

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, September 20, 2016 – 7:00 p.m.
City Hall Chambers - 8150 Barbara Avenue

Chair Maggi called the Planning Commission meeting to order at 7:00 p.m.

Commissioners Present: Elizabeth Niemioja
Pat Simon
Tony Scales
Armando Lissarrague
Joan Robertson
Dennis Wippermann
Annette Maggi
Jonathan Weber

Commissioners Absent: Luke Therrien (excused)

Others Present: Allan Hunting, City Planner

APPROVAL OF MINUTES

The September 6, 2016 Planning Commission minutes were approved as submitted.

Chair Maggi provided Commissioners with a 2012 memo written by Allan Hunting and Paul Hark in regards to determining if there is a practical difficulty on variances. The Planning Commission is to look only at land use whereas City Council has more latitude and can make decisions based on other factors. She explained that a variance should not be granted unless it meets three factors. Commissioners must first determine if the property owner proposes to use the property in a reasonable manner. If so, then they should move on to Step 2 and if not the variance should not be granted. The second factor is whether the landowner's problem is due to circumstances unique to the property not caused by the landowner. This is in regard to the land itself; not things manmade such as existing buildings. If the answer is no the variance should not be granted. The third factor is whether the resulting structure would be appropriate for the surrounding area.

Commissioner Scales stated there were other things to consider as well.

Chair Maggi agreed, but stated the challenge is often in determining if there is a practical difficulty.

BRIAN AND VICKI DZIEWECZYNSKI – CASE NO. 16-42V

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for a variance to allow a detached accessory building 1,440 square feet in size whereas 1,000 square feet is the maximum size allowed by code, and a variance to allow a setback of six feet whereas 50 feet is required for structures larger than 1,000 square feet, for the property located at 7030 River Road. 6 notices were mailed.

Presentation of Request

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the applicant is proposing to add an accessory structure that is 1,440 square feet in size whereas 1,000 square feet is the maximum size allowed, and a variance³ for the garage to be located six feet from the side property line whereas 50 feet is required. The request is to build the accessory

building on an existing foundation that was previously a home. The applicants would be removing an existing shed. The existing foundation is six feet from the property line. Any building over 1,000 square feet requires a 50 foot setback. Staff believes a practical difficulty can be found for the size and location of the proposed building due to the fact that the foundation is existing and the footprint will not be increasing. The Chief Building Official has looked at that foundation and found it to be sound. Staff recommends approval of the variance.

Chair Maggi asked staff to clarify the dotted and non-dotted areas shown on the site plan.

Mr. Hunting explained that the dotted area was an existing concrete slab and the other was a perimeter foundation with a dirt floor.

Chair Maggi asked what the square footage was of the concrete slab.

Commissioner Simon advised it was roughly 24' x 40'.

Commissioner Weber advised it was approximately 960 square feet in size.

Commissioner Niemioja questioned whether having an existing foundation was a practical difficulty and asked whether the former house at that location had been in violation of the ordinance or grandfathered in.

Mr. Hunting did not know the history of the house but advised that if the garage was on the north side it would have met the setback requirements. He stated that in 1998 when the applicants purchased the property the current rules were not in place in regard to maximum size, number, setbacks, etc.

Chair Maggi asked if part of the problem was that by purchasing the second lot and combining them the 50 foot setback kicked in which applies to lots over one acre in size.

Mr. Hunting replied that any structure over 1,000 square feet in size requires a 50 foot setback.

Chair Maggi asked if they could have constructed a 1,000 square foot accessory building if there were two separate lots.

Mr. Hunting replied that no lot can have an accessory structure without a principle structure.

Chair Maggi asked if part of the issue was that the two lots were combined which then allowed an accessory structure of 1,000 square feet which impacts the setback.

Mr. Hunting replied in the affirmative.

Commissioner Robertson stated she did not see any topographical challenge on the lot and questioned whether having an existing foundation makes it an allowable practical difficulty.

Commissioner Scales asked what the minimum size would be if they wanted to build a house on that lot.

Mr. Hunting replied the minimum allowed for a residence would be 1,000 square feet.

Commissioner Scales stated that the practical difficulty is that if they had not combined these properties they could have built a house with a larger garage and never had to request a variance.

Chair Maggi stated that was assuming the garage was on the north side of the house.

Commissioner Scales stated the property owner was being penalized for combining the two properties and questioned why they were struggling to find a practical difficulty.

Commissioner Robertson replied that having a practical difficulty was one of the principle criteria Commissioners must consider when granting variances.

Commissioner Scales referred to the memo from Allan Hunting and Paul Hark and questioned whether they should disregard the many previous requests done in the last couple years that may not have been held to the same standards.

Chair Maggi did not believe there were a lot of recent requests that did not have a practical difficulty, and stated it was the Commission's responsibility to come back to the framework put in place for decision making.

Commissioner Scales questioned whether they had strayed from because it did not quite fitting for our City.

Commissioner Lissarrague stated he understood the rules but felt they should use common sense as well. He stated he saw a practical difficulty as stated by staff, and would want to do the same thing if it was his property. He stated that putting it in another location could create an eyesore for the neighboring property.

Chair Maggi noted there were two variances being requested; one for the setback and one for allowing a building over 1,000 square feet in size. She stated in her opinion the real foundation was 1,000 square feet as she did not consider the dirt portion a foundation.

Commissioner Scales clarified that the concrete slab was 1,000 square feet but the perimeter foundation was 1,440 square feet.

Mr. Hunting advised there was a true footing foundation around the dirt portion on which they would be able to build a structure.

Commissioner Wippermann asked stated the house on the property to the north was fairly close to the property line and questioned to what extent they should be following the guidelines for setbacks in order to provide for proper spacing between buildings from one lot to another. He asked if staff heard from the property owner to the north.

Mr. Hunting replied they had not as the property was vacant. Staff only heard from the property owner to the south.

Opening of Public Hearing

Brian and Vicki Dzieweczynski, 7830 River Road, advised they were available to answer any questions.

Chair Maggi asked the applicant if they read and understood the report.

The Dzieweczynski's replied in the affirmative.

Ms. Dzieweczynski stated the practical difficulty that she sees is that it is an existing foundation that was on the property that they purchased in 1998. She advised they have worked hard to combine the properties and make them look unified. She stated the foundation was not something

they put there, and if it was not there the building could have been somewhere else and they would not have had to go through the variance process. Since it is there they would like to utilize it. She added that their home was built on bedrock; therefore, they had no basement for storage.

Mr. Dzieweczynski stated when they purchased the property Chief Building Official Brian Hoffman was aware of the house that had burned down and advised them they would be able to rebuild on it. Prior to purchasing the adjoining property they had the City look at it and were informed they would have to combine them into one property ID number as they could not have a lot with an accessory structure without a primary structure. At that time they were not aware of the 50 foot setback requirement. When they came in a month and a half ago they were not made aware that they would be applying for a 50 foot setback variance.

Commissioner Wippermann asked how they would incorporate the two-level foundation into an accessory structure.

Mr. Dzieweczynski replied that one portion would be on the 24' x 40' slab then they would go down three steps to the other portion.

Ms. Dzieweczynski stated they plan to have the proposed structure mirror the existing home as much as possible.

Commissioner Lissarrague asked when the requirement for a 50 foot setback for buildings over 1,000 square feet came into effect.

Mr. Hunting replied approximately 2008.

Commissioner Lissarrague stated when the applicants purchased the lot in 1998 they were told they could do certain things but they cannot. He believed that was a practical difficulty and that Commissioners should give some consideration to what they were originally told in 1998.

Commissioner Robertson stated that they were not saying the applicant could not build, just that the size of the proposed structure would be out of compliance with the setback. They still had the option of using a portion of the existing foundation but keeping it 1,000 square feet. She asked the applicants if they had considered a plan that would comply with size and setback regulations.

Mr. Dzieweczynski replied probably not as they want to complement and mirror their existing home.

Commissioner Lissarrague asked the applicants if their conversation in 1998 with the building official was based on rebuilding on the entire 1,440 square foot foundation.

Mr. Dzieweczynski replied in the affirmative.

Commissioner Niemioja asked what size the original plan was before speaking with the building official.

Commissioner Simon replied 1,126 square feet.

Mr. Dzieweczynski stated at that time they were planning on keeping the existing shed and building a 1,126 square foot accessory structure; however, the building office suggested building on the entire 1,440 foundation and removing the existing shed.

Chair Maggi closed the public hearing.

Planning Commission Discussion

Commissioner Simon asked what the regulations were for accessory structures over 1,000 square feet in the R-1C zoning district.

Mr. Hunting replied a lot must be at least 2.5 acres to have a structure over 1,000 square feet.

Chair Maggi stated she was struggling to find a practical difficulty as in her mind she did not consider an existing foundation part of the normal topography of the land. She was also concerned about the significant difference between the 6 foot setback being requested versus the required 50 foot setback.

Commissioner Niemioja stated that codes are continually changing and she did not feel they could make decisions based on the fact that requirements had changed from when they purchased the property. Unless they are specifically grandfathered in residents should have to adapt to the new code. She added that a 1,440 square foot accessory structure seemed extremely large for a relatively small lot. She would feel better if they had continued with the original plan before enlarging it after speaking with the building official.

Chair Maggi stated that historically they have denied requests for a 50% increase in size.

Commissioner Scales stated he has been on the Commission since 2008 during which they have recommended approval of many requests because it was the common sense thing to do. In reference to the variance criteria discussed earlier, he stated that City Council has stated it is no longer relevant all the time

Chair Maggi stated she had never heard Council say that. She reiterated that the Planning Commission's role was different than Council's role and that they could not factor financial considerations into their decision.

Commissioner Scales stated he agreed with the practical difficulty as stated by staff and that although there were two interpretations it did not mean one was right and the other was wrong.

Commissioner Wippermann stated if they went along with staff's recommendation all the time there would be no need for the Planning Commission. He noted they have voted differently than staff on many occasions and he expects it will happen in the future as well.

Commissioner Robertson stated the reason they have a Planning Commission is to have an additional body look at all the considerations. She stated it is clear that accessory buildings greater than 1,000 square feet must be on 2.5 acre properties. When there has been real physical difficulty related to topography Commissioners may have made some slight adjustments. In this instance if the applicant would agree to make some alterations the 6 foot setback would no longer be an issue. She stated in order to approve this request, Commissioners would have to ignore the definition of a practical difficulty as well as existing City Code that equates the size of the property to acreage. She felt those were too big to ignore.

Commissioner Weber stated the fact that the landowner could utilize the existing foundation and save money and time seemed to fulfill the variance criteria requiring that the landowner's problem was due to circumstances unique to the property.

Chair Maggi stated they could not say that because the Planning Commission could not consider financial implications – only land use.

Commissioner Scales stated they still should use common sense.

Commissioner Simon replied that was not how they were supposed to make their decisions.

Commissioner Scales stated that going strictly by the variance criteria and denying everything would make the Planning Commission irrelevant.

Commissioner Niemioja noted they went against staff recommendation at the last meeting and found a practical difficulty and recommended approval.

Commissioner Scales stated that Council will approve this request.

Commissioner Robertson stated that was their purview to do so.

Commissioner Scales stated they use common sense.

Chair Maggi stated that Council has a greater purview and can look at economic and other considerations that the Planning Commission is not allowed to.

Planning Commission Recommendation

Motion by Commissioner Robertson, second by Commissioner Niemioja, to deny the request for a variance to allow a detached accessory building 1,440 square feet in size whereas 1,000 square feet is the maximum size allowed by code, for the property located at 7030 River Road based on the fact that the criteria for a practical difficulty could not be met.

Motion carried (5/3 - Scales, Lissarrague, and Weber).

Commissioner Weber asked if the setback variance was only needed if the building was larger than 1,000 square feet.

Mr. Hunting advised that the Commission still had to act on both variance requests.

Commissioner Robertson asked if they could add a condition to the setback variance request that the building not exceed 1,000 square feet in size.

Mr. Hunting replied that by code it could not exceed 1,000 square feet.

Chair Maggi asked for clarification that a 6 foot setback was allowed for a 1,000 square foot accessory structure.

Mr. Hunting replied in the affirmative. He stated they still had to vote on it though since the applicant applied for two variances.

Commissioner Lissarrague stated he understood why staff took the position they have as it is unusual for there to be an existing foundation on a property.

Motion by Commissioner Scales, second by Commissioner Lissarrague, to approve the request for a variance to allow a setback of six feet whereas 50 feet is required for structures larger than 1,000 square feet, for the property located at 7030 River Road.

Motion carried (6/2 - Wippermann and Simon). This item goes to the City Council on September 26, 2016.

Chair Maggi advised the applicant that City Council would be able to look at different

considerations than the Planning Commission was allowed to.

Mr. Dzieweczynski noted that the second motion was not necessary since a six foot setback would be allowed on a building 1,000 square feet or smaller.

Chair Maggi replied that they had to act on it since two variance requests were submitted.

Chair Maggi asked staff if someone could speak to the Commission about the current approach to practical difficulty across the State.

Mr. Hunting agreed to see if the City Attorney could speak to the Commission about this matter.

Commissioner Simon suggested perhaps someone from the League of Minnesota Cities could come as well.

Mr. Hunting advised he would check on that.

Commissioner Robertson commented that historically in every variance application the Planning Commission has looked at the practical difficulty criteria discussed earlier. She wanted to make sure everyone understood that they have not been freely handing out variances and are all of a sudden getting strict.

Commissioner Scales stated they have been a little more open to look at the individual instance in regard to practical difficulty in the past than what they have tonight, he felt they should use common sense as to what practical difficulty is, and stated there is a variance in almost every neighborhood in the City. He asked staff if the applicant were to separate the two lots again would they be able to build a 1,000 square foot house with a large garage without the need for a variance.

Mr. Hunting replied in the affirmative.

Commissioner Niemioja stated that as a group they examine issues and sometimes see things differently than staff. She advised that although it was logical and financially beneficial to approve the request, the Planning Commission was not allowed to base their decision on financial implications.

OTHER BUSINESS

Chair Maggi asked for clarification of the September 26 special meeting.

Mr. Hunting advised that the meeting will be held in Council Chambers at 4:00 p.m. Each consultant would have 45 minutes to do a presentation and hold a question and answer session. There will be no issues with the Open Meeting Law as the special meeting has already been posted.

The meeting was adjourned by unanimous vote at 7:55 p.m.

Respectfully submitted,

Kim Fox
Recording Secretary