

**SHOREVIEW PLANNING COMMISSION
MEETING MINUTES**

August 23, 2011

CALL TO ORDER

Chair Feldsien called the meeting of the August 23, 2011 Shoreview Planning Commission meeting to order at 7:00 p.m.

ROLL CALL

The following members were present: Chair Feldsien; Commissioners Mons, Schumer, Solomonson and Wenner.

Commissioners Ferrington and Proud were absent.

APPROVAL OF AGENDA

MOTION: by Commissioner Schumer, seconded by Commissioner Wenner to approve the agenda as submitted.

VOTE: Ayes - 5 Nays - 0

APPROVAL OF MINUTES

MOTION: by Commissioner Schumer, seconded Commissioner Solomonson to approve the July 26, 2011 Planning Commission minutes as submitted.

Ayes - 5 Nays - 0

REPORT ON CITY COUNCIL ACTIONS

City Planner Kathleen Nordine reported that on August 1st, the City Council approved the improvements at Turtle Lake County Park. Condition was added regarding the design of the bathhouse, including daylighting, which the County is considering.

On August 15th, the Council approved the text amendment for off-premise advertising signs was approved as recommended.

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VARIANCE

FILE NO.: 2416-11-09
APPLICANTS: ANTHONY & KALII YOST
KURT & MICHELLE VIRNIG
LOCATION: 4110 & 4100 VICTORIA ST. N.

Presentation by City Planner Kathleen Nordine

The variance request is to reduce a 5-foot side yard setback to 0 feet for a driveway. This application was reviewed by the Planning Commission at the June 28th meeting and tabled because of concerns regarding the amount of area to be paved and the potential for vehicle storage. The plans have been revised, so that the primary purpose of the newly paved area is for a turn-around space between the two driveways of the homes. The setback would be between 80 and 85 feet from the front property lines. The turn-around area would be 20 feet in length ranging in width from 16 feet to 24 feet. A variance is required because the turn-around area will encroach over the common property line between the properties.

The applicant states that practical difficulty is present due to lot characteristics and how the two properties were developed with the houses set far back from the street and garages behind the houses. The long narrow driveways create difficulty in moving vehicles. The traffic levels on Victoria Street make it difficult to back out of the driveways.

Staff believes practical difficulty is present. A turn-around is reasonable due to the length of the driveways and frontage on Victoria Street. The proposal will not change the character of the neighborhood. Staff is recommending approval.

Property owners within 150 feet were notified of the revised proposal. A written comment in support was received. One telephone call was received with a concern about drainage from the garage area. The Assistant City Engineer reviewed the issue and believes there is no drainage problem, as the turn-around is located in front of the homes and will drain toward Victoria.

Commissioner Wenner noted receipt of a comment from neighbors about a home business. Ms. Nordine stated that Mr. Yost has a landscaping business. His office is in his home, but no employees come to the home. The garage is used to store equipment. Commissioner Wenner asked if the applicant would further explain his home business, but the applicant was not present.

Commissioner Solomonson asked if a zero foot setback is granted whether additional pavement would be allowed in the future. Ms. Nordine explained that the variance is tied to this specific plan. If more space is needed, another application would have to be submitted.

Chair Feldsien opened the discussion to public comment. There were no comments made.

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MOTION: by Commissioner Schumer, seconded by Commissioner Mons to adopt Resolution 11-54 approving a variance to reduce the minimum 5-foot setback to 0 feet for the driveway/parking area shared by Tony and Kalli Yost, 4110 Victoria Street and Kurt and Michelle Virnig, 4100 Victoria Street. Said approval is subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the Variance application. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. The applicants shall enter into a shared driveway agreement that addresses maintenance and use of the shared driveway area. Said agreement requires review and approval by the City Attorney and shall be recorded.
3. Expansion of the driveway is subject to permitting requirements of the City. The applicants shall obtain a driveway permit for the expansion.
4. The existing gravel area between the two homes that will not be converted to the proposed paved turnaround area shall be restored to lawn or landscaping within one year of the approval date.
5. This approval will expire after one year if a driveway permit has not been issued and work has not begun on the project.
6. This approval is subject to a 5-day appeal period. Once the appeal period expires, a building permit may be issued for the proposed project. A driveway permit must be obtained before any construction activity begins.

Approval is based on the following findings:

1. **Reasonable Manner.** The property owner proposes to use the property in a reasonable manner not permitted by the Shoreview Development Regulations. The request is reasonable based on the lot characteristics, location of homes, garages and driveways on the property. Reducing the required 5-foot setback to 0 feet for the turnaround is reasonable due to the length of the driveways and frontage on Victoria Street, a major collector street.
2. The hardship is due to circumstances unique to the property in question and was not created by the property owner. Unique circumstances are present due to the length of the driveways and proximity of the garages to one another and the homes. Further, Victoria Street is classified as a major collector and carries larger traffic volumes than local roads causing some safety concerns when backing out into the roadway.

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3. The variance will not alter the essential character of the neighborhood. The proposed paved area is small, designed as a turnaround, is setback 80 to 95 feet from Victoria Street, near the homes, and will be used primarily for maneuvering vehicles.

Discussion:

Commissioner Mons, in response to Commissioner Wenner’s question, suggested that the home business is separate from this application and is in compliance with City regulations.

Commissioner Wenner explained that his question is a result of wondering if the application is because of the fact that there is a home business and whether potential expansion of the business would impact the property. Chair Feldsien noted that any further expansion would require a new application.

VOTE: Ayes - 5 Nays - 0

VARIANCE

FILE NO.: **2424-11-17**
APPLICANT: **MICHAEL MORSE**
LOCATON: **1648 LOIS DRIVE**

Presentation by City Planner Kathleen Nordine

The Commission reviewed this application at the July meeting and tabled the matter due to concerns about building mass, visual impact and character of the neighborhood. The property is zoned R1 Detached Residential. The proposal has been revised to reduce the height of the garage and the following variances are requested to complete the project:

- Exceed maximum area permitted of 576 square feet to allow 1100 square feet;
- Exceed combined area permitted of 691 square feet to allow 1100 square feet;
- Exceed maximum height required of 15 feet to allow 15 feet 11 inches, reduced from 20 feet, 4 inches (inside storage area reduced to 4 feet 8 inches from original 8 feet 1 inch proposed);
- Reduce the required 5-foot side setback to 2.3 feet, as a recent survey indicates the structure was not set back 6 feet as previously indicated in the plans submitted.

The applicants state that practical difficulty is present. The garage will be used in a reasonable manner to house personal property and access the back yard. The size of the house is small and lacks storage space. The character of the neighborhood will not be changed because there are other large garages in the neighborhood, and the original height has been reduced.

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Staff does not believe practical difficulty exists. City Code defines use of property in a reasonable manner to mean:

- Detached garages are permitted in compliance with Code standards of height, size and location;
- Accessory structures must remain secondary to the principal (dwelling) use on the property;
- Although the reduced height addresses some concerns, the proposed 1100 square foot size is not reasonable for the property due to the size of the lot, house and proximity to the side lot line. Proximity to the west lot line also raises issues of drainage and overall maintenance.

The proposed garage area exceeds (140%) of the home and becomes the primary use on the property. The proposed setback eliminates impact mitigation of landscaping or buffer from the west. Staff also believes there are other options available, such as 1) allow a garage area of 691 square feet; 2) add storage area to the house; and/or 3) attach the garage to the house. There are some garages in the neighborhood that exceed current standards, but most are in compliance. The mass of the structure and impact to adjacent properties is a major concern.

Responses of property owners include a telephone call in opposition and a letter of support. Staff is recommending denial for the reasons discussed above. The unique circumstances are related to the applicant's personal needs, not characteristics of the property.

Commissioner Solomonson asked if the lot coverage is in compliance. Ms. Nordine stated that it is within the 40% allowed.

Mr. Gordon Gertz, 1636 Lois Drive, stated that his professional experience includes environmental public health, construction management, building codes, risk management, legal due diligence, property transfer and evaluation, managed remediation of University property at I-35W and County Road J. The risks he sees for the city would be possible litigation, third party claims if there are drainage problems and political backlash in the future. Costs to the City could include fines and penalties; costs to residents could be increased taxes/insurance premiums, property loss and devaluation, expense in administrative resources.

In addition to the above issues, Mr. Gertz listed a number of construction and regulatory risks. The side setback could especially be a fire risk to neighboring properties.

- No property survey;
- No Gopher State One Call
- Excavation below grade
- No demolition permit
- No testing of demo materials for asbestos, lead or PCBs

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- Demo materials burned on-site and disposed off-site and not evaluated according to Minnesota statute
- No building permit
- No storm water management plan or erosion control plan contrary to state and federal regulations
- Setbacks, height and size not in compliance with City ordinance
- No frost footings
- Impact of devaluation to properties in the neighborhood

He and other neighbors should not have to view this oversized structure. Because there was no application for a building permit, neighboring property owners were denied their right to comment on the variance. The stressed vegetation on the site may indicate illegal previous dumping on this residential site. There is potential exposure to human health and release to the environment of lead, asbestos, PCB, PAH, to high risk populations of children. There also may be contaminants to State waters with illegal dumping and storm water runoff. It was very disconcerting to hear someone refer to the neighborhood as the “Slums of Shoreview.” This only perpetuates an image of devaluation.

He recommended that the Planning Commission uphold City ordinances, building/fire codes and environmental, public health and safety rules. The structure should be in compliance with City Code to maintain the character of the neighborhood. He would urge the Commission to support staff’s recommendation.

Mr. Michael Morse, Applicant, stated that the appearance of the garage siding is close to identical to the siding on the house. With the height change, the style of the garage is an A-Frame style roof, the same as the house. The aesthetics, building materials and architecture are similar to the house. Although the mass is large, it is screened by its surroundings. This space is needed to protect personal belongings and keep the yard and driveway clean, which will improve the character of the neighborhood. The garage does not detract from the neighborhood, as it is not visible from the road going east or west. One must drive directly in front of the driveway to see it.

Mr. Morse maintains that the house is the primary feature on the property. Although the garage is bigger than the house, it is set back 15 behind the house, which makes it appear to be smaller. The new height of 15 feet 11 inches is 4 feet 5 inches shorter than the original proposal. It does not overpower the house from the street. The garage will not provide any essentials for daily living. The house will continue to be the primary use of the property. The primary use for this accessory structure is storage. The allowed garage size of 24 feet by 24 feet is not realistic for storage of their personal belongings.

The ditch on the east side of the home prevents easy access to the back yard. The garage will be used for access. There are no plans for any second accessory structure and would be willing to have his property restricted from a second accessory structure, if the variances are approved.

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The house is small with 768 square feet. Many homes in the neighborhood are similar in size but the majority of them are occupied by seniors. Very few are occupied by young couples with children.

The Shoreview Comprehensive Plan discusses seniors aging in place, which limits the community's ability to attract young households. There is a need to develop strategies to slow this trend to create an age-balanced community. The City should take into consideration shifting demographics and the changing needs of residents. There is limited expansion potential due to the configuration of the house and the ditch on the east side. The slow erosion of the ditch continuously affects his fence and gradually takes more and more usable property.

Mr. Morse stated that he has lived in the house as a single person for seven years but now has a family. A 691 square foot garage, permitted by the City, is not a possibility. The concrete and framing have been put in, and all their savings and funds invested in the existing structure. The change in height is a loss of approximately \$10,000. Requiring a change in square footage would be a financial tragedy. He would not be able to accommodate such a change for many years. The Comprehensive Plan suggests periodic review of zoning to allow greater flexibility for residents to reinvest in their properties. Selling his house would mean a loss of thousands of dollars due to decreases in property values. The situation is unique.

The recent partial survey shows the east side lot line to be in the middle of the City drain ditch, which makes 9 feet of his property unusable, or approximately 1200 square feet. For this reason, the house and driveway were built toward the west on the property. The new garage was placed within inches of the placement of the old garage. This means the old garage was approximately 3 feet from the property line. Although only 2.3 feet from the lot line, it is 18 feet from the neighbor's house. The visual impact would not be changed, if setback were 5 feet. The driveway is 3 feet 10 inches from the property line and was there before he became the property owner. This is a unique circumstance. The house to the west is 7 feet from the property line, which is non-conforming from 10 feet required for living area. There are no concerns on the part of the neighbor to the west.

The garage does not detract from the neighborhood and surrounding neighbors feel the same. The reason for the 11 inches of height above the allowed 15 feet is because if the trusses were lowered further, a different style would have to be used and open storage space would be lost above the main level. The difference is less than one foot and will not be noticeable. Staff agrees because of the proximity of the garage to the house.

Other circumstances in the neighborhood include unpaved driveways, driveways less than 10 feet apart, one garage 2 feet from the house, foreclosures and vacancies.

Mr. Toby Gibbs, 1649 Lois Drive, stated that he sees the front of the garage and has no problem with it. The neighborhood is older with limited space. His concern is to maintain good people in

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the neighborhood. Mr. Morse is a good neighbor and losing him as a neighbor trumps any concern about the garage. Lowering the height is a fair compromise. Codes develop at a particular time and circumstances change.

Mr. Carl Agner, 5629 Aldine Street, stated while homes are supposed to be the primary principal structure on residential property, his tour of the City shows properties where the driveway and garage are seen first and sometimes not the house. If an attached garage of 1,000 square feet is allowed, there is no access to power lines with maintenance equipment because there are no alleys. Setbacks are due to fire regulations. The whole west wall of the proposed garage is a fire wall. If there were screening, it could burn also.

Mr. Calvin Nets, 5621 Aldine Street, stated that he is also interested in building a bigger garage because the houses are so small with no storage. He has no problem with the garage Mr. Morse wants to build.

Ms. Connie Smallman, 5629 Aldine Street, stated that where the garage is placed she sees no problem with soil erosion or water runoff. It would be different if it were close to the drainage ditch.

Commissioner Mons stated that his major concern is the new information regarding the 2.3 foot setback on the west side. The original proposal requested two variances for height and size. No effort has been made to reduce size. The footprint is extremely large and is more of an issue in a neighborhood where homes are smaller. He would not want to diminish at all Mr. Morse's good reputation in the neighborhood. However, the ordinances applied are applied throughout the City. The question is whether the proposal fits in the neighborhood and the community as a whole. If this is allowed, there will be others who want the same consideration. The combination of the square footage and reduced setback is his concern.

Commissioner Solomonson also expressed concern about the reduced setback. There are unique circumstances. If redeveloped, a 35-foot house could be constructed and the lot 40% covered, as allowed by Code. He believes that view for neighbors would be more troubling than this garage. Some vehicles could be stored in the back yard but would be an eyesore. When driving by this property, with the reduced height, he does not believe the garage is the predominant structure. While concerned about the side yard setback, he is leaning toward supporting the application.

Commissioner Schumer stated that the setback is a problem. It would not have been a problem if the old garage had been rebuilt to a bigger size. While the applicant is a good neighbor, that cannot be the basis for deciding an application under City standards and ordinances. He cannot support the application because if allowed, it will be a problem with future building.

Commissioner Wenner stated that his concern is about the process and lack of a building permit. Not following the process prevented information about the project that could have prevented a situation of losing a lot of money. The structures he has seen similar to the proposed garage have

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been on farms of approximately 1,000 acres. Rather than forcing a remedy on a small property, sometimes it is better to find housing that is better suited to the needs. He has received several calls from neighbors who are not in favor of this project. He cannot support the application.

Chair Feldsien stated that he was not in support of this proposal because of size and height. The height has been reduced but not the size. Shoreview is rated as a very desirable place to live. Part of that is applying City regulations uniformly across the City.

MOTION: by Commissioner Schumer, seconded by Commissioner Wenner to deny the variance requests submitted by Michael Morse, 1648 Lois Drive, to exceed the area and height requirements for a detached accessory structure on his property. This denial is based on the following findings:

1. The request does not comply with the spirit and intent of the City’s Development Code and Comprehensive Plan. The residential dwelling unit is no longer the dominant use or feature of the property because of the proposed size and height of the accessory structure.
2. Reasonable Manner. The proposed size and side yard setback of the garage is not reasonable for the property due to the lot characteristics and size of the home. A one-story detached accessory structure with a maximum area of 576 square feet and a small storage shed could be constructed on the property at the required 5-foot setback.
3. Unique Circumstances. The unique circumstances are due to the applicant’s personal storage needs and not a unique characteristic of the property. While the home is small and has limited expansion potential, a detached garage 576 square feet in size and small storage shed can be constructed on the property. The structure can be set back 5 feet from the side lot line in accordance with the Development Code.
4. Character of the Neighborhood. The structure dominates the property and detracts from the residential character of the property and neighborhood. The visual impact of the structure from the west side property line cannot be mitigated due to the 2.3-foot setback proposed.

VOTE: Ayes - 4 Nays - 1 (Solomonson)

NEW BUSINESS

VARIANCE AND MINOR SUBDIVISION

FILE NO.: 2425-11-18
LOCATION: 5790/5784 FAIRVIEW AVENUE
APPLICANT: ALYSSA DELANGE AND JESSICA JIMENEZ

Presentation by Senior Planner Rob Warwick

This application is to adjust the side lot line between the two properties. Ms. DeLange has also

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submitted a variance application to allow the existing drive to remain with a setback less than the 5 feet required. It is set back approximately 1 foot from the proposed side lot line. No site alterations are proposed. The adjustment is to remedy existing encroachments so that the driveway on 5790 is fully on that parcel. The proposed side lot line will bring both houses into compliance with side setbacks of at least 10 feet.

By way of background, the plat of Edgetown Acres was recorded in 1954. The dwellings on these two parcels were constructed in 1955 under the jurisdiction of Mounds View Township. The detached garages were constructed in 1960 at 5784 and in 1978 at 5790 with Shoreview permits. There is no record of a separate driveway permit for 5790. A full second story was added to 5784 in 1982, with no indication that a variance was required.

Both resulting lots will comply with the dimensional lot requirements in the City Code.

Regarding the variance, the applicant states that the existing driveway provides access to the house and garage and has been in this location since the house was built.

The proposed lot line eliminates both dwelling side yard non-conformities, approximates a lot line radial to the curve of the street, and cures the existing driveway encroachment. This remedy is in accordance with the intent of the Comprehensive Plan and Development Code. Practical difficulties that justify a variance include the fact that the driveway width is 9 feet at the street, 10 feet at the house and 14 feet at the turnaround. The existing encroachments and non-conforming setbacks are unique problems of the property for the homeowners. As no site alterations are proposed, the variance will not result in any outward change to the property or alter the character of the neighborhood.

Notices have been mailed to property owners within 350 feet of the two properties in this application. No comments have been received.

The Public Works Director has reviewed the application and finds that front, rear and side drainage and utility easements are not necessary with the proposed side lot line adjustment.

Staff believes that reducing the side setback for the driveway is warranted. The proposed adjustment is consistent with policies of the Comprehensive Plan and complies with the Development Code. Staff recommends adoption of Resolution 11-52, approving the variance and recommending the City Council approve the minor subdivision.

MOTION: by Commissioner Schumer, seconded by Commissioner Mons to adopt Resolution 11-52 approving the variance request for 5790 Fairview and to recommend the City Council approve the minor subdivision for 5790 and 5784 Fairview, subject to the following conditions:

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Variance

1. The project must be completed in accordance with the plans submitted as part of the Minor Subdivision/Variance applications.
2. This approval will expire after one year if the minor subdivision has not been recorded.
3. This approval is subject to a 5-day appeal period.

Minor Subdivision

1. The minor subdivision shall be in accordance with the plans submitted, dated July 22, 2010.
2. This approval shall expire after one year if the subdivision has not been recorded with Ramsey County.
3. Approval of the Minor Subdivision is contingent upon the Planning Commission's approval of the variance to reduce the required front yard setback.

This approval is based on the following findings:

Variance

1. *The property owner proposes to use the property in a reasonable manner not permitted by the Shoreview Development Regulations. The existing drive varies in width. The width is 10 feet next to the house. This is a narrow width and reasonable. This variance request is not prompted by a proposed improvement but instead a side lot line adjustment that will remedy non-conformities and encroachments and this is also reasonable.*
2. *The plight of the property owner is due to circumstances unique to the property not created by the property owner. Unique circumstances warrant the variance. The existing encroachments and dwelling non-conformities are unique problems confronting the homeowner.*
3. *The variance, if granted, will not alter the essential character of the neighborhood. No site alterations are proposed with the minor subdivision and variance, and there will be no outward signs of any change to the property. Since the driveway has existed for more than 30 years, staff believes the character of the neighbor will not be altered by granting the variance.*

Minor Subdivision

1. The subdivision is consistent with the policies of the Comprehensive Plan and in compliance with the regulations of the Development Code.
2. The proposed lots conform to the adopted City standards for the R1 District.
3. The lot boundary adjustment remedies existing encroachments and brings the existing

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dwellings into compliance with the current side setback requirements.

Discussion:

Upon request by Commissioner Solomonson, the motion was revised as stated above, to specifically reference the property addresses of the subject properties.

VOTE: Ayes - 5 Nays - 0

MISCELLANEOUS

City Council Meetings

Commissioner Mons agreed to attend the September 6th and September 19th City Council meetings.

ADJOURNMENT

MOTION: by Commissioner Schumer, adjourn the August 23, 2011, Planning Commission meeting at 8:42 p.m.

VOTE: Ayes - 5 Nays - 0

ATTEST:

Kathleen Nordine
City Planner