

**WAYZATA PLANNING COMMISSION
MEETING MINUTES
JULY 17, 2023**

AGENDA ITEM 1. Call to Order

Chair Stockton called the meeting to order at 6:30 p.m.

Chair Stockton read a prepared statement outlining multiple options for joining remotely or submitting comments and questions.

AGENDA ITEM 2. Roll Call

Chair Stockton asked Community Development Director Goellner to take roll call.

Present at roll call were Commissioners: Douglas, Merriam, Stockton, Sorensen, Schwalbe, Severson and Elg (arrived at 6:44 p.m.). Community Development Director Emily Goellner, Assistant Planner Valerie Quarles, and City Attorney David Schelzel were also present.

AGENDA ITEM 3. Approval of Agenda

Chair Stockton asked for a motion to approve the agenda for the meeting.

Commissioner Douglas made a motion, seconded by Commissioner Merriam to approve the July 17, 2023 agenda, as presented. The motion carried unanimously.

AGENDA ITEM 4. Consent Agenda

a.) Approval of the June 26, 2023 Planning Commission Meeting Minutes

b.) ~~Approval of Planning Commission Report and Recommendation for Approval of Impervious Surface Variance at 374 Ferndale Road W~~ – (pulled for separate consideration)

c.) Adoption of Planning Commission Report and Recommendation of Approval of Impervious Surface Variance and Parking Area Setback Variance at 138 Huntington Avenue S

Chair Stockton read the items on the consent agenda and asked if any Commissioner wished to pull an item for further discussion.

Commissioner Merriam referenced Consent Agenda item b) and one of the findings in the Report and Recommendation found on page 15, under section 3.1 A. She explained that she did not remember this particular finding being part of their discussion. She stated that she also did not really like it being a finding of 'practical difficulty' because the size of the property is simply the size of the property, regardless of what district it is in.

1 City Attorney Schelzel suggested that the Commission pull this item for separate discussion and
2 vote on the consent agenda with the remaining items.

3
4 Chair Stockton asked for a motion to approve Consent Agenda items a) and c), as presented.

5
6 Commissioner Douglas made a motion, seconded by Commissioner Severson, to approve items a)
7 and c) of the Consent Agenda, as presented. The motion carried unanimously.

8
9 **b) Adoption of Planning Commission Report and Recommendation of Approval of**
10 **Impervious Surface Variance at 374 Ferndale Road W**

11
12 Commissioner Merriam explained that her concern with having what she had touched on earlier
13 as part of the findings is that a future project with similar circumstances may use this as a point of
14 reference for why this should also apply in their case. She stated that she would not agree with that
15 argument and reiterated that if you are allowed 20% for impervious surface, that should apply
16 regardless of the size of your lot and not just 20% of whatever other people in your neighborhood
17 get.

18
19 Chair Stockton noted that she was not present for this discussion and asked if anyone else on the
20 Commission had a recollection of this discussion.

21
22 City Attorney Schelzel explained that as staff writes the findings of the reports, they always try to
23 reflect what the discussion was, but noted that they also reference things that were included in the
24 packet materials as well as information and arguments provided by the applicant. He stated that if
25 Commissioner Merriam's concern was about precedent and every undersized property making this
26 same argument, he would reject that argument. because the whole idea of a variance is to look at
27 the particular property and the circumstances that are unique to it. He stated that he understands
28 the concern but does not believe this finding would create a binding precedent.

29
30 Community Development Director Goellner stated that this finding was reflected in the staff
31 presentation, which noted that this was an undersized property, but does not believe the minutes
32 show that it was formally a part of the motion. She stated that the Commission can decide whether
33 they want this item to be part of the findings or not.

34
35 Commissioner Merriam stated that she could support that item remaining within the findings as
36 long as it cannot be something that others can point to with a message of 'you did it for them, you
37 should do it for us'.

38
39 City Attorney Schelzel stated that someone could certainly make that statement, but whether it was
40 persuasive or would have any legal force is another question. He stated that in this case he does
41 not feel that it would ultimately have legal force. He stated that the wording related to 'undersized
42 property' could be removed and noted that this is only one piece of the puzzle in this situation. He
43 stated that he believes it is relevant, but if the Commission believes it creates some concern, then
44 it could be taken out.

45
46 Commissioner Merriam stated that she would personally recommend removing that phrase.

1
2 City Attorney Schelzel noted that he had also just noticed one small typographical error related to
3 the exclusion of the word 'of' prior to 'the property' and noted that that could be corrected, but the
4 reference to the property being 'undersized' could also be removed, if the Commission so chose.
5

6 Commissioner Sorensen noted that he did not have a strong opinion either way on this issue, but
7 noted that he agreed with Commissioner Merriam that if there was any issue here that was not
8 totally a reflection of their conversation, it should be taken out.
9

10 Commissioner Severson stated that she recalled the discussion from that night was not about the
11 undersized lot but rather focused more on the driveway situation. She stated that she would support
12 taking this statement out because it really did not impact the discussion or the ultimate decision
13 made by the Commission.
14

15 There being no further discussion, Chair Stockton asked for a motion.
16

17 Commissioner Merriam made a motion, seconded by Commissioner Elg, to Adopt the Planning
18 Commission Report and Recommendation for Approval of Impervious Surface Variance at 374
19 Ferndale Road W, with the revisions to 3.1.A, as discussed. The motion carried unanimously.
20

21 **AGENDA ITEM 5. Public Hearing Item**

22

23 **a) Consideration of Zoning Text Amendments to Chapter 918, Fencing/Screening**

24

25 Assistant Planner Quarles gave an overview of proposed text amendments to Chapter 918 related
26 to fencing and screening. She reviewed the proposed changes to the building materials, height,
27 opacity, hedges, and plantings standards, as well as the recommendation to remove fence
28 conditional use permits (CUPs). She explained the differences between CUPs and variances and
29 why staff prefers a variance approach in this case, and reviewed the primary questions for the
30 Commission to consider for this Zoning Ordinance amendment discussion.
31

32 At the conclusion of Planner Quarles presentation, Chair Stockton asked if the Commission had
33 any questions for Staff.
34

35 Commissioner Elg asked about the procedural and cost differences, for the homeowner, when
36 requesting a CUP versus a variance.
37

38 Planner Quarles stated that there would not be a significant difference for the homeowner because
39 either application would still have to go through both the Planning Commission and the City
40 Council. She noted that in terms of cost, she thinks it will be very similar because it is just a single
41 request and would follow the same process as any other land use application.
42

43 Chair Stockton asked if it was possible for an administrative process to be put into place.
44

1 Community Development Director Goellner stated that the City would need standards within the
2 Code that outline exactly what staff has authority to do, and explained that it would need to be
3 very specific.

4
5 Commissioner Douglas asked whether a CUP or a variance would drive more people to the
6 Planning Commission. She stated that she believes the discussion at the Task Force was that this
7 approach would not be as complicated.

8
9 Planner Quarles stated she did not think either option was less complicated than the other, and
10 reiterated that both would still have to come through the Planning Commission. She stated that
11 the narrative and reasons for the fence may have more of a difference, and gave the example of a
12 CUP where the applicant could try to show that the fence is not impactful or a problem to the
13 neighborhood and with a variance, it would be more of a 'pitch' and an explanation about their
14 situation and why a fence makes sense.

15
16 Commissioner Douglas stated that she liked a variance approach where they can look at other
17 properties in the area and look at whether it fits in or changes the character of the neighborhood.

18
19 City Attorney Schelzel noted that he supports staff's recommendation and explained that in his
20 experience with the City, some people think that if the City grants variances then something wrong,
21 which he did not think was true from a legal perspective. He stated that the standards that the
22 Commission would apply in looking at a variance request to put in a fence that is beyond the set
23 standards are whether it is reasonable, if it will have an adverse effect on the area, and if it is related
24 to some sort of unique condition on the property. He stated that he believes these things are more
25 useful criteria for evaluating an exceptional fence than a CUP, where if the conditions are met the
26 permit must issue. He explained that in some sense a variance is more subjective but it allows for
27 more of an analysis that in the end would be more effective for allowing fences that they feel are
28 reasonable and saying no to fences that they feel are not. He stated that an applicant would need
29 to state their case about why they feel they have practical difficulties, why it was reasonable and
30 why it would not have a negative effect on the area.

31
32 Commissioner Merriam asked about item 1B on page 31 of the packet and why it states 50% solid
33 matter and not 75%. She also asked why it was not kept the height not exceeding 8 feet and asked
34 if it had to be between 4 and 8 feet in height.

35
36 City Attorney Schelzel stated that this is in the CUP section so this would be above and beyond
37 the standard and may not apply if the commission went with the variance approach.

38
39 Assistant Planner Quarles stated that the 50% solid matter item is a mistake and should be changed
40 to 75%. She explained that the height between 4 and 8 feet was just to clarify that a solid fence in
41 the front yard, below 4 feet, does not require a CUP.

42
43 Commissioner Sorensen asked if this was taking about a side yard fence in the same item 1B on
44 page 31 and if so why didn't just use that terminology.

45
46 Assistant Planner Quarles stated that this would refer to both a side and front yard fence.

1
2 Commissioner Sorensen stated that he would suggest staff consider the wording in this paragraph.
3 He asked if the City changed the standard from requiring a CUP rather than a variance if that
4 meant, in subparagraph F, that would all become by variance.

5
6 City Attorney Schelzel stated that if the City moved away from a CUP, those references to a CUP
7 and CUP standards would all come out. He noted that it would not say something like, 'but if you
8 want a variance, just ask for it.' as that is the case for any part of the zoning code.

9
10 Commissioner Schwalbe stated that a few of the Planning Commissioners have been on the Zoning
11 Task Force and asked if they were aware that staff would prefer a variance over a CUP process.

12
13 Chair Stockton stated that she served on the Zoning Task Force and explained that was a difficult
14 meeting on this topic because they had a lot of technical challenges, and explained that she did not
15 feel that they had the opportunity to fully evaluate this particular aspect.

16
17 Commissioner Douglas stated that she would agree because they were in and out every few
18 minutes with the technical challenges. She asked if vinyl plank would include split rail fencing
19 and referenced page 32, under 2, that states a required screening fence shall be constructed of
20 masonry, brick, wood, or metal. She stated that vinyl was not included in this description and
21 asked if it should be added.

22
23 Assistant Planner Quarles stated that it looks like this particular section is for screening apartment
24 buildings from other uses, and she would not see an issue with using vinyl fencing for that purpose.

25
26 Commissioner Douglas noted that for tennis courts it states up to 10 feet and asked if that was for
27 any kind of material as referenced on page 30 of the packet. She asked if that meant it could be a
28 solid fence.

29
30 Commissioner Merriam noted that it was typically a chain link fence.

31
32 Assistant Planner Quarles stated that the tennis court stipulation is not limited to properties over 5
33 acres. She stated that the chain link point does not become an issue because the City only allows
34 tennis courts in the rear yard and chain link is already allowed. She noted that the 5 acre cut off is
35 for properties that would like to use barbed wire to enclose their properties.

36
37 Commissioner Merriam asked if someone that had 5 acres would be allowed to put up a barbed
38 wire fence.

39
40 Assistant Planner Quarles explained that they could with a CUP under the current code.

41
42 Commissioner Merriam asked what the conditions would be to allow barbed wire.

43
44 Assistant Planner Quarles stated that it would be the same conditions for any fence allowed by
45 CUP, such as, it does not create a safety hazard or cause any issues with character. She stated that

1 she would guess that this is a much older regulation and had more to do with agricultural uses or
2 farming.

3
4 Commissioner Merriam asked if the City still needed to include barbed wire within their code.

5
6 Commissioner Severson stated that she would like it to be in the code just in case someone would
7 like to put it in.

8
9 Commissioner Merriam stated that she does not understand why the City would even want to allow
10 barbed wire at all.

11
12 Assistant Planner Quarles stated that is a question that could be solved through choosing CUP or
13 variance standards, and noted that either way they would be coming before the Planning
14 Commission.

15
16 Commissioner Merriam asked if it would automatically become a variance standard if they
17 removed barbed wire from the code language.

18
19 Assistant Planner Quarles stated that would be the case because someone would be saying that
20 they would like to use a different material than what is allowed.

21
22 Commissioner Merriam reiterated that she did not feel there was any need to keep barbed wire as
23 a fencing option.

24
25 Commissioner Elg stated that he did not hear an answer about the height of the tennis court fencing,
26 and asked if there could be a 10 foot tall solid vinyl fence.

27
28 Assistant Planner Quarles stated that it does not appear to specify that, but noted that she has not
29 seen solid tennis court walls proposed. She stated that she feels it is important for the Commission
30 to discuss whether CUPs or variances would be the appropriate way to move forward.

31
32 Commissioner Sorensen referenced item 6 under specific fence standards, which talks about a
33 situation where someone's backyard is in common with the adjacent properties side yard. He
34 stated that in this instance, it appears as though they would be going back to the standards that
35 would apply to what the side yard setback would be for the adjacent property.

36
37 Assistant Planner Quarles stated that was correct, and would basically say that if you have a corner
38 lot next to you and your rear yard is their side yard, your fence should be acting more like a side
39 yard than a rear yard. She stated that in that instance you can install a short, solid fence or a taller,
40 less solid fence, and reiterated that it was basically saying that it should be treated as a side yard.

41
42 Commissioner Sorensen stated that he wants to make sure that it is clear that, if they have this
43 situation, they can put in a fence taller than 4 feet.

44
45 There being no additional questions from the Commission for staff, Chair Stockton opened the
46 public hearing on the application at 7:16 pm.

1
2 Director Goellner stated there were no people that called in to the meeting that have asked to speak
3 at the public hearing.
4

5 There being no one present in Council chambers and no one online wishing to comment on the
6 application, Chair Stockton closed the public hearing at 7:17 pm.
7

8 Chair Stockton asked for the Commission to share their thoughts and feedback.
9

10 Commissioner Elg stated that he agreed with the staff recommendation that it should be a variance
11 rather than a CUP because, for him, it resonates as a more direct and obvious way for applicants
12 to state their case. He explained that he feels the variance route felt more proper and clean.
13

14 Chair Stockton asked if there were any Commissioners that did not feel comfortable with the
15 change from CUP to variance and received no answer. She noted that in the discussion regarding
16 the rear yard/side yard situation, it appears as though the rule defaults to the lesser private situation
17 overall.
18

19 Assistant Planner Quarles stated that she felt that was accurate.
20

21 Chair Stockton stated that the trend seems to be for greater privacy, and asked if that was what the
22 Commission wanted because this feels like less privacy for the person who is looking into the back
23 yard area.
24

25 Commissioner Elg stated that he did not particularly like that approach but noted that he felt it was
26 not so much about privacy. He explained that he views fences as an issue in height when they may
27 be blocking traffic sight lines, but for someone's side or rear yard and the homeowner where it is
28 their back yard wants more privacy, he would want to accommodate that unless it is shown that
29 the concern is that it obstructs sight lines for oncoming traffic. He explained that he did not
30 understand the rationale for 48 inches for side yards unless it will block sight lines.
31

32 Chair Stockton noted that in other places she has lived, she has seen rules about reduction in fence
33 heights for side yards that are a certain distance from the road, for example the first 20 feet of the
34 fence is lower in order not to obstruct the site lines.
35

36 Commissioner Merriam referenced an example where her backyard was someone else's side yard
37 which ran along Wayzata Boulevard. She asked if it was more for aesthetics to only allow the
38 shorter side yard fencing and not the taller fencing. She noted that because it was someone else's
39 backyard, she could see why they would default to the side yard style fencing.
40

41 Chair Stockton asked if the City was defaulting towards the aesthetics of the street over personal
42 privacy.
43

44 Commissioner Merriam noted that they could ask for an exception just like they would with any
45 other code.
46

1 Commissioner Sorensen clarified that a side yard fence can be over 4 feet tall but needs to have a
2 certain percentage that is opaque.

3
4 Assistant Planner Quarles stated that if a side yard fence is over 4 feet tall, between 4 and 6 feet
5 tall, then it needs to be 50% solid or less.

6
7 Commissioner Sorensen asked if that should be 75%.

8
9 Assistant Planner Quarles stated that if the Commission approves, the proposed text amendment
10 would be 75%.

11
12 Commissioner Sorensen stated that he lives in a situation where his side yard is his neighbors
13 backyard. He stated that the more he has looked into this he has become comfortable with the side
14 yard requirements in this situation.

15
16 Commissioner Douglas stated that she remembers when they looked at Rice and Minnetonka
17 Avenue, and it was considered two front yards because it was on a corner and asked if that applied
18 to fences.

19
20 Assistant Planner Quarles stated that it does and that particular property would not get to have a
21 large rear yard fence much of anywhere because most of their yards are either front yards or side
22 yards.

23
24 Commissioner Elg noted that they could apply for a variance.

25
26 Chair Stockton stated that she believes there was consensus among the Commission to keep the
27 language for the side yard/rear yard as it has been proposed, and that the CUP should be changed
28 to a variance.

29
30 Commissioner Severson asked if there was any kind of language around fencing for pools and if
31 there would be any conflicts.

32
33 Assistant Planner Quarles stated that within the Swimming Pool chapter, there are specific fencing
34 requirements, for example, if you have a pool you have to have a fence that is 5 feet high and non-
35 climbable. She stated that it would be similar to a tennis court situation where the pool should be
36 situated in the back yard. She noted that some people just do the fencing around the immediate
37 pool area and some make it their property fence.

38
39 Commissioner Severson stated that in the property example just referenced by Commissioner
40 Douglas that property would not be allowed a swimming pool, so the fencing would not come into
41 play.

42
43 Assistant Planner Quarles stated that it would actually work if they used the wrought iron style
44 fencing that is not very solid.

45

1 Chair Stockton reiterated that it appears as though there was consensus among the Commission to
2 pass this with the proposed change from CUP to variance.

3
4 There being no further discussion, Chair Stockton asked for a motion on the application.

5
6 Commissioner Elg made a motion, seconded by Commissioner Sorensen, to direct staff to prepare
7 a draft Planning Commission Report and Recommendation with appropriate findings reflecting a
8 recommendation of approval for the Zoning Text Amendments to Chapter 918 Fencing/Screening,
9 with the recommendation to change the CUP approach to a variance, as discussed, for review and
10 adoption at the next Planning Commission meeting. The motion carried unanimously.

11
12 **AGENDA ITEM 6. Other Items:**

13
14 **a) Review of Development Activities**

15
16 Community Development Director Goellner stated that there is one upcoming neighborhood
17 meeting for the property at 201 Lake Street that will take place on July 20, 2023 for the Westway
18 Condominiums project. She stated that it is likely that this item will be ready for a public hearing
19 at the next Commission meeting.

20
21 **b) Planning Commission Meeting Schedule**

22
23 Community Development Director Goellner stated that there are meetings scheduled for August 7
24 and August 21, 2023. She noted that September is unique because of Labor Day and explained
25 that the Planning Commission was scheduled to meet on Wednesday, September 6, 2023, but, at
26 this point, was not sure if there will be any agenda items ready for that meeting.

27
28 **AGENDA ITEM 7. Adjournment.**

29
30 There being no further business on the agenda, Chair Stockton asked for a motion to adjourn.

31
32 Commissioner Severson made a motion, seconded by Commissioner Douglas, to adjourn the
33 Planning Commission meeting. The motion carried unanimously.

34
35 The Planning Commission meeting was adjourned at 7:34 p.m.

36
37 Respectfully submitted,
38 Kayla Atkins Rokosz
39 *TimeSaver Off Site Secretarial, Inc.*
40