

PLANNING AND ZONING COMMISSION MEETING – MARCH 14, 2023

The Regular Bi-Monthly Meeting of the Andover Planning and Zoning Commission was called to order by Chairperson Karen Godfrey on March 14, 2023, 7:00 p.m., at the Andover City Hall, 1685 Crosstown Boulevard NW, Andover, Minnesota.

Commissioners present: Scott Hudson, Bert Koehler IV, Nick Loehlein, Patrick Shuman, Jr., and Ryan Winge

Commissioners absent: Jonathan Shafto

Also present: Community Development Director Joe Janish
Associate Planner Jake Griffiths
Others

PLEDGE OF ALLEGIANCE

OATH OF OFFICE - COMMISSIONER PATRICK SHUMAN, JR.

Chairperson Karen Godfrey administered an oath of office to new commissioner, Patrick Shuman, Jr.

APPROVAL OF MINUTES

February 28, 2023 Regular Meeting Minutes

Associate Planner Jake Griffiths requested the following corrections:
Page 2, Line 4: Switching out the word “of” for “or” so it reads, “approval or denial”

Motion by Commissioner Loehlein, seconded by Koehler, to approve the minutes as amended. Motion carried on a 6-ayes, 0-nays, 1-present (Commissioner Shuman), 0-absent vote.

February 28, 2023 Workshop Meeting Minutes

Associate Planner Jake Griffiths requested the following corrections:
Page 3, Line 5: Adding the word “by” between “to” and “staff” so it reads, “which is responded to by staff”.

Motion by Commissioner Koehler, seconded by Commissioner Loehlein, to approve the minutes as amended. Motion carried on a 6-ayes, 0-nays, 1-present (Commissioner Shuman), 0-absent vote.

PUBLIC HEARING: VARIANCE REQUEST - 17337 ROANOKE ST NW; PID #06-32-24-33-0016 - SAMANTHA HAUPERT & COLIN ANDERSON (APPLICANTS)

The Planning & Zoning Commission is requested to hold a public hearing and make a recommendation to the City Council to either approve or deny the Variance request made by Samantha Hauptert and Colin Anderson. Associate Planner Jake Griffiths explained a Variance is a way through Zoning that cities can allow an exception to an Ordinance that would otherwise apply to a specific property. This Variance Request relates to minimum lot standards. The request is to deviate from the minimum lot size and width requirements of the R2 zoning district, one on Roanoke Street(7th Avenue) and one on 173rd Avenue to the South. For lot size, the City Code requires 2.5 acres, and the applicant is requesting a Variance to drop that to 1.15 acres. For lot width, the City Code requires 300 feet, and the applicant is requesting 138.5 feet. The applicant must show there are practical difficulties, and the Variance needs to be in harmony with the general purposes and intent of the comprehensive plan for the property. The Commission is being asked to compare the Variance Request with the review criteria outlined by the City Code, and make a recommendation based on finding of facts to City Council. He shared the history of the property being discussed, and that the applicant is requesting a variance for a lot split that would otherwise not meet City Code.

Commissioners had no questions about the presentation.

Motion: Chair Godfrey assumed a motion to open the Public Hearing at 7:10 p.m. Motion carried by unanimous consent.

Dan Gregerson, Gregerson, Rosow, Johnson & Nilan, LTD, 16025 Temple Lane, Minnetonka, the attorney for the applicants, who bought the property at a distressed sale. They would like to develop the property into two lots to become their forever home. They plan to build a home and accessory structure on the 173rd Avenue lot. The Roanoke Street lot would be rented out to friends and family. Any split of this property would require a variance along Roanoke, no matter how the boundary line is drawn. The applicant wants the line drawn in the original position so there is uniformity in size, and so it's taken back to what the property looked like 10-15 years ago. It would also allow the applicant to build a larger accessory structure along the 173rd Avenue lot.

Earnest England, 17350 Roanoke Street NW, stated he is seeing a 2.5 acre parcel they want to subdivide into 1.15 acres. It is in Andover's rules that 2.5 acres should be kept as the smallest lot size. He doesn't understand the use of the parcel, and asked if there is an easement going through the middle of the property. He used to plow the driveway of a man named Bruce, who used to live there, and there is one driveway going down the middle so he is not sure how the brown house would get access if the Variance was

approved. He asked if anyone from City staff has been out to look at the property to see if there is an easement in the middle. He used to work for Andover fire and brought up concerns about there not being City water or sewer on the properties, and about houses being built so close together since it could be a fire hazard. He asked what the 20 year plan is for City water and sewer. He is opposed to the Variance. He has 7.1 acres across the road and won't plan to subdivide until there is City water and sewer.

Commissioner Koehler asked Mr. England when he moved into his house.

Mr. England shared he and his wife bought their property in 1999. They had under 10 acres which were already subdivided and lived in the house on the 2 acre lot, then built their home on the 7.1 acre lot.

Dan Gregerson returned to the stand to clarify Mr. England's questions. There is a property on the Roanoke facing side, which will stay. A new residence will be constructed on the 173rd Avenue side, so there will be one residence on each parcel.

Commissioner Koehler asked what the planned access looks like to each primary dwelling on each property of the proposed variance request.

Mr. Gregerson explained there is a current access off Roanoke Street with an easement there, they could do a cross access easement or investigate if they could take access from 173rd Avenue. They would need to revisit that as a possibility.

Commissioner Koehler asked Staff if 173rd Avenue is a City road or a County road. Mr. Griffiths clarified it is a City road.

Chair Godfrey asked Staff for additional information. Mr. Griffiths stated the email he received prior to tonight's meeting was from Mr. England, and is an official part of the record. He explained the plans for City water in the area of the property being discussed. He presented Andover's zoning map showing the current boundary to which the City plans on extending City water and sewer. It is several miles short of where the applicant's property is, and the City does not plan to extend it farther.

Chair Godfrey asked if any proposed additional building in this area, including the applicant's property, would require a new well and septic. Mr. Griffiths shared that is correct. Chair Godfrey asked if that is possible on this site, and Mr. Griffiths said it would be up to the applicant to determine as part of their lot split process in the future if the Variance is approved and they choose to move forward.

Commissioner Loehlein asked a question related to City Code flexibility for lot splits, where it explains lot splits being allowed under certain conditions. A lot split must result in no more than two lots and must meet two of the following requirements: lot width, depth, or area. He asked if the applicants considered simply drawing the line differently, so that it would be within City Code, so each property would meet the Code.

Dan Gregerson shared he discussed it with his staff and clients, but they would prefer to go back to the original line for purposes of creating two more normal sized lots. If the lot line was extended in a different area to try to meet the City Code, it might impact the accessory structure that the applicants are hoping to build on the 173rd Avenue parcel. They are going forward with two variance requests tonight.

Commissioner Loehlein asked for Mr. Gregerson to indicate on the map where the applicants hope to build their accessory structure.

Mr. Gregerson asked Colin Anderson (variance applicant) to come forward to show on the map where they plan on putting it. He explained they are not delving too much into details of a potential lot split. They know they need to get the Variance first before planning too much of the lot split. The applicants know there will be more hurdles even if the Variance is approved, and that the Variance is the first step.

Colin Anderson, 17337 Roanoke Street NW, showed on the map that the shed would be near where the current structure on the property is.

Motion: Chair Godfrey assumed a motion to close the Public Hearing at 7:36 p.m. Motion carried by unanimous consent.

Commissioner Winge asked if the applicant were to redraw the lot lines to allow for only one variance request for lot width, so each parcel would be within the 2.5 acre requirement for a lot split, would the 90% rule apply to that?

Mr. Griffiths shared that in this case, no. Staff reports indicate the 90% rule exists because if you meet two of the three criteria, the one requirement you are deviating from has to meet 90% of the City requirement. In this case, the deviation to lot width would be less than half of what City Code requires, so the 90% rule wouldn't apply.

Commissioner Koehler asked if Zoning was enacted in 1974 when the City was incorporated, and if the Zoning changed considerably from 1974 until now.

Mr. Griffiths explained details of the R2 zoning district. Before 1974, the City was known as Grow Township. When the City was incorporated first ordinances were passed, one being Zoning. The R2 zoning district was established as a way to identify properties that didn't meet City Code. There were properties that were already approved that didn't meet the City Code, such as the one being discussed. Rather than having a bunch of properties that didn't meet R1 district rules, the City created R2 so existing properties built before 1978 could remain but any new buildings would need to follow City Code for 2.5 acres and 300 feet minimum. Since that time, unless a Variance was approved, new structures have met those requirements.

Commissioner Koehler asked if Mr. England moved in in 1999, the Zoning would have been in place as it is today, and the Zoning hasn't changed. Mr. Griffiths stated that is correct, but noted that across the street there is an R1 zoning district, but regardless minimum lot size and width is the same between the two.

Commissioner Loehlein stated the R2 zoning district is unique and was created because the properties there didn't meet the R1 or R4 district requirements. He asked if many of the properties were non-conforming at that time, or if they conformed to the R2 district requirements. He stated the two properties being discussed didn't, but did most of the properties not meet the R2 district? Mr. Griffiths said to look at properties in the R2 district that were subdivided prior to 1978, which almost all were. Any of those properties in this Zoning District meet city code because they were grandfathered in. Any new properties need to meet City standards and be at least 2.5 acres. New properties can't be re-zoned. The Zoning District can't grow, and is locked in to memorialize the non-conforming status of properties that are in it.

Commissioner Koehler stated he understands this is a Variance Request not a lot split. He asked if emergency services or engineering looked at this request, or if any other groups within the City provided input. Mr. Griffiths stated they won't get feedback on anything until the lot split happens.

Chair Godfrey clarified that at this point, they are only looking at the request for two variances. Staff guidance, MN state statutes, and City Code require the Commission to look at specific review criteria. It seems clear that two of the three requirements must be met and she doesn't see much leeway in that. She asked if from Staff's review, is it possible to draw the boundaries differently so the lot size would conform to City Code and there would only be one variance needed, which would be the frontage on Roanoke. Mr. Griffiths stated that yes, currently the property is 6.4 acres in size, and minimum lot size is 2.5 acres. There are many ways you could draw the line to meet the Code for minimum lot size.

Commissioner Hudson asked Mr. Griffiths to clarify if currently this property is a conforming property, and Mr. Griffiths said that is correct. Commissioner Hudson asked if the Commission would then be seeking to make one of them non-conforming if it were to go through. Mr. Griffiths said a variance is required because the applicant, through their request, is asking to make a conforming property non-conforming.

Chair Godfrey asked if the City Council in recent years has approved any requests to make conforming properties non-conforming. Mr. Griffiths shared he does not have an answer. Typically cities don't approve things like this, usually properties go from non-conforming to conforming, not the other way around. He doesn't have an answer to how many similar variance requests, if any, have been granted.

Community Development Director Joe Janish reminded the Commission that they are evaluating requests based on four questions, which should be leading the Commission's discussion related to this particular parcel.

Chair Godfrey restated a paraphrased version of the four considerations the Commission should be considering and focusing on. First, does the property owner propose to use the property in an unreasonable manner that is not permitted, which in this case does not apply. Second, is the plight of the landowner due to circumstances unique to the property and not created by the landowner. In this case it sounds as if the applicant is creating the problems based on their preference of where the line is drawn. Third, is that the variance, if granted, will not alter the essential character of locality. Fourth, economic considerations alone do not constitute practical difficulties. Mr. Griffiths added to also consider the test to look at performance with the comprehensive plan as well.

Commissioner Koehler asked if there is an absolute bare minimum that a residential property can be in the City of Andover, as he looked at the Zoning chart in front of him. Mr. Griffiths said the minimum lot size would be 8,600 square feet - 3,600 for a building pad and 5,000 for primary and alternate drain field locations. If the applicant went forward with a lot split, City staff would be looking for those two criteria to be met. Commissioner Koehler is having a problem with considerations two and three. He restated the second, that the plight of the landowner is due to circumstances unique to the property and not created by the landowner. He is hung up on where the applicant wants the line, as it could be moved and then meet two of the requirements. He restated question three related to Mr. England's comments, that if the Variance is granted it will not alter the essential character of locality. There are two pieces of property there that match what they are asking for and were there before the Zoning code was put in place. People like Mr. England bought into the neighborhood understanding what the Zoning requirements were and what the neighborhood should look like. From neighbors' perspectives, some may be okay with it, some many not, but it alters what the expectation was when they moved in, knowing what the Zoning Code was. Commissioner Koehler invited others to argue with him and show him there is a way around it.

Commissioner Loehlein shared he can't argue. If the applicants had come before the Commission having drawn the line in a different place, it would be different. But with the request as is, he agrees with Commissioner Koehler.

Commissioner Koehler clarified he is not against the lot split, but there is another way to do it that could maintain the integrity of what people expected when they bought into that neighborhood and get the applicants closer to meeting the code. He shared about past requests people have made to the Commission that were too far off from the Code to be considered, one requesting 1.5 acres, and this request is even smaller. He struggles with there being another way to draw the line, but the applicant not wanting to.

Commissioner Winge agreed with Commissioners Koehler and Loehlein. If the line could be drawn so that the smaller lot would be closer to 2.5 acres, that would get them closer to moving in the right direction.

Chair Godfrey explained before moving to a motion that the Commission makes recommendations to City Council, but does not make official decisions.

Mr. Griffiths clarified there are two variance requests being considered, one for lot size and one for lot width. He wanted to make sure the Commission wasn't missing one part of the applicant's request. Commissioner Hudson asked if it's one request that is being considered to recommend to City Council, two variances but one request that will either pass or fail. Mr. Griffiths stated that is correct, but as part of the Commission's review, both items should be discussed.

Commissioner Koehler asked if the line was drawn differently and the acreage of each parcel was closer to 2.5 acres, would the lot width still be a problem. Mr. Griffiths said yes, it would be. Commissioner Koehler is hung up on how far off the request is, 300 feet is the requirement for lot width and the request is off by more than 50%. Mr. Griffiths explained there is no way to draw the line differently to tackle lot width. Lot width will be 138.5 as requested, or it will be as it is today. He explained the reason as he showed the map of the current property. Commissioner Koehler clarified that no matter how the line is drawn, the lot width on Roanoke is staying the same no matter what, which was confirmed by Mr. Griffiths.

Commissioner Loehlein asked Mr. Griffiths to clarify why the applicants couldn't draw the line in a different place and meet the 90% rule, as stated in Item 2 of the City Code, since a new line could help the applicants meet requirements for lot area and depth. Mr. Griffiths explained it's because of Criteria 3, which states each lot within the proposed lot split shall provide at least 90% of the requirement that can't be met. The lot width of the proposed lot split would still be less than 50% of the City requirement.

Mr. Griffiths reminded the Commission that it can direct Staff to go back and craft findings to present to the City Council based on tonight's discussion, to be forwarded to them. It can be indicated in the motion. Chair Godfrey asked Mr. Griffiths if it needs to be part of the motion or if it can be a direction after action on the motion is taken. Mr. Griffiths stated that however the Commission would like to do it is okay.

Motion by Commissioner Koehler to recommend to the City Council approval of the Variance Request as presented. Motion died for lack of a second.

Motion by Commissioner Koehler, seconded by Commissioner Loehlein, to recommend to the City Council denial of the Variance Request as presented based on the fact that the land area of the lot is due to the landowners decision as to where to draw the line, and that the essential character of the locality is changed based on the fact that it no longer meets Zoning Code. Motion carried by unanimous vote.

Chair Godfrey asked Mr. Griffiths to direct Staff to craft a summary of tonight's comments and discussion for City Council. She stated the City Council will view the QCTV recording of tonight's meeting and see the comments made during the public hearing.

Mr. Griffiths stated that this item would be before the Council at the March 21, 2023 City Council meeting.

PUBLIC HEARING: CONSIDER AMENDMENT TO CITY CODE TITLE 12-7-3 FENCE HEIGHT - CITY OF ANDOVER (APPLICANT)

The Planning and Zoning Commission is requested to hold a public hearing and make a recommendation to the City Council on an amendment to City Code related to fence height. Community Development Director Joe Janish shared this is coming to the Planning and Zoning Commission based on things City staff has been seeing and based on research that was conducted. As they have gone through their Commercial Site Plan process required of commercial or larger residential sites, when it comes to ground mounted mechanical equipment like ground generators, hvac units, etc. it appears screening isn't adequate. He contacted nearby communities who allow for fencing up to higher heights through the screening process. He wanted to make an amendment to Code to make exceptions for fence height, and presented the language that will be added to the code. The proposed new language reads:

Fences that are required for screening of ground mounted mechanical equipment, through a required commercial site plan (CSP), may exceed the height otherwise required by City Code provided that:

1. Location of fencing meets Building Setbacks for a principal structure.
2. Fencing is to screen around mounted mechanical equipment.
3. Fencing shall be the minimum height needed to screen the equipment and no taller than 10 feet.
4. Fencing shall not be taller than the height of the adjacent building wall.
5. All other screening requirements are met.

Commissioner Koehler asked if the City has ever given exceptions before related to fencing. Mr. Janish is not aware of that. Commissioner Koehler asked if this code would pertain only to commercial buildings. Mr. Janish said yes, only those that require a Commercial Site Plan process. A single-family home would not qualify for this section of the code.

Chair Godfrey asked if a 4-plex or larger residential property would qualify. Mr. Janish said yes because they would trigger the Commercial Site Plan process.

Commissioner Koehler asked if an exception outside of this would be a home that wanted to build a fence in the front yard taller than 4 feet tall, and clarified that would not be

allowed. Mr. Janish stated that is correct. A single-family homeowner would need to request a variance showing practical difficulties or a Code amendment.

Motion: Chair Godfrey assumed a motion to open the Public Hearing at 7:59 p.m. Motion carried by unanimous consent.

There was no public input.

Motion: Chair Godfrey assumed a motion to close the Public Hearing at 8:00 p.m. Motion carried by unanimous consent.

Motion by Commissioner Koehler, seconded by Commissioner Loehlein, to recommend to the City Council approval of the amendment to City Code as written. Motion carried by unanimous vote.

Mr. Janish stated that this item would be before the Council at the March 21, 2023 City Council meeting.

OTHER BUSINESS.

Associate Planner Jake Griffiths updated the Planning Commission on related items. He updated that at the last meeting there was a Conditional Use Permit for Grace Lutheran Church which will be on the City Council agenda for March 21. The Commission is planning to have a meeting on the 4th Tuesday of the month, March 28th. He also recapped that the City had the North Suburban Home show and it was great to see several present and former Commissioners there.

Commissioner Koehler thanked Staff and the City for the wonderful job they did on the Home Show.

ADJOURNMENT.

Motion by Commissioner Shuman, seconded by Commissioner Koehler, to adjourn the meeting at 8:02 p.m. Motion carried by unanimous consent.

Respectfully Submitted,

Kristina Haas, Recording Secretary
TimeSaver Off Site Secretarial, Inc.