions a practical difficulty.

Commissioner Niemioja stated although she liked the aesthetics of the fence, she would be voting against the request because of concerns regarding setting a precedent. Any resident who does not understand the permit or needs a variance needs to contact staff and go through the process.

Commissioner Scales was concerned that the applicant was aware of the code requirements but built the fence anyway hoping not to get caught. He could not find a practical difficulty and felt there may have been a different outcome had the applicant come in with a variance request prior to building the fence.

**Planning Commission Recommendation**

Motion by Commissioner Scales, second by Commissioner Niemioja, to deny the request for a variance to allow a solid fence higher than 42 inches in the front yard, for the property located at 3462 – 70<sup>th</sup> Court East, due to lack of a practical difficulty.

Motion carried (9/0). This item goes to the City Council on August 27, 2018.

**J.L. JAMES INVESTMENT GROUP – CASE NO. 18-27CV**

**Reading of Notice**

Commissioner Simon read the public hearing notice to consider the request for a conditional use permit to expand a non-conforming structure up to 30% and a variance to expand a non-conforming structure by more than 30%, for the property located at 5912 Concord Boulevard. 31 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 add onto an existing house. The property is zoned I-1, Limited Industry. The zoning code allows an existing non-conforming structure to conditionally expand its gross floor area by up to 30% and a variance to exceed that amount. The applicant is asking for a 38% expansion. The applicant will be adding a garage onto the south side of the house and an addition onto the north side of the house. Additionally, they will be removing part of the home and a detached structure that lies within the flood fringe. Staff believes the criteria have been met and recommend approval of the request with the conditions listed.

Chair Maggi asked if conditional use permits and variances stayed with the property should there be a new owner.

Mr. Hunting replied in the affirmative.

Chair Maggi noted that the property was owned by an investment group.

Mr. Hunting believed they were purchasing the property with the intent of improving and then selling it.

Commissioner Niemioja suggested that perhaps the proposed removal of the structure from the floodplain could be used as a practical difficulty.

Commissioner Wippermann asked what made the property non-conforming.

Mr. Hunting replied it was non-conforming because a residential use is not allowed in the Industrial zoning district.

Commissioner Weber asked for the history of the zoning change.

Mr. Hunting replied that he believed the guiding was changed to Mixed Use in the 2030 Comprehensive Plan; however, the current zoning was in place prior to that.

### **Opening of Public Hearing**

Jordan James, owner of JL James Investment Group and the general contractor of JL James Homes, advised he was available to answer any questions.

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

Mr. James replied in the affirmative. He advised that by removing part of the structure impeding into the flood fringe they will be gaining a seven-foot buffer. They will also be adding a full basement on the north end.

Commissioner Wippermann asked Mr. James if he owned the property.

Mr. James replied in the affirmative, stating that JL James Investment Group is a value-added real estate investment company. They plan to remodel the house and then sell it.

### **Planning Commission Recommendation**

Motion by Commissioner Weber, second by Commissioner Lissarrague, to approve the request for a conditional use permit to expand a non-conforming structure up to 30% and a variance to expand a non-conforming structure by more than 30%, for the property located at 5912 Concord Boulevard, with the conditions listed in the report and the practical difficulty provided by staff.

Motion carried (9/0). This item goes to the City Council on September 10, 2018.

## **CONTINUUM CONSTRUCTION – CASE NO. 18-44PR**

### **Reading of Notice**

Commissioner Simon read the public hearing notice to consider the request for a major site plan review to add a 3,000 square foot building addition, for the property located at 2925 Buckley Way. 60 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 add an addition onto the back side of the building over existing parking lot surface. Since the site is near the former Rubbish Ranch, environmental testing will be required to make sure they will not be disturbing the soils. The building lies over two platted lots. A condition of approval requires that the two lots be consolidated into one lot prior to issuance of a building permit. Staff recommends approval of the request.

Commissioner Simon asked for clarification of the dump site location.

Mr. Hunting showed where the dump site was located, stating apparently it carried over a little to the west side of the subject site.

### **Opening of Public Hearing**

Jerry Wendel, Continuum Construction, 15214 Edgewater Circle, Prior Lake, advised he was available to answer any questions.

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

Mr. Wendel replied in the affirmative. He advised that he received the soil boring results this afternoon but had not yet reviewed them. They anticipate receiving the Phase I Study results next week.

Chair Maggi closed the public hearing.

**Planning Commission Recommendation**

Motion by Commissioner Scales, second by Commissioner Simon, to approve the request for a major site plan review to add a 3,000 square foot building addition, for the property located at 2925 Buckley Way.

Motion carried (9/0). This item goes to the City Council on September 10, 2018.

**NORTHERN STATES POWER COMPANY – CASE NO. 18-45SV**

**Reading of Notice**

Commissioner Simon read the public hearing notice to consider the request for a preliminary and final plat to subdivide 14.5 acres of the 154-acre site and a variance from the required setbacks for structures from the new property line, for the property located at 10325/10326 South Robert Trail. 32 notices were mailed.

**Presentation of Request**

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that NSP is proposing to do an internal lot creation around two existing fuel tanks and numerous accessory buildings. No new structures are being requested and no changes are being proposed to the existing access point along Robert Trail. There are at least three small structures within the required 30-foot side yard setback; therefore, the applicant is requesting a variance. Staff recommends approval of the request.

Chair Maggi asked if the internal street was a private road.

Mr. Hunting replied in the affirmative.

Chair Maggi asked for clarification of access.

Mr. Hunting advised that access to the property is not changing. The existing access from Robert Trail will be maintained with a private access agreement between the two parcels.

Chair Maggi asked if there were any rules related to shape when creating a lot within a lot

Mr. Hunting replied there were no restrictions on shape configuration, just lot width, size, etc.

Commissioner Weber asked if their access to the public road would be through another parcel or through the railroad's land.

Mr. Hunting replied that the railroad directly abuts the road so theoretically they are satisfying the requirement.

**Opening of Public Hearing**

Brian Sullivan, Xcel Energy, 414 Nicollet Mall, Minneapolis, advised he was available to answer

any questions.

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

Mr. Sullivan replied in the affirmative. He explained that to gain access to the property, they have created an easement to allow the owner of the other parcel to use their access drive. The proposed pipe stem lot is unusually shaped, which has a lot to do with following existing features and topography (i.e. fire roads, tanks, catch basin, fence line, access drive, etc.).

Commissioner Robertson asked if the remaining portion of the lot would become an outlot.

Mr. Hunting replied that they are creating an internal lot, and the balance would be its own lot.

Chair Maggi closed the public hearing.

#### **Planning Commission Discussion**

Commissioner Weber asked if there were any potential setback issues for the buildings on the existing lot.

Mr. Hunting replied that Heather Botten had done the review, but he believed there would be no setback issues regarding the new property line.

Mr. Sullivan advised that the buildings in question were the guard shack and structures housing equipment.

#### **Planning Commission Recommendation**

Motion by Commissioner Weber, second by Commissioner Scales, to approve the request for a preliminary and final plat to subdivide 14.5 acres of the 154-acre site and a variance from the required setbacks for structures from the new property line, for the property located at 10325/10326 South Robert Trail, with the practical difficulty as listed in the report.

Motion carried (9/0). This item goes to the City Council on September 10, 2018.

The meeting was adjourned by unanimous vote at 7:45 p.m.

Respectfully submitted,

Kim Fox  
Recording Secretary