

**CITY OF ISANTI
PLANNING COMMISSION
MEETING MINUTES
AUGUST 13, 2013**

1. Meeting Opening.

A. Call to Order.

Stevens called the meeting to order at 7:00 p.m.

B. Pledge of Allegiance.

Everyone rose for the Pledge of Allegiance.

C. Roll Call.

Members Present: Dave Englund, Kristi Gordon, Sue Larson, Cindy Lind-Livingston, Sean Stevens, and Michael Streiff III.

Members Absent: Steve Lundeen (gave prior notice).

Staff Present: Lisa Wilson, Planning and Parks Director.

D. Agenda Modifications.

Wilson stated that she had none.

2. Approval of Minutes from July 9, 2013 Planning Commission Meeting.

Stevens questioned if there were any comments or changes on the minutes.

Motion by Larson, second by Englund to approve the July 9th, 2013 Planning Commission Meeting Minutes. Motion was unanimously approved.

3. Public Hearings.

A. Request from Sen lin to Amend the Conditional Use Permit to allow for restaurant seating within the unit located on the property at 303 Credit Union Drive NE, Unit 1.

Wilson presented the information contained with the staff report.

Stevens opened the public hearing at 7:04 p.m. Stevens questioned if there was anyone present to speak on the item. Stevens stated that no one had come forward.

Stevens questioned if the applicant had been informed of the change from 16 seats to 10 seats.

Wilson stated that she had spoken to the applicant earlier. Wilson stated that communication can be difficult, as there can be a slight language barrier. Wilson stated that staff will be working with the applicant.

Larson stated that from going in there the comment is that there is no seating and there should be. Larson stated that it enhances a business when they can have seating. Larson stated that eight for sure, but going up to ten seats makes sense. Larson stated that in the summer it would not be too bad. Larson stated that in the winter it could seem a little close. Larson stated that she is not sure about that extra two.

Stevens questioned if they could do outdoor seating.

Wilson stated that outdoor seating would be permitted through the administrative permit process. Wilson stated that staff would need to look at whether the space would meet requirements.

Stevens stated that they have a sidewalk out front.

Wilson stated that she is not sure how wide that area is.

Larson stated that space would be limited. Larson stated that maybe one table with two chairs.

Stevens questioned if the change that came down, if that was fire code.

Wilson stated that it is a building code requirement. Wilson stated that it is a bathroom issue based upon building requirements.

Larson stated that there is not enough room in that area to do another bathroom.

Stevens stated that he wished the applicant were here to discuss the potential growth opportunities or accessing the space next door.

Larson stated that if he were to come before us, we would almost need an interpreter. Larson stated that there is a language barrier.

Wilson agreed. Wilson stated that staff has worked through another individual that works with him. Wilson stated that he is trying to gain seating. Wilson stated that they do not want to have to remove all the tables and seating.

Englund stated that the size of the space is about 11 x 24. Englund stated that if there are more than three tables, it could be difficult.

Stevens stated that they may need to shift some tables and chairs in the restaurant. Stevens stated that he sees them as an asset to the community. Stevens stated that he would like to see them grow and is inclined to grant their request in some capacity. Stevens stated that the number is probably ten seats and they may well find that is too many.

Englund stated that ten seats is sufficient.

Gordon stated that there are seats in there already.

Stevens stated that there are and they are pushed against the wall and they are supposed to be for waiting. Stevens stated that he has seen people in the restaurant eating.

Larson stated that if they rearranged the tables and chairs, it might work okay.

Discussion continued regarding the movement of some tables and chairs.

Stevens closed the hearing at 7:10 p.m.

Motion by Larson, second by Stevens to recommend approval of the request by Sen Lin to Amend the Conditional Use Permit to allow for restaurant seating in addition to take-out and delivery service within Unit 1 located on the property at 303 Credit Union Drive NE based upon the finding of fact as presented with staff conditions. Motion was unanimously approved.

B. Request from Amanda Volenski for a Variance from the minimum required setback for a privacy fence along a public right-of-way for the property located at 1232 Deer Haven Dr SE.

Wilson presented the information in the staff memo as well as provided the staff recommendation on the item.

Stevens opened the public hearing at 7:12 p.m. Stevens requested that the applicant approach the podium and provide their name and address.

Amanda Volenski, 1232 Deer Haven Dr SE was present for the item.

Stevens questioned how long she owned the property.

Volenski stated that she purchased the property in April of 2012.

Stevens stated that he would read in the letter provided by Ms. Volenski: "I hired contractors to construct a 6' privacy fence on my property at 1232 Deerhaven Dr SE in Isanti. They built it 1' off our property line along the public right of way on South Passage and I was told after it was built that it was not allowed to be built there. The contractors didn't build the fence as drawn on the survey which they told the building inspector that they talked to me about the fence not being built as drawn which they never talked to me about. I was not sure what the definition of the public right of way was so where the application says fences have to be built 15' off of the public right of way, I thought it meant 15' from roadside. The fence has been standing for approximately a year now and I am hoping that with applying for this variance, I will be able to keep my fence where it is and not have to pay to move it all. Thank you for your consideration."

Streiff questioned how she found out the fence was in the wrong place.

Volenski stated that we had a fence built and a deck put on shortly thereafter. Volenski stated that Mr. Sames had come out to inspect both and informed the property owner that the fence could not be there. Volenski stated that she has been fighting this and had gone to court. Volenski stated that she ended up taking a deal and did not want to end up in jail and pay a fine.

Stevens questioned if Mr. Sames had discussed the visibility issues with corner lots and the reasoning for the setback with privacy fences. Stevens stated that the Planning Commission weighs the request against a number of factors. Stevens questioned if the contractor was a licensed contractor.

Volenski stated yes.

Streiff questioned if they had done work in Isanti before.

Volenski stated they are based out of Rogers. Volenski stated that she heard of them at her work in Minneapolis. Volenski stated that she had asked them to come up to do their fence. Volenski stated that they had talked with them about where it would be located. Volenski stated that they had drawn on the survey where the fence would be. Volenski stated that the contractor used the drawing for a quote that they had received from Above All as the framework for this permit. Volenski stated that she found out when she went to court that the contractor had told Mr. Sames that they had talked to them about the fence location. Volenski stated that was not true. Volenski stated that the contractor did not even know what the 15 foot setback meant. Volenski stated that they were thrown under the bus. Volenski stated that had they known about that they would not have built it in its current location.

Streiff stated that they have done a lot of work on the property.

Volenski stated that they take pride in their home.

Streiff questioned what the contractor had to say.

Volenski stated that the contractor told them they were behind them. Volenski stated that the contractor stated they would go to court with them and would cover the costs for removal and replacement. Volenski stated that now that they have gotten to this point, the contractor has disappeared. Volenski stated that if they have to move the fence, they will need to pay someone different because she does not want to deal with the original contractor.

Streiff stated that they could have just moved it right away, then there would be no hassle for her or the City. Streiff questioned if she knew what the cost was to move the fence.

Volenski stated that it cost around \$2,000 to construct the fence. Volenski stated that to take down the fence, move it, buy new posts and place new cement. Volenski stated that it would be a pretty good chunk of change to have this done.

Streiff stated that it is too bad that when you hire a licensed contractor that it is not done correctly.

Englund questioned if there was a permit pulled. Englund questioned why the fence was not inspected to make sure that it was done right.

Volenski stated that he came out to inspect the fence and the deck. Volenski stated that the area was marked out prior to the construction. Volenski stated that she should have asked him to come out.

Larson questioned if a drawing was submitted with the permit.

Volenski stated that the drawing shows the fence at the 15 foot setback. Volenski stated that in looking at the permit they were reminded of the one foot off the property line. Volenski stated that she questioned why the 15 feet was not mentioned. Volenski stated that they are new to the area.

Larson stated that regardless of what they do tonight, if there were utility work completed along that roadway, the fence would be removed. Larson stated that if that were the case, they would be responsible for all costs to replace it.

Stevens stated that there is a five part test for these. Stevens stated that his findings are that the placement of a fence is reasonable. Stevens stated that there are no unique circumstances for the property. Stevens stated that within this case, there is nothing about the lot that justifies the fence needing to be where it ended up going. Stevens stated in terms of the character of the locality, he did not see that being germane to the item. Stevens stated that for practically difficulties did not see that as germane. Stevens stated that he did not find the last item germane either. Stevens stated that they have an actionable cause with the people that built this. Stevens stated that he would recommend having a letter sent from an attorney to the contractor to help with moving the fence at no cost. Stevens stated that the last thing they want to do is dig this up and redo this, but for a contractor this should be a half day's work. Stevens stated that is the situation is what she is in now. Stevens stated that the circumstances are right for granting a variance.

Streiff stated that in looking at the economic side of things, she has followed the process. Streiff stated that there is a lack of communication or a misunderstanding between the contractor. Streiff stated that she did everything in her mind the right way.

Stevens stated that economic conditions alone cannot grant a variance. Stevens stated that the prong of the test identified does not grant them the reason for granting the variance.

Streiff stated that there is uniqueness to what happened here. Streiff stated that the potentially the City could be at fault here as well. Streiff stated that he does not feel the situation fits what is being weighed here.

Gordon stated that someone should check before the fence goes in that the location is correct.

Volenski stated that she thought that they would.

Streiff stated that they did turn a sketch that showed they would be meeting the setbacks. Streiff stated that when he comes out to inspect, it is not completed to what was approved.

Stevens stated that there are faults in this situation. Stevens stated that the reason variances are there is for situations unique to the property. Stevens stated that within the legal guidance for what we can or cannot do, it just is not there. Stevens stated that Mrs. Wilson should not have to comment on where or if City staff had fallen down on this item. Stevens stated that even if Mrs. Wilson could, the request does not meet the legal requirements for granting a variance.

Larson stated that she commended her for hiring a license contractor.

Volenski questioned why this was coming down on them.

Larson stated that it is left to the property owner.

Streiff stated that the work is being completed on your behalf for the contractor.

Larson stated that they have to follow the five point test.

Streiff stated that it makes the City review these all in a consistent manner.

Stevens stated that it moves us away for “swinging” votes for a buddies’ variance.

Volenski stated that the contractor did the permitting work. Volenski stated that she does not think the contractor asked any questions of Mr. Sames.

Stevens questioned if there were other questions or comments.

Lind-Livingston questioned some property rights issues.

Stevens stated that they had a recent variance request, where the lot is weirdly shaped in an older part of town. Stevens stated that there could be a fence put on that property; and the shape, slope, etc. are not such that would render the variance approval.

Volenski stated that the main reason you can’t have a fence there is safety.

Stevens explained the City’s stance on this issue.

Volenski stated that if parked at the stop sign, you can see all the way down to the railroad tracks.

Englund stated that it is a deeper right-of-way due to the utilities.

Streiff stated that if there is work along there, she would lose her fence.

Volenski stated that she would be willing to take that chance. Volenski stated that she does not have the money for moving the fence. Volenski stated that she is not working and is trying to go to school.

Larson stated that in the picture, you do have visibility all the way down the roadway.

Volenski stated that she has spoken to the neighbors and they do not have a problem with that. Volenski stated that she has signatures. Volenski stated that with the utilities she is willing to take that chance.

Streiff stated that the variance concept is supposed to be applied on the front side; this is being applied on the back side. Streiff stated that he is having a hard time applying these requirements when common sense should be used on this item. Streiff stated that there are areas where things could have been done differently.

Volenski stated that if she would have known what the 15 feet meant, she would have constructed the fence where it should have been.

Stevens stated that she would send a letter to the contractor that she should be refunded for the costs incurred for their error. Stevens stated that she should speak with a lawyer on that item. Stevens closed the hearing at 7:40 p.m.

Motion by Stevens, second by Englund to recommend denial of a 14 foot variance, reducing the setback for a privacy fencing along a public right-of-way from 15 feet to 1 foot for the property location at 1232 Deer Haven Drive SE based upon the Findings of Fact. Motion - no recommendation to the City Council (ayes – 3 Stevens, Larson, Englund; nays – 3 Streiff, Gordon, Lind-Livingston).

4. Other Business.

A. Amendments to Ordinance No. 445 Zoning, Section 6 Residential Districts; Section 13 Use Regulations, Article 4 Accessory Buildings, Structures, and Uses; Section 15 Fencing, Screening, and Landscaping; and Section 17 Off-Street Parking and Loading to require zoning permits.

Wilson presented the information within the staff memo. Wilson stated that City staff was looking for direction from the commission members.

Stevens stated that the hard part for him is that people that are inclined to make the call will follow the rules and others will not. Stevens stated that like in the last situation, the property owner did things the right way and she turned over the responsibility to the contractor and things were not done correctly.

Streiff stated that we would need to be iron clad on the City side.

Englund stated that this could all be hearsay. Englund stated that the contractor may come in and do the permit approval. Englund stated that the rules can change based upon the property.

Streiff stated that the City would need to go out and look at the property before approving each one. Streiff stated that you would need five building inspectors. Streiff stated that this will add red tape to the process.

Stevens stated that the alternative is to put together a 37 page pamphlet.

Streiff questioned why things have to be so complicated.

Lind-Livingston stated that she had Mr. Sames come out before they did anything. Lind-Livingston stated that Mr. Sames just jumped in the car and met them out there to help them. Lind-Livingston stated that upfront time saves a lot of headaches.

Streiff questioned if staff does this often.

Wilson stated that Mr. Sames is more than willing to go out. Wilson stated that she has met property owners to review things on site. Wilson stated that City staff can give suggestions and let them know that they are meeting code. Wilson stated that this is part of the job.

Englund stated that the contractor usually comes in and talks over the counter. Englund stated that sometimes you have people that have nothing in writing and it is just verbal.

Stevens questioned if we are staffed for this or budgeted for this. Stevens stated that if the City starts to grow again, this could become impossible to keep up.

Englund stated that the City added staff when necessary to help with these things.

Stevens stated that there is also the notion that City staff suddenly takes on more liability for telling property owners that they are okay on a project.

Streiff stated that there should be a way to say, if we look at the site prior to construction, we are willing to sign off on the project. Streiff stated that if you choose to go the weekend warrior route, if that fails, then you are responsible.

Stevens stated that there could be a happy medium with information on the website. Stevens stated that there could be steps in a process for each item to follow. Stevens stated that he did not feel that solves the issue.

Englund stated that there are going to be people that do not read the website. Englund stated that property owners do need to be aware that they are responsible for the contractor if they mess up.

Streiff stated that there should be weekend enforcement.

Wilson stated that is not an option.

Stevens questioned City staff perspective on this item. Stevens questioned the rights of obligation for City staff and the property owner.

Wilson stated that staff understands that it may be more work. Wilson stated that when people are coming in, staff is already trying to look at these items. Wilson stated that with code enforcement, it is so much harder to get these things removed than it is to have a potentially uncomfortable conversation about what they can and cannot do beforehand. Wilson provided an example.

Streiff stated that the property owner should know in their head that this is not right. Streiff stated that when you are in town and you place something in a right-of-way, common sense should kick in.

Englund stated that if you look on Heritage Blvd, people see it and they think they can do it too. Englund stated that rules change and people just keep going.

Streiff stated that if she gets the variance and the fence stays, the next property owner may try to tack onto that fence and technically they cannot.

Stevens stated that the group is giving staff nothing on this item.

Wilson stated that if the Planning Commission is comfortable with the changes and call for the hearing. Wilson stated that City staff cannot call for a hearing on this item.

Streiff stated that they need to call for the hearing. Streiff stated that if this prevents some after the fact difficult conversation, then so be it.

Stevens stated that this is a marketing issue. Stevens stated that the City needs to get the word out somehow to the community first. Stevens stated that he would rather see this done through marketing than through an ordinance amendment. Stevens stated that if the homeowner is thinking about a project, we should throw all the resources possible to do it right the first time.

Englund stated that if you put it in multiple articles over time, the people would get it. Englund stated that people need to see it five times before it would sink in.

Discussion regarding marketing and enforcement continued.

Motion by Streiff, second by Larson to call for a public hearing including the areas as identified by City staff. Motion was unanimously approved.

5. Discussion Items.

A. Zoning Ordinance Amendments.

Wilson stated that these were amendments that were approved by Council and should be replaced in their home copies.

B. Subdivision Ordinance Amendments.

Wilson stated that the attachment included subdivision ordinance amendments recently approved by the Council. Wilson stated that they should be added to their personal copies.

6. Adjournment

Motion by Englund, second by Larson to adjourn the August 13th, 2013 meeting of the Planning Commission. Motion was unanimously approved.

The meeting adjourned at 8:17 p.m.

Dated at Isanti, Minnesota this 10th day of September 2013.

Respectfully submitted,

Lisa M. Wilson, AICP
Planning and Parks Director