

**MINUTES OF A REGULAR PLANNING COMMISSION MEETING HELD,
TUESDAY, MAY 8, 2012 – 6:30 P.M. – ROCKVILLE CITY HALL**

Planning Commission met @ William Werlinger 25983 80th Ave - 6:00 p.m. as a committee of the whole to view 1 site.

The meeting was called to order by Chair Toni Honer. Roll call was taken and the following members were found to be present: Chair Toni Honer, Dale Borgmann, Susan Palmer, Jerry Tippelt & Liaison Jeff Howe. Jerry Bechtold arrived @ 6.37 p.m.

Staff members present were: Zoning Administrator Rena Weber, Billing Clerk/Administrative Assistant Judy Neu.

Others present: Tom Maselter, Scott & Cindy Heddens, Bill & Kerry Werlinger.

APPROVAL OF AGENDA/AMENDMENTS – Motion by Member Borgmann, second by Member Tippelt, to approve the agenda. Motion carried unanimously.

APPROVAL OF MINUTES 04/10/12 – Motion by Member Borgmann, second by Member Palmer, to approve the minutes of 04/10/12 as presented. Motion carried unanimously.

NEW BUSINESS

CONTINUED THE PUBLIC HEARING FOR 25983 80TH AVE – VARIANCE REQUEST –

Zoning Administrator Rena Weber reported that the Planning Commission tabled action back on February 14, 2012 because you wanted to do a site visit when the growing season started and you wanted Stearns County Environmental Service to do a site visit to determine if it was a wetland, in which Anne Nelson from Stearns County Environmental Service sent the City an email regarding her determination. Below is the written report.

From: Nelson, Anne [mailto:Anne.Nelson@co.stearns.mn.us]

Sent: Thursday, April 19, 2012 10:32 AM

Subject: Determination for Werlinger property

Sue McGuire and I met on site with William Werlinger who gave permission for us to do a soil boring in the area where a storage shed is proposed. My concern with the position of the shed was that the area was wetland, but a determination had not been completed.

Sue and I examined the vegetation, soils and hydrology and also had a conversation with Mr. Werlinger, essentially asking him about the proposed shed—dimensions, which should include any fill needed to elevate the base of the proposed shed.

Vegetation—We found at least 3 species of sedge. Since plants did not have flowers, it was not possible for us to identify the specific species. We did, however, verify that the plants we observed were not grasses, but were sedges. In general, sedges are facultative wetland or obligate wetland plants. Please note, vegetation has been impacted by mowing.

Hydrology—It was noted that approximately 1.5 inches of rain had fallen the day prior to the site visit. However, prior to this much needed precipitation, there was a very dry second half of summer 2011, a very dry fall 2011 and a very dry winter and early spring. We still have moderate drought conditions. With that said, we observed saturated soil at approximately 4 inches below the ground surface. In addition, the road ditch, which was only about 20 feet away from the boring location, had ponded water. The top of the water in the ditch was, maybe, 6 inches below the ground surface where we conducted our boring. The ground surface in this

area is nearly flat. There are also several areas which appeared to have had surface water ponding for an extended period of time.

Soil—soil appeared to be composed primarily of gravel and larger-grained sand which could have come from several sources—road building (80th Avenue), lake excavation, part of the access before the existing driveway was built. Usually, fill of this nature is brownish in color. However, the color of this fill was 10 YR 5/2 which is, essentially grey or brownish grey, in color. The color suggests that soil has been saturate for prolonged periods of time, which is also a wetland characteristic.

Based on these three factors, my determination is that this area is a type 1 wetland. As I was speaking with Mr. Werlinger, I said that I thought this property may have been reviewed several years ago just prior to building the house. Unfortunately, my office's records do not reveal that a wetland determination was done on this property. We have made determinations on the lots across 80th Avenue, and on other lots south of the Werlinger property.

The city may carry on with its permitting process. I would request that a condition of approval would be that an approved wetland replacement plan would be obtained prior to placing any fill in the wetland. We had also discussed with Mr. Werlinger the wetland replacement plan application process.

Mr. Werlinger, I have attached a list of wetland consultants. If you wish to dispute this determination, you are free to do so. A wetland consultant should be contacted, and he/she would go on site and review the soils, hydrology and vegetation. The consultant's information would be submitted to me, and I would ask our Technical Evaluation Panel to conduct a site review. The panel would then make a recommendation on whether the area is or is not wetland. If you do not wish to dispute my determination, I would strongly recommend that you contact a consultant to assist you with putting together a wetland replacement plan application. I will not be sending a formal letter unless you would like for me to send one to you.

STAFF REPORT:

Re: Variance Request(s)
76.42170.0017: Owners: William A. Werlinger
Property Address: 25983 80 Ave – St. Cloud, MN 56301

Variance(s) Requested:

1. Variance to construct a 12' x 15' sun room and 32' x 32' unattached garage and to locate it on property abutting Pleasant Lake – Recreational Development Lake.
2. Said request is to also locate sun room within the 50' shore impact zone

Construction Requests:

1. Construct sun room and unattached shed and match the structures.

Relevant Information:

1. This property is located within the 1000' Shoreland Overlay District.
2. Property contains 40,560 square feet more or less.
3. 20 notices of public hearing were sent out.
4. A revised drainage plan was submitted on 2/10/12 – 4 p.m.
5. The plan would now require review by Stearns County Environmental Services as they review any shoreline alternation and wetlands.
6. Sauk River Watershed District was also afforded the opportunity to review this proposal as they have not approved the city shoreland management and stormwater management ordinances.

7. Anne Nelson – comments regarding the wetlands state that a determination should be done in the spring. Refer to e-mails of 2/14/12
8. There have been water issues with this property in the past.
9. SRWD has not commented as of yet.
10. The sun room construction was reviewed by the building official – no concerns were raised.

Recommendations:

1. This requires 2 variances on a lot that was in place before the ordinance was adopted.
2. Anne Nelson requests the following be added. All I was asking for was that prior to adding fill (whether it's a garage or sand or boulders or gravel, etc.) a wetland determination should be done first. It could be that the entire area is not wetland or it could be that it is wetland. I don't know this. But, if the variances are granted, I am asking that a condition is placed on approval, that prior to installing any fill for the garage or for the 51-foot opening in the buffer that a wetland determination is completed. If it is determined there is wetland, then there is an application process to go through before wetland can be filled.

Chair Honer asked if anyone would like to speak on this variance request. "No request"

Motion by Member Palmer, second by Member Tippelt, to close public hearing @ 6:35 p.m. Motion carried unanimously.

Member Palmer stated after reviewing Anne Nelson's (Stearns County Environmental Service) report and under the hydrology portion where she talk's about 1.5 inches of rain had just fallen and that we were coming off of a very dry period, that there is standing water and water not to far below ground surface that we should have some concerns about wetland issue.

Member Bechtold arrived @ 6.37 p.m.

A review of the finding was done (A copy of the finding of facts is hereby attached and marked Exhibit A - Sun Room)

1. 4 Yes 1 abstain Why or Why not? Site line is accordance with neighboring properties.
2. 4 Yes 1 abstain
3. 4 Yes 1 abstain Why or Why not? Safety-Not on County Road side
4. 4 Yes 1 abstain Why or Why not? Lagoon
5. 4 Yes 1 abstain

A review of the finding was done (A copy of the finding of facts is hereby attached and marked Exhibit B - Detached Garage)

1. 3 Yes 1 No 1 abstain
2. 4 Yes 1 abstain
3. 4 Yes 1 abstain
4. 4 Yes 1 abstain
5. 3 Yes 1 No 1 abstain

Motion by Member Palmer, second by Member Bechtold, to deny the variance request for the detached garage. Motion carried unanimously.

Motion by Member Borgmann, second by Member Palmer, to approve the variance request for the sun room with proper mitigation (rain gutters & buffer) for the stormwater run off. Motion carried unanimously.

PUBLIC HEARING APPROXIMATELY 6:30 P.M. THOMAS & MILISSA MASELTER @ 226 CEDAR STREET NORTH – VARIANCE REQUEST –Zoning Administrator Rena Weber read the notice of public hearing on **Tuesday, May 8, 2012 at approximately 6:30 p.m. at Rockville City Hall – 229 Broadway Street East** to consider the request of Thomas & Milissa Maselter for **variances** from Side Yard & Impervious Surface Requirements. The address of the property is: 226 Cedar Street North with a legal description of: All that part of Lot Nine (9), Block forty-three (43), not sold to St. Cloud Mankato & Austin Railway Co. (now Great Northern Railway Co.) in Townsite (now City) of Rockville, according to the plat and survey thereof, now on file and of Record in the Office of the Stearns County Recorder.

Section 20, Subdivision 6: LOT, YARD, AREA & HEIGHT REUIREMENTS

- B. Side yard setback shall be ten (10) feet, plus on-half (1/2) foot for every one (1) feet of structure height in excess of two (2) stories or thirty-five (35) feet whichever is less except for interior lots abutting Broadway Street wherein no minimum setbacks are required provided fire suppression techniques are incorporated to the satisfaction of the building official and fire marshal.

Subdivision 12(b). Lot Coverage Limits - Standards.

No parcel may exceed the associated impervious surface coverage limits, as described below:

- B. Commercial and Industrial zoned property:
1. Not located in the Shoreland overlay district, 50%.
 1. The request is to construct a 9' x 40" attached living space to a garage in the B-1 District (**CENTRAL BUSINESS DISTRICT**), locate said structure 3' 9" from the side yard lot line and exceed impervious surface by 603 SF.

STAFF REPORT:

Variance(s) Requested:

1. Variance to construct an attached 9' x 40' living space to a garage and to locate it 3'9" from the east lot line **10' required.**
2. Variance from impervious surface requirements by 603 SF.
3. 18 Notices were sent out.

Construction Requests:

1. Add a 9' x 40' attached living space that will be located 3'9" from the property line.

Relevant Information:

1. B-1 – Central Business District. Existing garage is built 12'9" from east lot line.
2. Lot coverage limits 50% or 2197 SF - proposed is to add 360 sf onto 2440 sf currently in place. The limits used to be 90% so Mr. Maselter was not exceeding the limit at the time the last addition was built.
3. 2011 and first half of 2012 taxes have not been paid.

Recommendations:

1. Maintain existing drainage patterns over, under, and across their property.
2. If approved the owner should provide on site storm water disposal such as a rain barrel or underground trench to catch the water (especially the east side of the garage) from crossing over onto neighboring property. A rain garden could be installed in the 3' area.
3. Or construct a drainage swale along the east line of the property between the garage and property line.
4. No additional driveways will be allowed.
5. Proper temporary and permanent erosion control measurers (BMP's) shall be implemented during and after construction to minimize sediment leaving the site; this

would include proper installation of silt fence or bio-rolls on the down gradient side(s) of any excavations or earth disturbing activities, and subsequent re-vegetation of the disturbed areas soon after work is completed.

6. If you approve the requests do so with conditions.

Tom Maselter stated the proposed building is 3 feet smaller than what was removed this past fall. He would like to add living space for when he has his family. He is currently renting next door by consolidating his business with living space this would free up more money. The financing will be done by trading out work.

Member Palmer questioned "What is the estimate value of the proposed building? Still has a question on the taxes because it says you still owe for 2011 and by adding structure will increase the value and the 2012 taxes are coming due.

Tom Maselter stated he is sending in monthly payments to Stearns County and the value by him doing it himself is about \$10,000 - \$12,000.

Member Palmer explained that your proposed building will increase your value in which will increase your taxes.

Tom Maselter explained Randy Lahr from Stearns County Assessor office was out about 2 weeks ago and stated that the valuation would probably go up about another \$20,000 with the new addition. (The valuation is done by square footage price)

Chair Honer stated his rebuttal back to us is that he wouldn't have the rent from the apartments.

Tom Maselter explained then he wouldn't have the \$500.00 monthly rent payment and this would help out a lot.

Chair Honer asked if anyone would like to speak on this variance request. "No request"

Motion by Member Borgmann, second by Member Bechtold, to close the public hearing @ 7:16 p.m. Motion carried unanimously.

A review of the finding was done (A copy of the finding of facts is hereby attached and marked Exhibit C)

1. 5 Yes Why or Why not? Surrounding property similar
2. 5 Yes
3. 5 Yes
4. 5 Yes Why or Why not? Burlington Northern Santa Fe Railroad (BNSF) runs at an angle, neighbors garage very close
5. 5 Yes

Motion by Member Borgmann, second by Member Bechtold, to approve the variance request with conditions that everything is being followed by Building Official, Building Plans, Staff, mitigation plan and get in writing from Stearns County that there is a payment plan . Motion carried unanimously.

PUBLIC HEARING @ APPROXIMATELY 6:50 P.M. CINDY HEDDENS @ 25437 COUNTY ROAD 138 – VARIANCE REQUEST –Zoning Administrator Rena Weber read the notice of public hearing on **Tuesday, May 8, 2012 at approximately 6:50 p.m. at Rockville City Hall – 229 Broadway Street East** to consider the request of Cindy J Heddens for variances from Accessory Building Requirements. The address of the property is: 24537 County Road 138

with a legal description of: 32.40 Acres of Section 9, Township 123, Range 29, All of S2 NE4 lying NW of Highway 23 and SE of RR and SW of 66' Road running NW'ly and SE in the City of Rockville - Stearns County, Minnesota.

The request is to install a 3rd unattached garage currently constructed in the R-1 District. The request is also to vary from the same roof and siding requirements.

STAFF REPORT:

REQUEST:

- Approval to move a 3rd accessory structure and to locate it in the R-1 District.
- Approval to vary from requirements that all the 4 structures will match in siding/roof.

RELEVANT INFORMATION

1. Property is zoned R -1
2. Property is 32.40 acres
3. The owner has located the 3rd garage on property as it needed to be moved from its St. Cloud location by the 15th of May. The property was bought out by the County. (County is putting in a round about).
4. The siding on the house and 3 garages does not match.
5. Roofing does not match.
6. When approval was given to move the structure onto the lot 3/30/12 the owner was told that she needed to match the house and garage.
7. At that time she also told staff that she would eliminate one of the other accessory structures.
8. 9 notices were sent out

RECOMMENDATION

1. Due to the fact that Ms. Heddens stated that she would remove one of the structures to stay within the 2 structure limit - Denial is recommended.
2. Not one of the structures matches the other – this needs to be addressed.

Cindy Heddens stated if you look at the pictures it shows that the one shed no neighbors can see it and it's behind another structure. The proposed building would probably enhance the property if anything because its cedar siding, it's a natural look. The house will probably need to be shingled within 5-10 years, and would be willing to match it at that time.

Member Tippelt questioned "Would you be apposed to rezoning it to Agricultural?"

Scott Heddens stated he doesn't know what is all involved with that.

Zoning Administrator Rena Weber questioned "I thought you were going to remove one of the structures?"

Cindy Heddens explained she thought one of the structures was temporary but its not.

Chair Honer asked if anyone would like to speak on this variance request. "No request"

Motion by Member Palmer, second by Member Borgmann, to close the public hearing @ 7:34 p.m. Motion carried unanimously.

A review of the finding was done (A copy of the finding of facts is hereby attached and marked Exhibit D)

1. 2 Yes 3 No

2. 2 Yes 3 No
3. 5 Yes
4. 2 Yes 3 No Why or Why not? Substantial acreage-was supposed to get City water & sewer
5. 2 Yes 3 No

Motion by Member Palmer, second by Member Bechtold, to deny the variance request as present unless they would be willing to take one structure down and have structure match in a reasonable time frame.

AYES: Bechtold, Borgmann, Honer, Palmer, Tippelt.

Motion passed on a 5 to 0 vote.

Chair Honer stated it makes her uncomfortable to hear you say that the building is being moved tomorrow morning (May 9, 2012), even if we had approved we are only a recommending body which the Council makes the final decision and they don't meet until May 16th, 2012.

Cindy Heddens explained they were well aware of that when they applied for the variance. They don't have a choice it has to be moved by May 15th, 2012.

Chair Honer questioned "What is the agreement you have with the movers?"

Cindy Heddens explained that they had to wait 2 weeks after the concrete was poured before they could put the building on, once the building is there the contractor will come back and set the building.

Zoning Administrator Rena Weber reported the original condition to the building permit was to have one of the accessory building removed.

Motion by Member Palmer, second by member Borgmann, to amend the motion and approve to variance request if one accessory structure is removed, proposed building and house siding match in color and reroof house within 5 years or when need be.

AYES: Bechtold, Borgmann, Honer, Palmer, Tippelt.

Motion passed on a 5 to 0 vote.

Discussion was held on the below Ordinances:

a) AGRICULTURAL BUILDING WITH NO PRINCIPAL STRUCTURE –

Zoning Administrator Rena Weber reported she had contacted Jed Burkett from the League of Minnesota Cities to get samples of definitions. Below is the written report:

From: Burkett, Jed [mailto:JBurkett@lmc.org]

Sent: Monday, April 23, 2012 2:05 PM

Subject: definitions

Following up on our phone conversation, here are some examples of definition of principal structure or use.

Principal Structure or Use. One which determines the predominant use as contrasted to accessory use or structure. <http://www.ci.blaine.mn.us/index.cfm?id=901392>

Principal Use. The main use of land or buildings as distinguished from subordinate or accessory uses. A "principal use" may be either permitted or conditional.

<http://ci.waterville.mn.us/UserFiles/File/Zoning%20Administration/Zoning%20Definitions.pdf>

Principal or Main Building. A building in which the principal use of the lot is located or conducted.

Principal Use. The permitted or conditional use of property. Also may be defined as the main and predominate use of land or structures as distinguished from a secondary or accessory use. <http://www.perham.lib.mn.us/vertical/sites/%7B5BCEF176-6AD1-406C-A4C6-7F7D132DF5EB%7D/uploads/%7B0E7424CF-6807-45AC-8DF8-84D2AA9D5C4E%7D.PDF>

PRINCIPAL USE OR STRUCTURE; The structure or use which is the primary or predominant focus of activity on a parcel. Principal uses include such uses as a single family home, cabin, resort lodge and cabins, salvage yard storage areas, offices and businesses.

<http://www.midwaytwpmn.govoffice2.com/vertical/Sites/%7BCC2032FF-CB5D-4424-A6A5-392859EA19B1%7D/uploads/%7B7D21AA93-3C96-4D8A-990D-75A021C910FE%7D.PDF>

Principal Building. A building or group of buildings which are permanently affixed to the land and which are built, used, designed or intended for the shelter or enclosure of the principal use on the property.

Principal Use. The primary or predominant use of any land and/or buildings and the main purpose for which the land and/or buildings exist.

<http://www.ci.brainerd.mn.us/docs/zoningcode/section02.pdf>

Principal Structure or Use. The main use of land or buildings as distinguished from subordinate or accessory uses. "Principal use" may be either permitted, interim, conditional or allowed by administrative permit. Such a use is to be interpreted in the general, broad sense of a given use classification, such as residential, commercial, industrial, etc. and is comprised of and limited to one or more activities specified in a given zoning district.

http://www.ci.maple-lake.mn.us/vertical/sites/%7BA71242C5-0B5F-4DBF-91A5-8D1A5B252CDD%7D/uploads/2-Rules_and_Definitions.12.21.04.pdf

I hope these definitions are helpful. They are provided for informational purposes and not intended as specific legal advice.

The Planning Commission would recommend using the City of Brainerd's verbiage and adding principal building & principal use definitions to the City Ordinance.

b) B1 –(RESIDENTIAL USE) IMPERVIOUS SURFACE, SETBACKS, SIDING, ACCESSORY STRUCTURE – No action taken.

c) SIGN ORDINANCE –

Contact Department of Transportation to see if they have any verbiage or requirements regarding Electronic Variable Message Signs along the Highway.

d) INDUSTRIAL ZONE –ALLOW HIGHWAY COMMERCIAL – No action taken.

PLANNING COMMISSION MEMBER/STAFF REPORT –

ADJOURNMENT – Motion by Member Bechtold, second by Member Palmer, to adjourn the meeting at 8:30 p.m. Motion carried unanimously.

**JUDY NEU
ADMINISTRATIVE ASST**

**TONI HONER
CHAIR**