

## PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Wednesday, August 3, 2011 – 7:00 p.m.  
City Hall Chambers - 8150 Barbara Avenue

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

Commissioners Present: Tom Bartholomew  
Pat Simon  
Dennis Wippermann  
Victoria Elsmore  
Armando Lissarrague  
Mike Schaeffer  
Harold Gooch  
Tony Scales  
Paul Hark

Commissioners Absent:

Others Present: Heather Botten, Associate Planner

### **APPROVAL OF MINUTES**

The minutes from the July 19, 2011 meeting were approved as submitted.

### **PAUL MASON LLC – CASE NO. 10-40ZAC**

#### **Reading of Notice**

Commissioner Simon read the public hearing notice to consider a conditional use permit (CUP) to allow outdoor vehicle and material storage for the property located at 11278 Rich Valley Boulevard. 4 notices were mailed.

#### **Presentation of Request**

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that the existing site is used as a single-family residence and a recycling facility. The property owner would like to utilize his property for outdoor storage of vehicles and materials as well. The property has an existing CUP for a recycling facility, and a new CUP is being requested for outdoor storage. Staff is recommending that the landscaping plan be changed to identify the location of two additional trees on the actual site plan. A solid fence is required along the western property line and should continue along a portion of the north lot line as well. Because of the low topography, staff is going to recommend that additional trees be planted on the south property line. The applicant must work with the Planning Department to determine the exact location of screening. Staff has not heard from any surrounding property owners. Staff recommends approval of the request with the conditions listed in the report.

Commissioner Simon questioned whether this site would impact the property to the north which was intended to be used as a holding pond for runoff.

Ms. Botten stated she did not know offhand, but assumed that engineering staff would ensure it did not.

Commissioner Simon recommended that Condition 8 be modified to reflect that the landscape plan should be changed to reflect the **location** of two additional trees in order to clarify that the actual number of trees was not changing.

Commissioner Lissarrague asked if anyone was living on the property, to which Mr. Saver replied that his tenant moved out a month ago and he would be moving in soon.

Commissioner Hark asked how much fencing would be required along the north property line.

Ms. Botten replied that staff would meet with the applicant to determine how much screening was needed for visibility purposes.

Commissioner Hark asked what type of fencing was required.

Ms. Botten replied that solid fencing was required, and that anything that could be seen through (i.e. chain link) would not be sufficient.

### **Opening of Public Hearing**

The applicant, Paul Saver, 7845 Boyd Court, advised he was available to answer any questions.

Chair Bartholomew asked if the applicant was in agreement with the conditions listed in the report, to which Mr. Saver replied in the affirmative.

Commissioner Lissarrague stated the property was in need of mowing and weed control.

Mr. Saver stated he planned to completely landscape the property after receipt of approvals.

Commissioner Lissarrague asked if the house would be remodeled, to which Mr. Saver replied it would remain as is.

Commissioner Gooch asked what the existing business was on the property.

Mr. Saver replied that it was currently a recycling facility for construction and demolition debris and he was asking for a CUP for the storage of automobiles, small construction equipment, boats, trailers, etc.

Commissioner Simon asked if sales would take place on the property, to which Mr. Saver replied they would not.

Commissioner Simon asked what was being stored in the roll-offs on the property.

Mr. Saver replied it was glass from a construction project that perhaps would be used for a future office building on the site.

Commissioner Simon asked if the house on the site would be used as an office as well as living space, to which Mr. Saver replied it would only be used as living space.

### **Planning Commission Recommendation**

Chair Bartholomew stated he supported the request.

Motion by Commissioner Gooch to approve the request for a conditional use permit to allow outdoor vehicle and material storage for the property located at 11278 Rich Valley Boulevard, with the nine conditions listed in the report, and a modification to Condition 8 to require that "The Landscape Plan shall be modified to reflect 'the location' of two additional trees on the landscape plan."

Commissioner Hark suggested that language be added to Condition 6 specifically stating that the applicant and the City must come to an agreement as to how much screening is required along the north lot line.

Commissioner Gooch stated he was agreeable with the recommended modification to Condition 6.

Second by Commissioner Simon.

Motion carried (9/0). This item goes to the City Council on August 22, 2011.

### **GREG GROVER – CASE NO. 11-20V**

#### **Reading of Notice**

Commissioner Simon read the public hearing notice to consider the request for a variance to allow a fence higher than seven feet in a residential area, for the property located at 5975 Concord Boulevard. 4 notices were mailed.

#### **Presentation of Request**

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that the applicant received a permit in September, 2010 to reconstruct an existing fence that runs along the north side of the applicant's property line. The fence ended up being higher than the allowed seven feet. The discrepancy was brought to the City's attention, the Building Official verified the height to be 8'2" to 7'9" in some locations, the property owner was notified that he was in violation, and he submitted the variance application. Due to the slope of the property, the fence is built with a staggered design that steps down as the land goes down. The rolling terrain and the step-down design of the fence do not allow for perfect measurement of the seven foot maximum fence height. The measurement was taken from the neighbor's side of the fence and depending on where the fence is measured, it can have a wide range of heights. Based on the overall average, the fence height has exceeded seven feet. Staff felt it would be reasonable to allow some flexibility in height because it is virtually impossible to construct a fence no taller than seven feet from the ground at all points along this fence line. Staff recommends approval of the request.

Ms. Botten advised that staff heard from two neighboring property owners. The property owner to the west, Mr. Danner, was in support of the request providing the fence was located solely on the applicant's property. The Planning Commission could choose to add a condition that the applicant verify the corner stakes of his property. The property owner to the north opposes the request.

Commissioner Simon asked if the fence was inspected by the City.

Ms. Botten stated an inspection is a requirement of a permit, however, she was not sure at what point in the process the inspection was performed or whether they specifically measured the fence height.

Commissioner Simon stated a physical measurement would not be needed in this case as you could visibly see it was taller than seven feet.

Commissioner Gooch referred to Mr. Danner's letter and asked for clarification of whether any of the fence was located on Mr. Danner's property.

Ms. Botten stated that knowing the location of the property lines was the property owners' responsibility and any dispute would be a civil issue. She advised that she explained this to Mr. Danner and he stated he would be okay with the request as long as Mr. Grover had a survey done

and the corners marked showing the fence to be solely on the applicant's property.

Commissioner Elsmore asked if the original complainant was the same neighbor who sent the email stating he was opposed to the request, to which Ms. Botten replied that she was unsure as most complaints that come in remain anonymous.

**Opening of Public Hearing**

Greg Grover, 5995 Concord Boulevard, advised that he had a lot survey done last year and all the corner stakes are in place and clearly marked. He advised there was a retaining wall put in by a previous owner that was partially on Mr. Danner's property; however, he has since removed it.

Chair Bartholomew asked Mr. Grover if he was comfortable with his ability to locate the corner stakes.

Mr. Grover replied in the affirmative. He stated the property to the north was about two feet higher than his. Also, the previous owner dug out much of his backyard, leaving a large depression. To correct the situation he planned to bring in two feet of fill which would bring the fence height close to compliance. He advised that he installed landscape fabric on the bottom of the fence as his intent is to build planters along the fence and fill them with dirt. He sent plans to the City Engineer regarding the filling. Mr. Grover stated a land alteration permit was not needed as he was proposing to bring in 60 yards of fill and a permit was only needed for 100 yards or more.

Chair Bartholomew asked what length of the fence was above the seven foot mark.

Mr. Grover replied only the area near the depression, stating the fence was 7'6" at its highest point.

Commissioner Simon asked if the applicant installed the fence himself, to which Mr. Grover replied it was installed by a couple people working for him.

Commissioner Simon asked if they were fence contractors, to which Mr. Grover replied they were not.

Commissioner Simon stated it was the applicant's responsibility to find out that the fence had to be a maximum of seven feet in height.

Mr. Grover stated his intention was to fill in the back yard which would make the fence height close to compliance. He stated he had no control over the fence height on his neighbor's side of the fence.

Commissioner Simon asked when the fence was completed, to which Mr. Grover replied Fall 2010.

Commissioner Simon asked if the applicant applied for a fill permit yet.

Mr. Grover stated a land alteration permit was not needed, however, he submitted elevation plans to the City Engineer but he had not yet gotten a response.

Commissioner Simon asked when the plans were submitted.

Mr. Grover stated they were sent three months ago, however, the City Engineer stated he never received them so another plan was submitted a month ago.

Ms. Botten advised that Mr. Grover is correct in stating that he does not need a land alteration permit, however, he is working with the Engineering Department to ensure that the proposed

grading/filling would not negatively impact his neighbor. She stated she spoke with the City Engineer today and apparently there was some miscommunication as he was waiting for additional information from Mr. Grover. She will advise the City Engineer that Mr. Grover stated he has already submitted all documents.

Commissioner Wippermann asked why there were heavy boards on the bottom of the fence.

Mr. Grover stated he installed treated wood on the bottom of the fence to attach landscaping fabric to which would prevent any dirt from washing into his yard.

Commissioner Lissarrague asked if the fence would be in compliance if the proposed filling was done, to which Mr. Grover replied it would be very close.

Commissioner Wippermann asked if the fence was measured from the applicant's side or the neighbor's.

Ms. Botten replied that the measurement was taken from the neighbor's side which is likely why the report states the fence is 8'2" and the applicant states the fence is 7'6" at its highest elevation. Staff felt the fence should be measured from the neighbor's side because of the impact to that property.

Chair Bartholomew asked if code required that the elevation measurement be taken from the neighbor's side of the fence, to which Ms. Botten replied that City Code was not specific on which side to take the measurement.

Chair Bartholomew recommended that the criteria be clarified to prevent future issues.

Commissioner Elsmore asked how many sections of fence would need to be modified to bring it into compliance, to which Mr. Grover replied approximately six.

Commissioner Hark asked the applicant if the City came out to measure the fence.

Mr. Grover replied that apparently the Chief Building Official was on the property because he left a notice for him stating that he received a complaint and wished to discuss the situation.

Commissioner Hark asked if the notice was received during construction or after completion, to which Mr. Grover replied after completion.

Commissioner Hark asked if anyone from the City came out during construction of the fence.

Mr. Grover replied they did not. He advised that property owners are supposed to contact the City for an inspection when they have finished the project. He was planning to contact the City once his landscaping was complete.

Chair Bartholomew asked if he knew the fence was to be a maximum of seven feet in height, to which Mr. Grover replied in the affirmative.

Chair Bartholomew asked if he was concerned that the fence was over seven feet.

Mr. Grover replied he was not because he assumed the proposed landscaping would bring it into compliance.

Chair Bartholomew asked if the applicant contacted the City to see if it would be acceptable to

raise the elevation in order to meet the seven foot maximum.

Mr. Grover stated he contacted the City Engineer this past winter after receiving the notice from the Chief Building Official. He submitted his elevation plan and was told that he could not put in as much fill as he was proposing. In the spring he submitted a revised plan proposing two feet of fill. A month ago he submitted the plan again as the City Engineer stated he had not received the first one. He stated he was not aware that the City Engineer was waiting for additional documentation and would contact him regarding the situation.

Commissioner Wippermann asked if there were sections of fence where the western portion of the section was seven feet high but got taller as the ground sloped towards Concord.

Mr. Grover replied in the affirmative, stating the top section started at 6'6" in height. He advised that he dropped the sections in 6" increments to make a gradual slope.

Clair Hostetler, 5929 Concord Boulevard, stated he also owned the property immediately north of the applicant's property. He referred to his email citing various previous disagreements between he and Mr. Grover.

Chair Bartholomew requested that the comments be limited to the issue of the fence variance.

Mr. Hostetler stated he did not want any fill added to his property and would like the fence built in compliance with City Code.

Chair Bartholomew asked if the fence was on his property, to which Mr. Hostetler replied that it was approximately three inches inside Mr. Grover's property line.

Commissioner Lissarrague asked if Mr. Hostetler knew during construction that the fence was not in compliance with City height standards, to which Mr. Hostetler replied in the affirmative.

Commissioner Lissarrague asked if he addressed the height issue with Mr. Grover while the fence was being built, to which Mr. Hostetler replied that he did.

Commissioner Hark referred to a photograph of a no trespassing sign and asked how far the fence was from the sign, to which Mr. Hostetler replied the sign was approximately two inches inside Mr. Grover's property line.

Commissioner Lissarrague asked what was there prior to the newly built fence, to which Mr. Hostetler replied there was a four foot chain link fence a couple feet inside the property line.

Russ Hostetler, 5939 Concord Boulevard, stated he was raised in the home north of Mr. Grover and to his knowledge the slope had always been there. He stated if Mr. Grover had hired a professional to build the fence it could have been constructed under the seven foot height maximum. He stated Mr. Grover should have to correct the situation and he cited various previous disputes between he and Mr. Grover.

Mr. Grover stated the previous fence was in disrepair. When he had the survey done he discovered it was four feet into his property and therefore he moved the fence over.

#### **Planning Commission Discussion**

Chair Bartholomew asked for clarification of which side the fence should be measured from.

Ms. Botten stated that Code does not specify which side it should be measured from. Staff

measured it from the neighbor's side because there was an impact to them as well.

Chair Bartholomew asked if Mr. Grover could make the fence even taller if the variance was approved, to which Ms. Botten replied he could not.

Commissioner Elsmore stated the fence should be measured from the neighbor's side as they were the ones who were negatively impacted and had no say in the matter.

Chair Bartholomew stated that setting the fence back from the property line would eliminate the issue of what side to measure the height from.

Commissioner Lissarrague stated that Mr. Grover felt the fence would be in compliance because of the proposed fill, he was responsible and got a survey, and he felt uncomfortable going on the neighbor's property to measure the fence.

Commissioner Simon stated she would likely be voting no because if the fence had been built by a fence company it could have been built with proper step-downs and in compliance with City regulations, by pulling a permit the applicant should have been aware of the seven foot height requirement, the filling should have been done early spring, the neighbor should not be forced to fill their lot in in order to bring the fence into compliance, and approval of this request would set a precedent.

Commissioner Scales stated he saw both sides of the issue, but felt the fence should be measured from the applicant's side. He advised that he built a fence on his property. The neighbor then cut their yard down; therefore, through no fault of his own a person in the neighbor's yard would see a nine foot high fence.

Commissioner Elsmore stated the difference was that the neighbor in this situation did not cause the compliance issue by altering their yard.

Commissioner Scales stated his concern is that 20 years down the road the new owner of his house may not be able to replace the fence as they were not aware of the history.

Commissioner Wippermann stated he would likely be voting no as it would appear as if the fence could have been built in compliance with Code, and he saw no rationale for granting a variance.

Commissioner Hark stated by pulling the permit the applicant essentially agreed to the height restrictions; however, he built the fence higher than agreed. The fence could have been built to conform with the terms of the permit. He stated he was disappointed that the two neighbors could not get along and asked if there was any precedent with the City as far as forcing someone to remove a fence.

Ms. Botten stated a precedent had not been set. She stated if City Council were opposed to the request they could ask that the portions exceeding the height maximum be corrected.

Commissioner Hark stated he was concerned about the potential for citizens to think they could do whatever they wanted if regulations were not enforced. He stated he would likely vote no, and he recommended that the City inspect projects prior to their completion.

Chair Bartholomew advised he was opposed to the variance, stating the fence could have been built in compliance with code, and the property owner could have set the fence back onto his property to maintain the proper height maximum. He stated he did not want to consider a variance until there was a clear understanding which side of the fence the height should be measured from.

**Planning Commission Recommendation**

Motion by Commissioner Gooch, second by Commissioner Elsmore, to deny the request for a variance to allow a fence to exceed the maximum height of seven feet in a residential area, for the property located at 5975 Concord Boulevard, based on the fact that the fence could have been built in compliance with Code.

Motion carried (8/1 - Lissarrague). This item goes to the City Council on August 22, 2011.

**OTHER BUSINESS**

Chair Bartholomew adjourned the meeting at 7:59 p.m.

Respectfully submitted,

Kim Fox  
Recording Secretary