

MINUTES

CALL TO ORDER

Chair Maddy called the meeting to order at 7:03 P.M.

ROLL CALL

Present: Chair Maddy; Commissioners Eggenberger, Huskins, Gault and Riedel; Planning Director Darling; Planning Technician Notermann; and, Council Liaison Johnson

Absent: None

1. APPROVAL OF AGENDA

Riedel moved, Huskins seconded, approving the agenda for July 6, 2021, as presented. Motion passed 5/0.

2. APPROVAL OF MINUTES

- **June 1, 2021**

Gault moved, Huskins seconded, approving the Planning Commission Meeting Minutes of June 1, 2021, as presented. Motion passed 4/0/1 (Riedel abstained).

3. MATTERS FROM THE FLOOR - NONE

4. PUBLIC HEARINGS -

Chair Maddy explained the Planning Commission is comprised of residents of the City of Shorewood who are serving as volunteers on the Commission. The Commissioners are appointed by the City Council. The Commission's role is to help the City Council in determining zoning and planning issues. One of the Commission's responsibilities is to hold public hearings and to help develop the factual record for an application and to make a non-binding recommendation to the City Council. The recommendation is advisory only.

A. PUBLIC HEARING – C.U.P. for a Fence

Applicant: Jacob Gustafson and Allison Spies

Location: 4865 Ferncroft Drive

Planning Technician Notermann noted that the applicant has applied for a C.U.P. for a fence that is taller than the height established for shoreline fences. She stated that they would like to install a five-foot, black vinyl chain link fence where the Code states that no fence can be taller than four feet in the Shoreland District. She reviewed the conditions that staff is recommending.

Planning Director Darling noted that City Engineer Budde will stop out at the property later this week in order to ensure that removing the boulder wall, as staff is recommending, will not cause any erosion or other issues now that the rain garden has been constructed.

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Planning Technician Notermann stated that staff recommends approval with the conditions as listed in the staff report.

Commissioner Riedel noted that the staff report lists a condition that the applicant have “plans” to remove or relocate the boulder wall and asked if they would be required to remove or relocate the wall.

Planning Technician Notermann clarified that, as noted by Planning Director Darling, the City Engineer will stop out to the property and evaluate the boulder wall situation.

Commissioner Gault suggested that the condition language be changed to say that the applicant is required to comply with the plans regarding the boulder wall, as approved by staff.

Planning Director Darling explained that the boulder wall pre-dated the subdivision, was not shown on any documents that were submitted, and were in an area that was heavily vegetated.

Chair Maddy asked if the City knows when the boulder wall was installed.

Planning Director Darling stated that it was likely legal at the time it was installed, but putting the property line and easements on top of the wall created the issue. She stated that if it had shown up in the original documents, it could have been handled with the subdivision rather than having to go back now with something like an encroachment agreement.

Commissioner Riedel asked if staff would be open to an encroachment agreement pending the advice of the City Engineer regarding erosion.

Planning Director Darling stated that staff is open to an encroachment agreement.

Chair Maddy asked if the language of the condition should be changed to read that the applicant will abide by staff decision on what to do with the boulder wall.

Planning Director Darling noted that staff can make a recommendation, but the Council will have to make the decision on either an encroachment agreement or removal of the boulder wall. She explained that she does not think the language needs to be changed at this point.

Commissioner Huskins asked staff, in their recommendation, to include the terminology ‘not greater than’ five feet.

Commissioner Eggenberger asked why this request is for a CUP and not a variance.

Planning Director Darling stated that it is a permanent fence and read aloud a portion of the City Code that explains that a fence that varies by height, design, or location, can be approved with a CUP, which means that it is an allowed use in the zoning district. She stated that she assumes it was stated this way in the Code in order to allow some flexibility.

Jacob Gustafson, 4865 Ferncroft, thanked the Planning Department staff because they have been very helpful throughout this whole process. He stated that he and his wife, Allison Spies, are new transplants from Michigan. He assured the Commission that their goal is to be good residents of the City and explained that they were unaware that the boulder wall existed because it was hidden behind vegetation.

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Commissioner Gault asked why Mr. Gustafson was requesting a five foot tall fence rather than complying with the four foot height.

Mr. Gustafson explained that their main reason is their dogs and noted that they have two large Tibetan Mastiffs. He noted that their standing height is about 3.5 feet, so they wanted to make sure that they had a good, secure fencing system to ensure that they are contained in the yard. He noted that in Michigan, they took one of their dogs on nursing home visits prior to COVID-19 and noted that he had submitted pictures to the City so they could get an idea of what the dogs look like.

Chair Maddy opened the Public Hearing at 7:20 P.M. noting the procedures used in a Public Hearing. There being no public comment, Chair Maddy closed the Public Hearing.

Commissioner Gault referred to the past request from resident on Country Club Lane for a higher fence than what the City allowed. He reminded the Commission that they had recommended denial of the past request because they felt there were other ways to control the animals and keep them contained. He stated that he would like to see the Commission be consistent in their recommendations.

Chair Maddy asked for specifics about the Country Club Lane request.

Commissioner Gault stated that they were asking for a 6 foot tall fence with board on board and noted that they had also requested the fence height because of their two large dogs and the location of the sidewalk. He stated that he sees this an opportunity for invisible fencing.

Commissioner Riedel stated that he agrees with the idea of consistency, however, he feels that what is subjectively different in this situation is the other fencing was in a front yard and the concern about the appearance of large fences along the road. In this case, this is a back yard and is primarily the neighbors and the lake that would see the higher fence.

Commissioner Gault reiterated his concern that if the Commission recommends approval in this situation, they will be inconsistent with the recent, similar situation along Country Club Lane.

Commissioner Riedel stated that this situation feels less intrusive for the neighbors because this is a transparent fence in a backyard and not a board on board fence along the street. He noted that he understands and agrees that this is completely subjective and inconsistent.

Chair Maddy stated that he does not like relaxing City Code due to pet size.

Commissioner Riedel stated that there are some dogs that when they get zapped with the electric fencing get aggressive rather than learn not to cross the invisible line. He stated that invisible fencing is not an option for every dog and noted that it is also more difficult to train an older dog.

Commissioner Huskins asked if the planned landscaping would be located above the fence. He explained that if the shrubbery or landscaping, as it matures, hides a 4 or 5 foot fence in the backyard, it would make very little difference to him.

Commissioner Gault reiterated that he is not thrilled with the idea that the Commission would recommend denial for one request and approval for the other, when they are very similar requests.

Commissioner Eggenberger stated that he thinks the City has a Code on fencing to protect the site lines of the City and granting a CUP to change that, in his opinion is not feasible. He stated

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that he doesn't like to idea of allowing it because of the size of dogs and noted that there are other ways to control your pets.

Commissioner Gault asked if there had been any feedback from the neighbors regarding this request.

Planning Technician Notermann stated that the City did not receive any input from the neighbors.

Commissioner Eggenberger asked to hear more of Commissioner Riedel's thoughts on this item.

Commissioner Riedel explained that he is the one usually advocating for consistency and to go by the rules, however, in this case, there is a CUP process for this situation. He stated that, as Planning Director Darling indicated, when this Code was written it was because there are cases where it may be reasonable for a person to request something outside of the code, but within the realm of the CUP and that process should be easier than a variance process. He stated that in some respects, the City should expect that people would apply for the CUP. He stated that he is on the fence because of Commissioner Gault's explanation about the recent case, but does feel the prior request was different, even though both requests were due to the size of dogs.

Commissioner Gault stated that when there are other ways to address a situation, he thinks they should be applied as opposed to coming and having the Commission recommend approval when it is not really needed. He reiterated that there are a number of other ways that this would be resolved.

Commissioner Riedel stated that he did not disagree with this point, except for the characterization of CUP. He gave the example of CUPs that have been granted for accessory space exceeding 1,200 square feet. He stated that in that situation, the applicant did not need a justification for wanting more accessory space. He stated that a CUP was put into place merely so if someone wants it, it will not be automatically granted, but is subject to review. He stated that he feels what Commissioner Gault has been describing was more along the lines of a variance, and a CUP is something that should be considered more favorably from the start, by the Commission.

Chair Maddy asked if there was a way to put conditions in the Code on this in order to make it more clear cut and consistent.

Planning Director Darling stated that the Commission could do that and explained that a CUP is an allowed use in any zoning district where that particular regulation would apply, subject to conditions, either measurable or subject to allow some discretion. She stated that the Commission can make a recommendation on whether the specific conditions listed have been met and the subjective ones that are allowed for all CUPs. She clarified that in this situation this is allowed by CUP so there would be no need to ask for a variance.

Commissioner Eggenberger asked what would happen when the dogs pass away, for example, would they have to take the fence down, since is a CUP.

Planning Director Darling stated that they would not have to take down the fence and it would be permanent.

Commissioner Gault stated that he believes the Commission was correct in their denial of the Country Club Lane request and believes that this is essentially the same thing, just in a different location.

Commissioner Eggenberger explained that he was struggling with whether this is enough of a difference between the one the Commission recommended denial on and this application.

Chair Maddy stated that he sees a large difference in the two requests. One was for a 6-foot opaque fence along Smithtown Road and this request is for a 5-foot chain link fence in the backyard on a quiet lake.

Commissioner Eggenberger noted that the front portion of the fence is not chain link.

Planning Technician Notermann stated that portion of the fence does not require a CUP. She stated that portion of the 5 foot board on board fence is allowable in that location and pointed to the areas on the exhibit where the extra regulations applied.

Commissioner Riedel clarified that there are different height requirements for the front and back yard.

Eggenberger moved, Riedel seconded, recommending approval of the CUP request or a fence height of not greater than five feet at 4865 Ferncroft Drive, with the conditions as discussed; to require the applicant to acquire all necessary permits for construction of the fence; and that the applicant be required to comply with the staff recommend regarding how to address the existing boulder wall that crosses through the drainage and utility easement. Motion passed 5/0.

Planning Technician Notermann stated that this should appear before the Council on July 26, 2021.

5. NEW BUSINESS

A. Minor Subdivision

Applicant: Todd Cebulla

Location: 19210 Waterford Place and 5520 Vine Hill Road

Planning Technician Notermann stated that this request is for a lot line adjustment. She noted that there are single family homes located on each parcel which would remain after the lot line adjustment. She stated that the applicant owns both parcels. He is asking for land to be taken from the northern lot and added to the southerly parcel. After working with staff, the applicant has agreed to submit new plans that reflect a new parcel size for the 5520 Vine Hill Road parcel in order for it to be at least 20,000 square feet. She stated that the revised survey would have to be submitted prior to the City Council meeting on July 26, 2021. Staff recommends approval with the conditions outlined in the staff report, including the adjustment to 5520 Vine Hill Road to be at least 20,000 square feet.

Planning Director Darling noted that just prior to the meeting, the applicant was able to give staff an estimated layout showing the revision for both lots to meet the requirements.

Todd Cebulla, 19210 Waterford Place, expressed his appreciation to the Planning Department and explained that he feels this is pretty straight forward and they plan to maintain the minimum lot sizes and provide the required easements. He stated that they are looking to open up their backyard because the home is sort of jammed against the tree line.

Huskins moved, Gault seconded, recommending approval of the Minor Subdivision, for a lot line adjustment at 19210 Waterford Place and 5520 Vine Hill Road, subject to the three conditions included in the staff report. Motion passed 5/0.

Chair Maddy stated that this item would appear before the Council on July 26, 2021.

B. Variance to Side Yard Setback

Applicant: Kimberly Poe

Location: 23320 Park Street

Planning Technician Notermann stated that this request is for a variance to a side yard setback at 23320 Park Street. She noted that the existing home was constructed in 1924 and is located as close as six feet from the west side property line. She stated that because there is a required 10 foot setback, the house is considered to be a legally non-conforming structure. The applicant would like to construct an addition onto the existing home that will be 7.2 feet from the side property line. Staff recommends approval of the variance, as requested.

Commissioner Eggenberger noted that the letter from Ms. Commers expressed concern about possible erosion and asked if the permits would cover that concern.

Planning Technician Notermann stated that the concerns about drainage and slope would be addressed with the building permit applications.

Commissioner Huskins noted that the construction will take place on the left side of the home and Ms. Commers is located on the right side of home.

Kimberly Poe, 23320 Park Street, explained that Ms. Commers was confused about where the addition would be going and was concerned about the steep slope around the tree line which may create erosion into her back yard. She noted that when she built her two car garage last year she was required to have a surface water management plan and all of the roof water is gathered into what used to be a summer kitchen for the apple orchard that used to be there. The addition is 150 square feet, plus the open porch across the front just to tie it all together. She explained that maintaining the look of the home is very important to her.

Commissioner Riedel noted that he agrees that the construction will be happening on the opposite side of Ms. Commers, but there may still need to be some other types of stormwater management put into place, such as a silt fence.

Chair Maddy opened the meeting to public testimony on this item at 7:59 p.m. There was no public comment.

Gault moved, Huskins seconded, to recommend approval of the variance request to the side yard setback at 23320 Park Street, subject to the condition that the applicant be required to acquire all necessary permits prior to construction. Motion passed 5/0.

Planning Director Darling stated that this will be on the Council agenda for July 26, 2021.

A resident spoke from the floor explaining that he was at the meeting because of a letter he received about an easement on his property.

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Planning Director Darling stated public comment on items not on the agenda could happen as part of Matters from the Floor and gave the Commission to option to re-open that portion of the meeting in order to hear his comments.

Chair Maddy re-opened Matters from the Floor.

Mr. Ayman Abdelsamie, 5960 Grant Street, explained that his home was built in 1928 and he has been doing some remodeling and fixing it up. He stated that he feels his situation is very close to what was discussed in the prior agenda item. He explained that there is an easement on the property on his driveway which he was told has been there forever. He stated that the City bought the lot next to his home and they tore down the house in order to use some of the property for drainage. He stated that he is hoping that the City could release the easement on his property so he could have a normally shaped lot. He stated that he would just ask that the City allow this situation to be cleaned up and taken care of so he can have access to his property and have a normally shaped lot.

Chair Maddy stated that the Commission cannot take action tonight because they have no information on this topic nor was in included on the agenda.

Planning Director Darling explained that it is most likely the Public Works and Engineering Departments that will weigh in on whether or not this area can be vacated.

The Commission discussed the easement location, reason, and the hardship that it causes to the property owner.

6. OTHER BUSINESS

A. Sign Ordinance Amendments

Applicant: City of Shorewood

Location: City-Wide

Planning Director Darling gave a brief overview of past Commission discussions surrounding amendments to the Sign Ordinance.

The Commission discussed the revised Sign Ordinance including; signage in public right-of-way; limitations on the clear view triangle at corners and how it is measured; owner/occupant signs; public lands and parks; signs located within 5 feet of the property line and exceptions; referencing the State statute; public/traffic signs; flags; and signs in windows being readable only from inside the buildings.

Planning Director Darling noted that she can correct language so it reflects exactly what the changes that have been discussed, such as correcting typographical errors but noted that she is nervous about making any changes to sections that were not part of the public hearing. She stated that perhaps she can write in the changes being discussed in her log and incorporate them into the next housekeeping change that the Planning Commission tackles.

Gault moved, Eggenberger seconded to recommend approval of the text amendments for the Sign Ordinance, with the minor edits as discussed during the meeting. Motion passed 5/0.

7. REPORTS

- **Liaison to Council**

Council Liaison Johnson reported on matters considered and actions taken during Council's recent meeting (as detailed in the minutes for that meeting).

Planning Director Darling gave a brief overview of one of the discussion topics at the meeting regarding backyard chickens and noted that the item may be coming back to the Commission for further discussion.

- **Draft Next Meeting Agenda**

Planning Director Darling stated that for the next Planning Commission meeting there will be a variance request and may also be reviewing changes to the Comprehensive Plan that the consultant has put together.

8. ADJOURNMENT

Riedel moved, Gault seconded, adjourning the Planning Commission Meeting of July 6, 2021, at 8:46 P.M. Motion passed 5/0.