

## **PLANNING COMMISSION**

**JULY 10, 2023**

**6:30 O'CLOCK P.M.**

1. Call to Order
2. Minutes of the Previous Meeting – June 12, 2023
3. Public Hearings
  - Conditional Use Permit for Fence – Juhl
  - Conditional Use Permit for Fence – Sinner
  - Variance for Fence in Front Yard – Sinner
4. Noise Ordinance - Discussion
5. Wilker's CUP Review – Update

## MINUTES OF PLANNING COMMISSION MEETING

June 12, 2023

Pursuant to due call and notice thereof, a regular Planning Commission meeting was held at City Hall on the 12th day of June, 2023 at 6:30 PM

**THE FOLLOWING WERE PRESENT:** Chairman Ferris, Commissioner Buckingham, Commissioner Fitch, Commissioner Hanson, Commissioner Egger, Commissioner Tinsley and Commissioner Johnson

**THE FOLLOWING WERE ABSENT:** None

**THE FOLLOWING WERE ALSO PRESENT:** City Administrator Tim Ibisch, City Clerk Linda Rappe, Ian Albers, Planning/EDA Assistant, Coy Borgstrom, Scott Stroh,

**CALL TO ORDER AT 6:30PM**

**MINUTES OF THE PREVIOUS MEETING – May 8, 2023 Motion to Approve made by Commissioner Fitch, second by Commissioner Tinsley with All Voting Aye**

**PUBLIC HEARING – Zoning Amendment (Rezone) – Reagan Outdoor Advertising**  
Community Development Assistant Ian Albers gave background and they have requested to change from D-H to C-3 highway commercial which allows for billboards. Mr. Albers is recommending that the rezone not be effective until their new lease takes effect.

Public hearing opened

No comments

Public hearing closed

Discussion – Commissioner Egger stated that this makes logical sense, Commissioner Johnson asked if this lease is for one billboard or more. City Administrator Ibisch stated that there would be room for two. Commissioner Egger asked if it would be electronic or static. Administrator Ibisch stated that they have talked about both. Commissioner Fitch asked where on the parcel the sign would go. Administrator Ibisch stated that it would be oriented towards one end of the parcel so that there would be room for another sign at the other end.

**Motion to Approve the Rezone from D-H to C-3 Contingent on the Lease Approval made by Commissioner Egger, second by Commissioner Johnson. Ayes: Hanson, Tinsley, Fitch, Buckingham, Johnson and Egger Nay: Ferris**

**PUBLIC HEARING -Zoning Amendment (Rezone) – Borgstrom**

Community Development Assistant Ian Albers stated that there are two parcels, one where the current single family home is and where Mr. Borgstrom's shop used to be. This would not be a spot zone. Administrator Ibisch stated that this is a transitional area. Chairman Ferris asked about the access easement Mr. Borgstrom stated there is an easement and it has been recorded. Commissioner Egger wanted to make sure that the property to the west would have screening. Administrator Ibisch stated that as that property to the west is developed screening will be considered.

Public Hearing opened

No comments

Public hearing closed

Administrator Ibisch asked Mr. Borgstrom about the snowdrifters property to the east if there is any long term plans, Mr. Borgstrom stated maybe if they had money they would like to put up a shed to have meetings, storage and clubhouse. There is a recorded easement to access the snowdrifter's property.

**Motion to Approve the Rezone from C-2 to R-C made by Commissioner Johnson, second by Commissioner Fitch with All Voting Aye.**

**PUBLIC HEARING - Conditional Use Permit for Fence – Fisher/Paradise**

Community Development Assistant Ian Albers stated that they have applied to put in a chain link fence less than 6 feet in height in the rear yard and the owners have indicated that the neighbors are on board. The house to the east is currently for sale. The conditions are that the property owners sign an access agreement and is recorded and an acknowledgement in the conditional use permit that they are putting the fence on the utility easement.

Public hearing opened

No comments

Public hearing closed

**Motion to Approve made by Commissioner Eggler, second by Commissioner Tinsley with All Voting Aye.**

**CHAOTIC GOOD BREWING COMPANY PATIO/PARKING – Discussion – Community**

Development Assistant Ian Albers stated that Mr. Stroh wants to expand his liquor license to have a patio and that takes up parking spaces. Mr. Stroh stated that he has 44 seats including the outdoor seating. That means it would have to have 11 spaces. As Fire Chief, Commissioner Fitch stated that he is working on occupancy load. The County has given Mr. Stroh a permit to use the right of way on County 34 and to allow Mr. Stroh to pave it. Mr. Albers stated that on the east entrance there would only be 2 spaces and not three spaces. Mr. Stroh stated that the patio will be cordoned off and there will be planter boxes in front of the parking spaces on the east right off County 34. Mr. Stroh stated that he is looking at leasing spaces from Plaza 57 since it is within the 300 feet of his property.

**RFP FOR CEMETERY LAND IN SW KASSON – Update –** City owned parcel of 44 acres around the cemetery and Windsor court was put out for a request for proposal. We have received a proposal.

**KASSON PARK SURVEY – Results -** Community Development Assistant Ian Albers went through the 273 responses.

**PARKING STUDY – SCOPE OF WORK –** Two purposes of study are to gather data on the utilization of current parking resources downtown and to use that data to determine future needs and to provide support for any strategies that we recommend for safety, beautification and parking resources downtown. Pre-study phase, August 11 get a base count of parking spaces and a measurement of available parking. Phase 1 weekend of August 17-19 at varied times and phase two would come later in September and use the same times. Results presented in October.

**OTHER –** Commissioner Eggler stated that 15 7<sup>th</sup> St NW is accumulating more stuff and has received a complaint. Mr. Albers will work with Commissioner Eggler on the complaint.

**ADJOURN – 7:30pm**

Respectfully Submitted,

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Linda Rappe, City Clerk

## STAFF REPORT

**TO:** Planning Commission  
**FROM:** Ian Albers, Community Development Assistant  
**DATE:** June 22, 2023  
**SUBJECT:** Juhl CUP for fence  
**APPLICANT:** Sheldon and Brenda Juhl  
**OWNER:** Sheldon and Brenda Juhl  
**LOCATION:** 919 3rd St NE  
**MEETING DATE:** **July 10, 2023**  
**COMPREHENSIVE PLAN:** Low Density Residential  
**ZONING:** R-1 Single Family Residential

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## BACKGROUND

The applicants, Sheldon and Brenda Juhl, have applied for a conditional use permit to place a fence closer than 3 feet to the side and rear lines at their property at 919 3rd St NE. The proposed chain-link fence would extend from the rear wall of the house to the rear property line, extend along the rear property line to the corner, then along the side property line – curving slightly inward before finally connecting to the side wall of the house. The applicant stated that the garage of the neighbor to the side encroaches onto their property – staff recommends that the property owners obtain an easement agreement to allow for the continued encroachment. This easement may optionally be added as a condition of approval for the conditional use permit. A conditional use permit is required to allow the fence to be placed closer than 3 feet from the property line.

## REVIEW PROCEDURE

### 60-Day Land Use Application Review Process

Pursuant to Minnesota State Statutes Section 15.99, local government agencies are required to approve or deny land use requests within 60 days. Within the 60-day period, an automatic extension of no more than 60 days can be obtained by providing the applicant written notice containing the reason for the extension and specifying how much additional time is needed. For the purpose of Minnesota Statutes Section 15.99, “Day 1” for the conditional use permit application was determined to be June 22, 2023. The City's deadline for action is on August 21, 2023.

### *Public Hearing*

City Code § 154.312(B)(3) requires a public hearing for review of a conditional use permit to be held by the Planning and Zoning Commission. The public hearing notice for the CUP was published in the Dodge County Independent and mailed to all affected property owners located within 350 feet of the subject properties.

## APPLICATION REVIEW

### *Existing Site Character*

See attached pictures.

### *Conditional Use Permit Review*

As described in Section 154.067(D)(4), the following should be considered during review of a conditional use permit application:

- (1) The effects of the proposed use on the comprehensive plan; and
- (2) The effects of the proposed use upon the health, safety and general welfare of occupants of surrounding lands.

Additionally, the following findings should be made, when applicable:

- (1) The proposed conditional use meets all of the applicable use specific standards listed within § 154.175 to 154.178;
- (2) The use is not in conflict with the comprehensive plan of the city;
- (3) The use is consistent with the purpose of this chapter and the purposes of the zoning district in which the applicant intends to locate the proposed use;
- (4) The use will not cause traffic hazards and the traffic generated by the proposed use can be safely accommodated on existing or planned street systems; and the existing public roads providing access to the site will not need to be upgraded by the city in order to handle additional traffic generated by the use;
- (5) Adequate measures have been taken or are proposed to prevent or control offensive odor, fumes, dust, noise, vibration or lighting which would otherwise disturb the use of the neighboring property;
- (6) Adequate utilities, parking, drainage and other necessary facilities will be provided;
- (7) The proposed use will not impede the normal and orderly development or improvements of the surrounding property;
- (8) The proposed use will not be injurious to the use and enjoyment of other property in the neighborhood and will not significantly diminish or impair the values of the property;
- (9) The use will not disrupt the character of the neighborhood; and
- (10) The structure and site shall have an appearance that will not have an adverse effect upon adjacent residential properties.

## RECOMMENDATION

Staff recommends to the Planning Commission to recommend approval of the application for a CUP to allow placement of a fence closer than 3 feet to the rear and side property lines with the following conditions:

- (1) An access agreement shall be notarized and recorded with the property owners to the rear and side of 919 3rd St NE so that the fence can be placed closer than 3 feet to each property line.
- (2) The property owners at 919 3rd St NE acknowledge that there is a utility easement along the rear property line and any portion of the fence placed within the utility easement and can be dismantled at owner's expense if this easement is utilized.

In recommending approval of the conditional use permit, staff offers the following findings of fact:

- (1) The property has a utility easement along the rear property line.



# ArcGIS WebMap



June 21, 2023

Roads

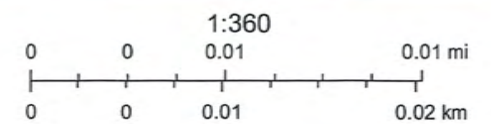
PIN

Name



Parcels

CITY

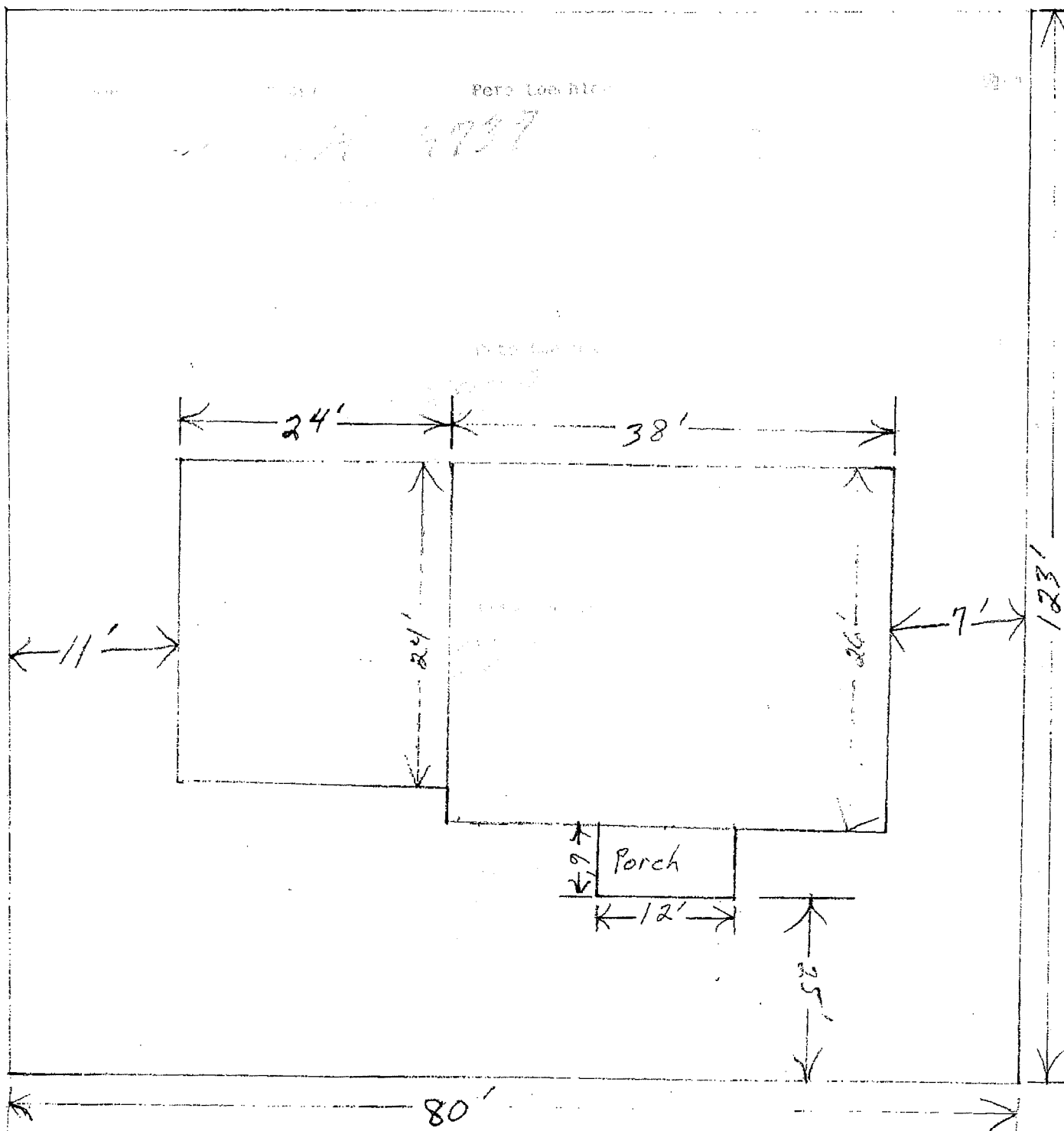


507-634-4737  
Tom Halloran

Tom Halloran

House plan for  
Pete Louder

Pete Zorcher

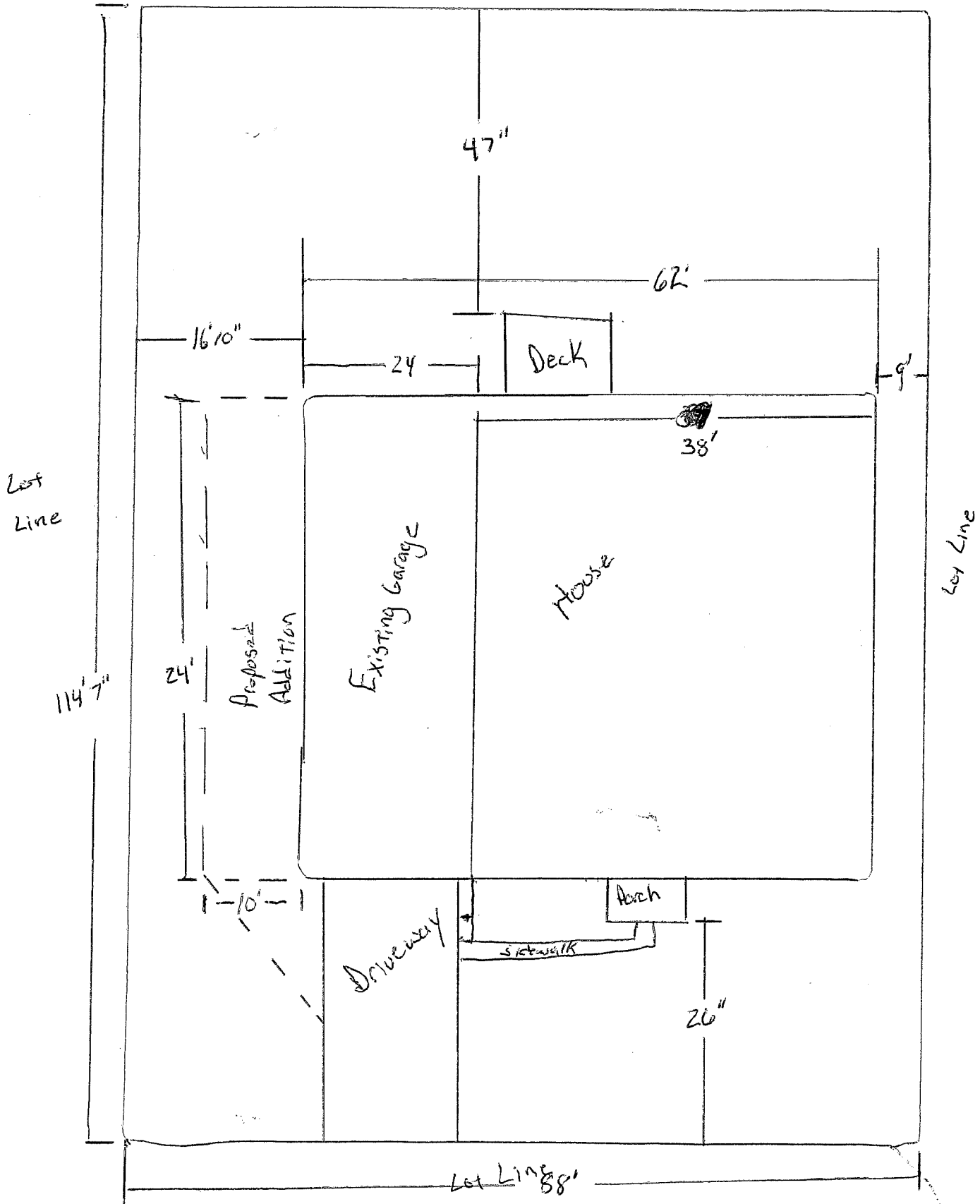


10TH AVE. NE

Proposed Addition to Lot 12 Block 3  
Blaine's 10<sup>th</sup> Subdivision

Lot Line

KA06-37





## STAFF REPORT

**TO:** Planning Commission  
**FROM:** Ian Albers, Community Development Assistant  
**DATE:** June 22, 2023  
**SUBJECT:** Sinner CUP and Variance for fence  
**APPLICANT:** Mike and Stacy Sinner  
**OWNER:** Mike and Stacy Sinner  
**LOCATION:** 504 10th St NE  
**MEETING DATE:** July 10, 2023  
**COMPREHENSIVE PLAN:** Low Density Residential  
**ZONING:** R-1 Single Family Residential

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## BACKGROUND

The applicants, Mike and Stacy Sinner, have applied for a conditional use permit to place a fence closer than 3 feet to the property lines at 504 10th St NE. The applicants have also applied for a variance to allow for a fence with transparency greater than 50% to project into the front yard. The property is a corner lot, and as such it is considered to have two front yards. The proposed privacy fence would extend from the corner of the garage to the front property line, beyond which is a sidewalk in the ROW of 6th Ave NE. The fence would then extend along each of the side property lines before finally connecting back to the corner of the house. A conditional use permit is required to allow the fence to be placed closer than 3 feet from the property line. A variance would be required to place the fence within the front yard under the current language of the code. However, staff proposes that the zoning ordinance could be amended to allow for privacy-type fences within the front yard of corner lots. As zoning amendments require public hearings, the decision on the variance could be tabled until the next Planning Commission meeting on August 14.

## REVIEW PROCEDURE

### 60-Day Land Use Application Review Process

Pursuant to Minnesota State Statutes Section 15.99, local government agencies are required to approve or deny land use requests within 60 days. Within the 60-day period, an automatic extension of no more than 60 days can be obtained by providing the applicant written notice containing the reason for the extension and specifying how much additional time is needed. For the purpose of Minnesota Statutes Section 15.99, "Day 1" for the conditional use permit application and variance application was determined to be June 22, 2023. The City's deadline for action is on August 21, 2023.

### *Public Hearing*

City Code § 154.312(B)(3) requires a public hearing for review of a conditional use permit to be held by the Planning and Zoning Commission. The public hearing notice for the CUP was published in the Dodge County Independent and mailed to all affected property owners located within 350 feet of the subject properties.

City Code § 154.068(E)(2) requires a public hearing for review of a variance to be held by the Planning and Zoning Commission. The public hearing notice for the variance was published in the Dodge County Independent and mailed to all affected property owners located within 350 feet of the subject properties.

## **APPLICATION REVIEW**

### ***Existing Site Character***

See attached pictures.

### ***Conditional Use Permit Review***

As described in Section 154.067(D)(4), the following should be considered during review of a conditional use permit application:

- (1) The effects of the proposed use on the comprehensive plan; and
- (2) The effects of the proposed use upon the health, safety and general welfare of occupants of surrounding lands.

Additionally, the following findings should be made, when applicable:

- (1) The proposed conditional use meets all of the applicable use specific standards listed within § 154.175 to 154.178;
- (2) The use is not in conflict with the comprehensive plan of the city;
- (3) The use is consistent with the purpose of this chapter and the purposes of the zoning district in which the applicant intends to locate the proposed use;
- (4) The use will not cause traffic hazards and the traffic generated by the proposed use can be safely accommodated on existing or planned street systems; and the existing public roads providing access to the site will not need to be upgraded by the city in order to handle additional traffic generated by the use;
- (5) Adequate measures have been taken or are proposed to prevent or control offensive odor, fumes, dust, noise, vibration or lighting which would otherwise disturb the use of the neighboring property;
- (6) Adequate utilities, parking, drainage and other necessary facilities will be provided;
- (7) The proposed use will not impede the normal and orderly development or improvements of the surrounding property;
- (8) The proposed use will not be injurious to the use and enjoyment of other property in the neighborhood and will not significantly diminish or impair the values of the property;
- (9) The use will not disrupt the character of the neighborhood; and
- (10) The structure and site shall have an appearance that will not have an adverse effect upon adjacent residential properties.

### ***Variance Review***

In its consideration of a variance request, the Planning and Zoning Commission shall consider the following questions when making their recommendation to the City Council, as described in § 154.068(E)(4):

- (1) Whether or not exceptional, unique or extraordinary circumstances apply to the physical surrounding, shape or topographic conditions of the parcel of land that result in practical difficulties for the owner;
- (2) Whether or not the variance requested will alter the essential character of the locality;

- (3) Whether or not granting the variance requested will:
  - a. Impair an adequate supply of light and air to adjacent property;
  - b. Substantially increase congestion in adjacent public streets;
  - c. Endanger the public safety; or
  - d. Substantially diminish or impair property values within the vicinity.
- (4) Whether the variance requested is the minimum variance that would alleviate the practical difficulties;
- (5) Whether or not the variance requested is consistent with the intent of this chapter and the city's comprehensive plan; and
- (6) Whether or not the variance requested provides for a reasonable and practical solution that eliminates the practical difficulties.

## RECOMMENDATION

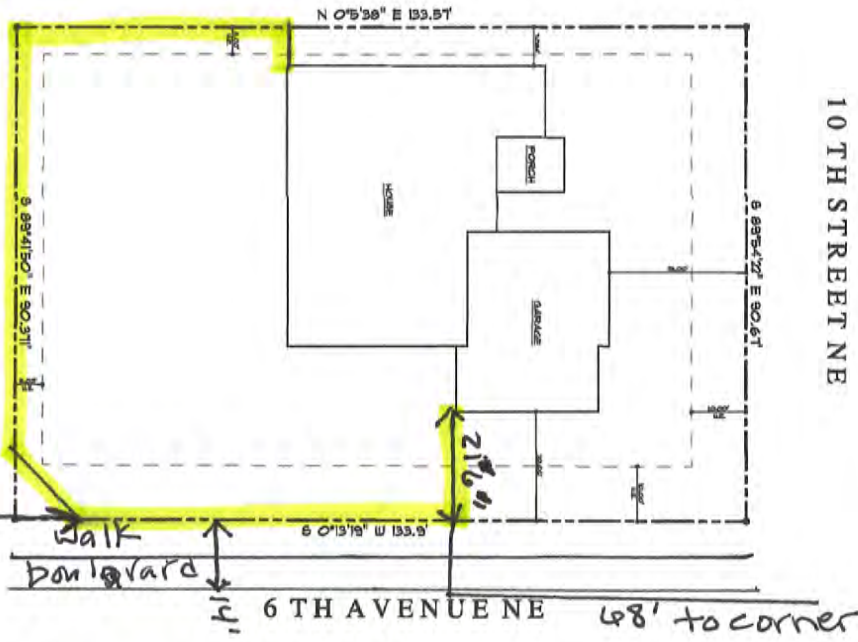
Staff recommends to the Planning Commission to table the recommendations for both the CUP and the variance until the next Planning Commission meeting on August 14. The purpose of this would be to have a public hearing to consider changing the zoning ordinance to allow for placement of privacy-type fences within the front yard of corner lots. Approval of the CUP to allow the fence on the property line would otherwise be recommended for approval, though the proposed location within the front yard does not comply with the current ordinance. Approval of the variance request is difficult to justify given the requirements that must be met by all variances. The request to locate the fence in the front yard could be considered a reasonable request given that non-corner lots are able to utilize what would be an equivalent space in their yards, and there are examples of non-compliant fences built in front yards of corner lots in Kasson. However, the uniqueness factor is the most difficult to justify in this case considering that there are a multitude of corner lots in Kasson that would also need variances if the property owners wanted to build similar fences. If this is the case, it is more advisable to change the zoning ordinance. A sample ordinance change could be:

- (6) No portion of a fence or wall projecting into the front yard of a property shall exceed 36 inches in height unless one or more of the following is met:
  - (a) The height is required by the city for screening, buffering or safety;
  - (b) The transparency of the fence is 50% or more. **The exception is, on corner lots, fences with transparency greater than 50% may be located within the required front yard area that lies between the side wall of the principal building and the abutting side street. Said fence may also be located within a required front yard area that qualifies as an equivalent rear or side yard as defined by this Chapter.**

As the City's deadline for action is on August 21, 2023, there is time available to table action on both requests until the August 14 Planning Commission meeting. If the Planning Commission were to recommend approval of a zoning amendment that would allow for privacy-type fences within the front yard of corner lots, the applicants would no longer require a variance, but would still need a conditional use permit to allow for a fence on the property lines.



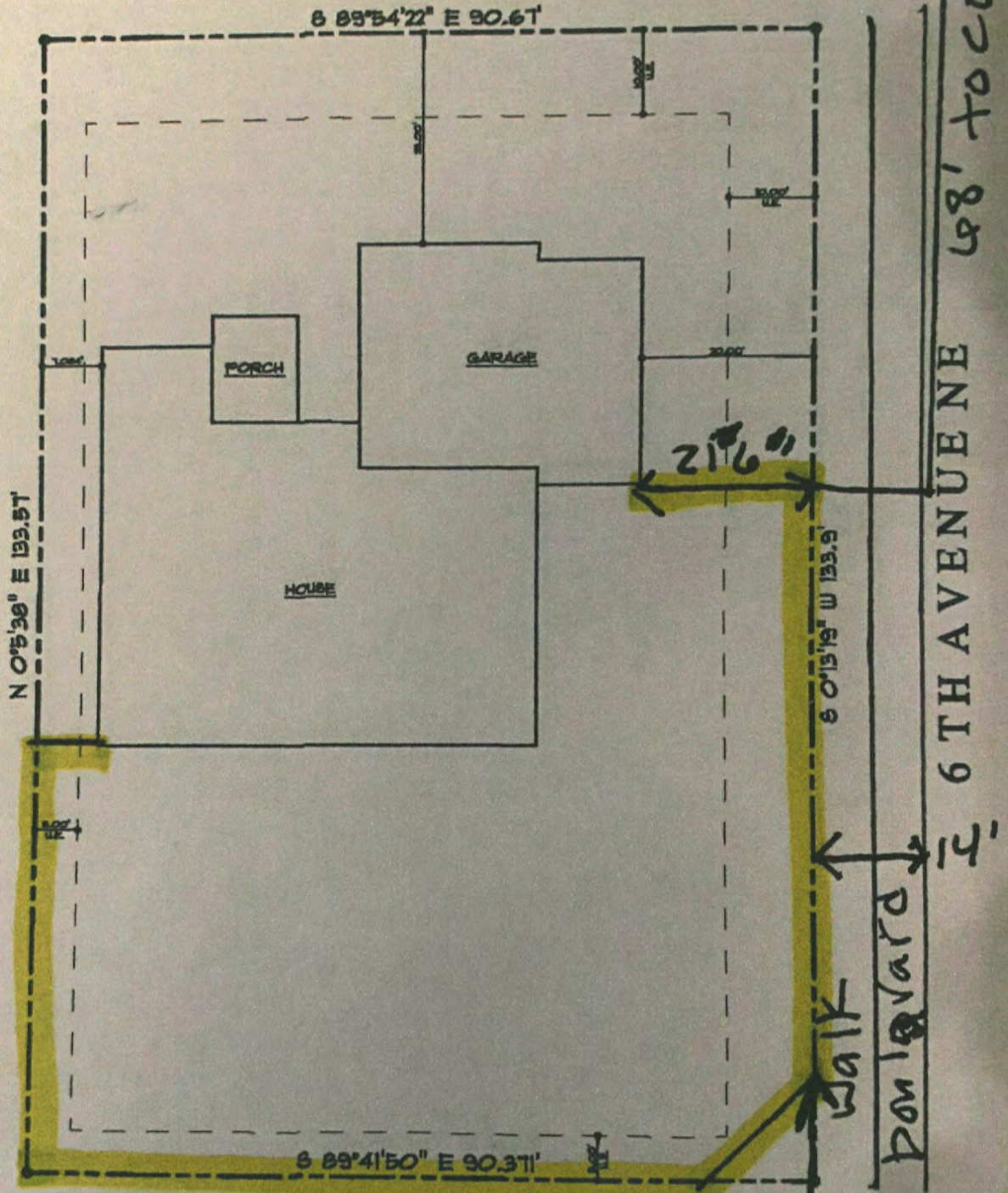
**SITE PLAN**  
SCALE: 1" = 10'-0"



**LEGAL DESCRIPTION**  
LOT 3, BLOCK 2  
HOUSTON'S FIRST SUBDIVISION  
DODGE COUNTY, MN



10 TH STREET NE



**SITE PLAN**  
SCALE: 1" = 10'-0"

52'  
to driver  
clear view  
down road

68' to corner



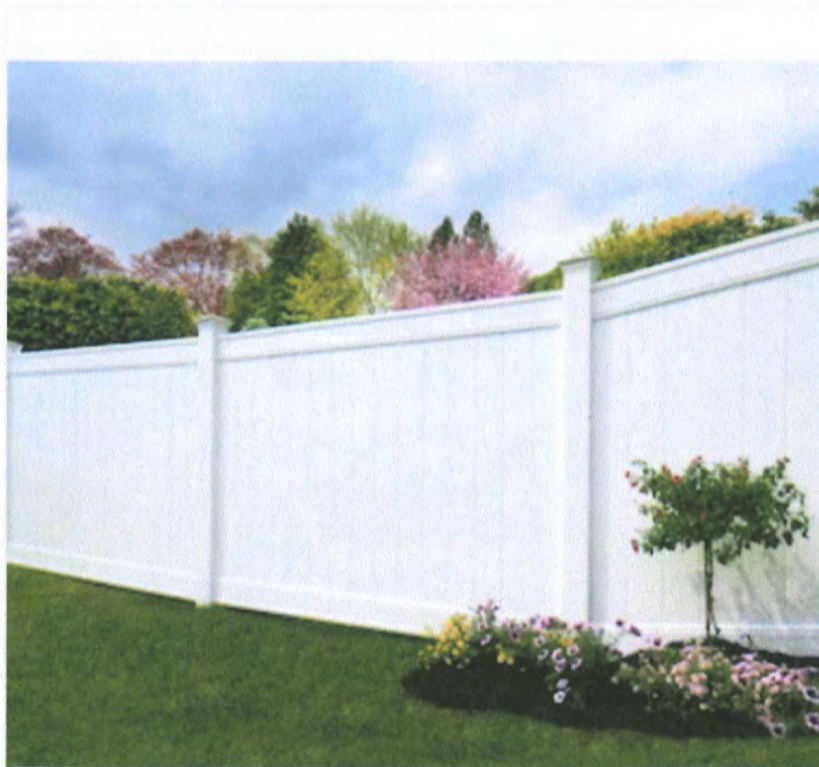
 **Rochester Lowe's**   
Open until 10 PM

**Delivery to**  
**55944** 

**Building Supplies / Fencing & Gates / Vinyl Fencing**

**Freedom 6x8 Emblem Ready-to-Assemble Fence**

 **393**



 **Chat Now**

AA

 lowes.com





April 20, 2023

To: Kasson City Counsel

We consent to having a fence installed on the property line between our home at 907 6<sup>th</sup> Ave NE and the Sinner home at 504 10<sup>th</sup> Street NE

Brian Kinehart

Name

5/18/2023

Date

BRL

Signature

Amanda Kinehart

Name

5/18/2023

Date

Amanda Kinehart

Signature

April 20, 2023

To: Kasson City Counsel

We consent to having a fence installed on the property line between our home at 502 10<sup>th</sup> Street NE and the Sinner home at 504 10<sup>th</sup> Street NE

Michelle R Rank

Name

4/18/23

Date

Michelle R Rank

Signature

Ronald L Rank

Name

4/18/23

Date

Ronald L Rank

Signature

< All Mail Fence for 504 10th St....

6 Messages

**Kristofor Johnson**

9/16/22

To: Tony, Stacy &gt;

Hey Tony. I have copied the buyer of this property on this email. Her name is Stacy Sinner. She would like to install a privacy fence in the back and part way down the sides of the property.

Stacy - can you please respond to Tony with some fence specs? He wants to know what type of material you are using, what height it will be and where the fence will be going. If you can give him a drawing for the location, that would probably be best. I have attached the plans to this email. You could use the site plan to draw your fence location.

Talk to you soon, thanks!

--

**KRISTOFOR JOHNSON**  
REALTOR® - GRI

kjohnson.counselorrealty@gmail.com



507.273.8019



www.kjohnson.counselorrealtyofrochester.com



facebook.com/getmovingwithKJ



pdf

504 10th S...l plans.pdf

8.9 MB



10:21

95

6 Messages  
< All Mail Fence for 504 10th St....

I thank you,

Tony

See More



**Stacy Sinner**

9/19/22

To: Tony Cc: Kristofor >

Thank you, Tony!

Sent from my iPhone

On Sep 19, 2022, at 8:12 AM, Tony Bigelow  
<[tony@bigelowhomes.net](mailto:tony@bigelowhomes.net)> wrote:

See More



**Tony**

9/19/22

To: Stacy, Kristofor >

Hi Stacy,

I will review this today and get back to you today.

Thanks,

Tony



10:21

95

< All Mail

6 Messages



Stacy Sinner

9/19/22

To: Tony Cc: Kristofor >

## Re: Fence for 504 10th St. NE Kasson

Thanks, Tony!

Sent from my iPhone

On Sep 19, 2022, at 8:59 AM, Tony Bigelow  
<[tony@bigelowhomes.net](mailto:tony@bigelowhomes.net)> wrote:

See More



Tony

9/19/22

To: Stacy Cc: Kristofor >

Stacy,

We have reviewed the fence location and materials  
and it is approved.

Thank you,

Tony





## Reason for requesting a variance to build a fence

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Introduction: Hello, we are Stacy and Michael (Mike) Sinner. We are relatively new residents of Kasson and reside at 504 10<sup>th</sup> Street NE.

Mike is retired and Stacy continues to work as a consultant for the U.S. Department of Justice and as an expert witness in criminal justice litigation.

We moved to the area, with our two miniature golden doodles in order to be closer to family. We currently have the opportunity to care for our 9 and 10 year old granddaughters Tuesday, Wednesday and Thursday through the summer months. During the school year, they stay with us after school until their parents, who also live in Kasson, come home from work.

Action so far: When we purchased the house in October of 2022, the builder, Kris Johnson assured us that we could build the fence we are proposing, we just needed formal permission from the “association”. We contacted the association representative, Tony Bigelow and he approved the fence. (see attached documentation) With permission in hand, we bought the fence material, had it delivered to our yard and hired a contractor to install the fence. We had family visiting at the time and they suggested we might need permission from the City, based on an experience they had in a Chicago suburb. We contacted the Kasson City Clerk and found out that we did not actually have the permission we needed. Since then, Ian and Linda have helped us understand the process of applying for a variance.

Reason for the variance: We have always maintained a focus on privacy and safety because of our career work. Stacy served as a correctional officer, correctional sergeant and Director of Detention Services for Olmsted, Co. in a career that spanned over 30 years. And as mentioned above, Stacy continues to work as a consultant for the DOJ and in the emotionally charged environment of criminal justice litigation as an expert witness.



Mike served as a correctional officer, correctional sergeant and jail administrator in Stearns, Co; St. Louis, Co and Goodhue Co Minnesota And as director of the Many Rivers Regional Juvenile Detention Center in a career that extended over 32 years.

Throughout our careers we have dealt with all kinds of people. And it is our vigilance, awareness and preparation that has and continues to keep us and our family members safe.

While we are not paranoid and we do not exclude ourselves from public activities, we do choose to avoid places that are regularly frequented by the people we came into contact with through our work. When out in public, we always practice situational awareness. A habit that has served us well by being prepared for unexpected meetings with past clients.

The fence we are proposing would provide a reasonable amount of non-public space as well as containment for our puppies. It would also help to establish the relative privacy and security that we feel is important for us and our family members.

#### Practical Difficulty:

- *The property owner proposes to use property in a reasonable manner that is not otherwise not permitted by an official control:* Our understanding is that the fence we are proposing is not typically allowed because a corner property (such as ours) effectively has “two front yards”, because two sides of the yard border on the street. This portion of the ordinance places owners of a corner lot at a disadvantage because of the loss of usable space by the placement of a fence that complies with the ordinance.
- *The plight of the property owner is due to circumstances unique to the property, not created by the owner:* Again, the reason our proposed fence requires a variance is because our corner lot borders on city two streets.

- *The Variance, if granted, will not alter the essential character of the locality:* This is true. There are 4 other residences, within a 1 block area (507 10<sup>th</sup> St NE, 905 6<sup>th</sup> Ave NE, 802 6<sup>th</sup> Ave NE and 801 8<sup>th</sup> Ave NE) that have the same style of fence that we are proposing. Our proposed fence does not block any necessary sight lines for traffic and has been approved and endorsed by our neighbors who are affected.
- *The need for the Variance involves more than economic considerations:* The only economic consideration for our proposed fence is the expense to us in order to have it built. We are happy to accept this cost.
- *“Practical Difficulties” also means and includes, but is not limited to, inadequate access to direct sunlight for solar energy systems:* Our proposed fence will not affect any solar energy systems.

Thank you for your consideration.

Sincerely,

Stacy and Mike

Reason for requesting a variance to build a fence  
Addendum

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Here are three examples of fences, already constructed in Kasson, that have similar proximity to the side walk that we are attempting to have authorized.

- 801 6<sup>th</sup> Ave NE (Cedar construction but, near the sidewalk)
- Dodge County Fairgrounds along 5<sup>th</sup> Ave NE (metal fence)
- 403 Mantorville Ave S (Casey's)

Thank you for your consideration.

Sincerely,

Stacy and Mike

## MEMO

**TO:** The Planning Commission  
**FROM:** Ian Albers, Community Development Assistant  
**DATE:** July 10, 2023  
**RE:** Noise Ordinance – Discussion

At the last City Council meeting on June 28, there was some discussion regarding the City's noise ordinance in response to an event/noise permit request submitted by Kasson American Legion Post 333. Typically, event/noise permits are included in the consent agenda – this request had additional discussion due to the fact that there were several dates listed on the application. The City Council ultimately approved the request, though asked that the Planning Commission review the noise ordinance. The following section of the code from Chapter 95: Health and Sanitation; Nuisances includes regulations for noise nuisances in Kasson:

### § 95.22 PARTIES AND GATHERINGS.

No person shall, between the hours of 11:30 p.m. and 7:00 a.m., attend or participate in any party or gathering of four or more persons from which noise emanates in sufficient volume to disturb the peace, quiet, comfort or repose of persons in any hospital or office, or in any dwelling, hotel, motel or other type of residence, or of any persons in the vicinity; nor shall any person visit or remain in any dwelling, structure or place where the party or gathering is taking place, except persons who have gone there for the purpose of abating the noise or disturbance.

As discussed at the City Council meeting, event/noise permits are usually required for events where noise occurs after 10:00 pm. By requiring event/noise permits, City staff (emergency services) are made aware of these events as they occur. While the request from the Legion did not require any street closures, the event/noise permit is the process by which this type of request is made for other events. There are no clear limitations or restrictions on the number of events that can be requested in total within the City or by any individual applicant or at any one venue.

Downtown Kasson is a frequent location for events requiring event/noise permits. There is a benefit to the businesses that choose to have these types of events, though it is also important to note that a number of Kasson residents live downtown and the City has received noise complaints in the past. The options going forward would be to either continue with the noise ordinance and event/noise permit process as it currently is, or else take a look at altering or redefining some of the aspects of the process for future event requests.

## MEMO

**TO:** The Planning Commission

**FROM:** Ian Albers, Community Development Assistant

**DATE:** July 10, 2023

**RE:** Wilker's CUP Site Review

On July 6, I visited Jason Wilker Retaining Wall and Landscaping to complete the site review in accordance with the 2020 CUP allowing for continued operations of the non-conforming use in an R-1 Single Family Residential District. I met with an employee who is familiar with the CUP and its conditions, as well as the site review process itself. The employee showed me around the site and gave me an in-depth overview of the work that had been completed at the site so far this year, as well as some of the work that is planned to be completed later. During the site visit, I took many photos to document what I observed. Generally, I found that the site had been greatly improved since my earlier visit this spring. Going through each of the conditions:

1. Building addition – I gave a building permit application to the employee and explained that the plans for the addition would need to be approved in order to receive a permit and that inspections by the building official would follow this.
2. Nursery stock dealer certificate – I will ask that the certificate be presented.
3. New trees – the employee shared with me that the nursery stock contains 50 trees, including pine, birch, crabapple, linden, and elm. An additional 10 nursery stock trees had been sold so far in 2023, and a further 15-20 will be purchased in September. On the west side of the property, the employee explained that there are 94 trees – mostly saplings – that are replanted as needed.
4. Screening – there are a total of 111 trees planted on the property lines to provide screening of the outdoor storage areas from the adjacent properties and public street. New trees have been added this year, and work has been done to improve the attractiveness of the trees in the form of pruning and mulching the landscaped areas. Vegetation is replanted as needed. As there is now a new subdivision to the east, the employee stated that they have spoken with the new property owners directly adjacent about screening.
5. Additional screening – provided in north, west, and south yards.
6. Parking and loading – parking and loading area provided near the main shop.
7. Exterior lighting – no new lighting disclosed.
8. Refuse – enclosed area for refuse.
9. Signs – no new signs observed.
10. Expansion of footprint – no notable changes in footprint observed.
11. Hours of operation – the employee was reminded that hours of operation are 7:00 – 9:00.
12. Outside storage – landscaping areas and screening provided for outside storage.



Building addition



Nursery stock area





Storage bunker screening



South property line screening





West property line screening



North property line screening





Parking area



Refuse enclosure





Landscape material screening



Landscape material screening





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Fax (507) 288-4867

P.O. Box 6471 ■ 2715 Pennington Ct. NW ■ Rochester, MN 55903-6471

## Trees on Property Line

WEST Side -

16 Trees - (Planted 8 new 2023)

North Side - (Will be Pruning all of them)  
this year

39 Trees

South Side - (Have Pruned and Mulched)  
these trees this year

28 Trees

EAST Side - (Have Pruned these trees this year)

28 Trees

TOTAL Trees on Property Lines - 111 Trees

TOTAL Trees on Entire Property - 255 Trees  
(As of July 6, 2023)





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Tree's

Jason Wilker Property

2023

Nursery Stock

- 23 Pine Trees
- 7 Birch Trees
- 11 Crab Trees
- 7 Linden Trees
- 2 Elm Trees

50 Trees

- Sold 10 From Nursery Stock So Far in 2023.  
(NOT Counting these 50 Trees)
- Will be purchasing Another 15-20 New Trees  
for Nursery Stock in September.

West Side of Property

- 40 - Hardwood Saplings - Growing Tubes  
(planted 25 this year)
- 28 - Pine Trees Saplings - ORANGE STAKED  
(replanted 5 this year)
- 24 - Hardwood Trees - Burches, Crabs, Lindens, Elms  
(replanted 5 this year - will replace  
Another 5 this year)

94 Trees



**A 233548**

Certified filed and or recorded on  
6/4/20 4:00 PM  
Office of the County Recorder  
Dodge County, Minnesota  
Ryan B DeCook, County Recorder

Return to: City of Kasson

Receipt #: 30353

Ryan B DeCook,  
Dodge County Recorder  
by SM, Deputy



233548



6/4/2020

**DO NOT REMOVE**

This cover sheet is now a permanent part of the  
recorded document.

**RESOLUTION 4.5-20**  
**CITY OF KASSON RESOLUTION APPROVING**  
**A CONDITIONAL USE PERMIT**  
**TO ALLOW FOR CONTINUED OPERATIONS**

**WHEREAS**, Jason Wilker, owner of the property in question has submitted a request for a Conditional Use Permit for a nursery in the R-1 Zoning District. The CUP will allow for the continuance of an existing non-conforming use on a parcel located at 1103 8th Avenue NW Kasson, MN, and;

**WHEREAS**, at a public hearing duly held on the 13th day of January, 2020, the Planning Commission heard testimony of all persons wishing to comment on the proposed Conditional Use Permit to allow for this nursery/landscaping business; and

**WHEREAS**, the appropriate City Staff and consultants have performed a technical review of the application, including attachments, for a Conditional Use Permit to allow for a nursery/landscaping business; and

**WHEREAS**, following the public testimony and report of the technical review, the Planning Commission reviewed all relevant information regarding the proposed Conditional Use Permit to allow for a nursery and is forwarding a positive endorsement;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KASSON, MINNESOTA that the following Findings are adopted regarding the application for a Conditional Use Permit for a nursery/landscaping business at 1103 8th Avenue NW, Kasson, MN: SECTION 154.029 (B)(2)**

- (a) The use will not create an excessive burden on existing parks, schools, streets and other public facilities which serve or are proposed to serve the area.***

The presence of a nursery should have minute, if any, impact on the parks, schools, streets and other public facilities.

- (b) The use will be sufficiently compatible or separated by distance or screening from adjacent residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.***

The presence of a nursery/landscaping business at 1103 8th Avenue NW will be a compatible use.

- (c) The structure and site shall have an appearance that will not have an adverse effect upon adjacent residential properties.***

The presence of a nursery/landscaping business at 1103 8th Avenue NW will be a compatible use will not have an adverse effect upon adjacent residential properties.

- (d) The use, in the opinion of the City, is reasonably related to the overall needs of the City and to the existing land use.***

The presence of a nursery/landscaping business at 1103 8th Avenue NW will allow a business to continue its growth and fill an existing need, as well as allowing for improvements to screening.

- (e) The use is consistent with the purpose of this chapter and the purposes of the zoning district in which the applicant intends to locate the proposed use.***

The presence of a nursery/landscaping business at 1103 8th Avenue NW will be a compatible use.

***(f) The use is not in conflict with the comprehensive plan of the City.***

The presence of a nursery/landscaping business at 1103 8th Avenue NW will be a compatible use.

***(g) The use will not cause traffic hazards or congestion.***

A nursery/landscaping business at 1103 8th Avenue NW should have little, if any, impact on traffic hazards or congestion. Applicant will work with the City of Kasson to mitigate any issues.

***(h) The traffic generated by the proposed use can be safely accommodated on existing or planned street systems; and the existing public roads providing access to the site will no need to be upgraded or improved by the City in order to handle the additional traffic generated by the use.***

The nursery/landscaping business at 1103 8th Avenue NW be accessed from 8<sup>th</sup> Ave. NW; which should not require any additional upgrades. Applicant will continue working with the City of Kasson to mitigate any issues.

***(i) Adequate measures have been taken or are proposed to prevent or control offensive odor, dust, noise, vibration or lighting which would otherwise disturb the use of neighboring property.*** The conditions set by the Planning Commission, which are attached should eliminate any issues in this regard.

***(j) Adequate utilities, parking, drainage and other necessary facilities will be provided.***

The property, as evidenced by the attached documentation will provide all necessary facilities.

***(k) The proposed use will not impede the normal and orderly development or improvements of the surrounding property.***

The presence of a nursery/landscaping business at 1103 8th Avenue NW will be a compatible use.

***(l) The proposed use will not be injurious to the use and enjoyment of other property in the neighborhood and will not significantly diminish or impair the values of the property.*** The presence of a nursery/landscaping business at 1103 8th Avenue NW will be a compatible use.

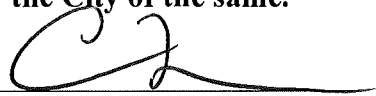
***(m) The use will not disrupt the character of the neighborhood.***

The presence of a nursery/landscaping business at 1103 8th Avenue NW will be a compatible use.


**BE IT FURTHER RESOLVED that the Conditional Use Permit to allow for a nursery/landscaping business at 1103 8th Avenue NW, Kasson, MN, is hereby approved subject to the following conditions of approval:**

1. See Attachment 1 for conditions.
2. That appropriate building and demo permits be obtained.
3. The property owner shall comply with applicable laws and City Ordinances.
4. The property owner shall at all times maintain a valid nursery stock dealer certificate from the State of Minnesota. If the State of Minnesota undertakes enforcement action against the operator, the operator must notify the City of the same.

Adopted this 22<sup>nd</sup> day of April, 2020

  
Chris McKern, Mayor

ATTEST:

  
Timothy F. Ibisich, City Administrator

Motion to approve the afore mentioned resolution made by Councilperson Burton, second by Councilperson Eggler. Those voting in favor: Burton, Eggler, Ferris, McKern and Zelinske, Those voting against: None.

Conditions for Wilker's CUP:

1. Other than for the right to construct onto the existing building on the Property an addition measuring 54' x 40' plus a bumpout measuring 20' x 30' (the "Addition Project"), there shall not be any further additions made to the existing building, or any new buildings on the property except as may be allowed by a properly modified CUP. The City will entertain and consider any future modification requests in good faith.
2. The property owner shall at all times maintain a valid nursery stock dealer certificate from the State of Minnesota.
3. The property owner shall plant on the property and shall at all times maintain on the property a nursery stock of at least one hundred fifty (150) trees ("New Trees") not counting existing trees, bufferyard plantings, screening, or seasonal nursery stock contained in the irrigated area near the main building. The following conditions apply to the new Trees:
  - a. the 150 New Trees shall be planted in the growing area on the western portion of the property;
  - b. the 150 New Trees shall be a sapling size or larger;
  - c. the 150 New Trees shall be certified nursery stock obtained from a certified nursery stock grower or dealer. The Owner shall maintain documentation from the grower or dealer from whom new trees are acquired, and shall provide such documentation to the City within seven (7) days of receipt of a written request for same by the City;
  - d. the 150 New Trees may be planted in phases of 50 trees per year. The first 50 trees shall be planted by October 1, 2020; the second 50 trees shall be planted by October 1, 2021; and the final 50 trees planted by October 1, 2022;
  - e. the Owner shall, within sixty (60) days, replace any of the 150 New Trees that die, that are destroyed, or that are sold;
  - f. commencing October 2, 2020, the City may schedule nursery stock reviews to ensure that the applicant has planted on the property the required number of New Trees to comply with these requirements; and
  - g. the City shall schedule such nursery stock reviews giving the owner at least seven (7) days written and emailed notice. The Owner shall allow the City's staff and agents upon his property for duly scheduled nursery stock reviews and shall fully cooperate with all such reviews.
4. All outdoor storage areas, including storage bunkers, shall be screened from view of adjacent properties and the public street.
5. All portions of the north, west, and south yards that are not already screened as described in paragraph 4 shall have appropriate screening or buffer plantings at least three feet in height and at least one every eight feet. Alternative plantings, as described in Sec. 154.060, may also be proposed.
6. The site shall include ten (10) parking spaces and one (1) loading space. The City will not require painted parking spaces.



7. Exterior lighting on the property shall comply with the provisions established in Sec. 154.064 of the City Code of Ordinances.

8. Refuse shall be contained fully within buildings or within containers specifically intended for such use.

9. Signs on the property shall comply with Sec. 154.082 of the City Code of Ordinances and shall be processed through the City Sign permitting process.

10. Any material deviation on-site from what currently exists on the property (except the Addition Project described in paragraph 1) that results in the change or expansion to the location or footprint of the following shall require an amendment to the Conditional Use Permit:

- a. Buildings (principal or accessory);
- b. Outdoor Storage Areas;
- c. Hardcover;
- d. Parking Areas; and
- e. Screening/Bufferyards.

11. Hours of operation shall be between 7:00 a.m. and 9:00 p.m., except snow plowing operations which may occur outside these hours of operation.

12. The outside storage or display of landscaping materials shall be allowed only if reasonably maintained and screened from view of adjacent properties and the public street.

**Exhibit 1**  
**Legal Description Wilker Property**

The SE 1/4 of Section 29, Township 107, Range 16, Dodge County, Minnesota described as follows: Commencing at the southeast corner of said SE 1/4, thence on an assumed bearing of North along the East line of said SE 1/4 a distance of 810.00 feet for a point of beginning of the tract to be described; thence West at right angles to said East line 410.00 feet; thence North parallel with said East line 510.00 feet, more or less, to the north line of the SE 1/4 SE 1/4; thence East along said North line 410.00 feet to the East line of said SE 1/4; thence South along said East line 510.00 feet to the point of beginning.