

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, July 3, 2012 – 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
Armando Lissarrague
Paul Hark
Victoria Elsmore
Tony Scales
Harold Gooch
Dennis Wippermann
Annette Maggi
Pat Simon

Commissioners Absent:

Others Present: Allan Hunting, City Planner

APPROVAL OF MINUTES

The minutes from the June 5, 2012 meeting were approved as submitted.

THOMAS ALCORN – CASE NO. 12-20V

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for a variance to allow a deck/landing to be located about 13 feet from the front property line whereas 24 feet is the minimum setback, for the property located at 3591 – 78th Street. 3 notices were mailed.

Presentation of Request

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the applicant is requesting a variance to allow a deck/landing 13 feet from the front property line whereas 24 feet is the required setback. The deck was constructed in the fall of 2011. A deck is considered a “structure” by code definition and all structures are required to meet setbacks. The code also has a provision which allows platforms or decks to encroach up to six feet into the front setback to allow for more flexibility. Staff recommends denial based on the rationale listed in the report.

Commissioner Lissarrague asked what the consequences would be to the homeowner if the request was denied.

Mr. Hunting stated that would be up to City Council to determine; however, they would have the option of asking the homeowner to remove the deck portions lying within the setback.

Commissioner Lissarrague asked for clarification of the six foot setback provision.

Mr. Hunting replied that Mr. Alcorn’s platform encroaches 17 feet into the front setback. Subtracting six feet for flexibility results in an 11 foot encroachment into the setback.

Commissioner Lissarrague asked how a resident would go about finding information regarding building a platform.

Mr. Hunting stated the information is available in the City Code. It would be best for individuals to contact the different departments to ask specific questions, which is what the City's website recommends.

Opening of Public Hearing

The applicant, Tom Alcorn, 3591 E. 78th Street, stated he hired a contractor last October to install the platform. The deck was close to completion when a Stop Work Order was posted by the City's Chief Building Official in November 2011. The project has sat dormant since that time. He advised that prior to building the deck he called the City and was told that a building permit would not be required because the deck was not attached to the house. His contractor thought he was building the deck according to code and was unaware there were any issues with its placement. Mr. Alcorn advised he was a construction safety inspector and therefore somewhat familiar with various codes and he felt this was acceptable as well. After receiving the Stop Work Order the applicant went to the City's website for information and felt that it was not user friendly. He then went to City Hall and was given a variance request, which he did not fully understand. He stated he did not have the supportive information he needed and there was a lot of confusion on his part. He stated he sent numerous emails asking for information and found there was no central person he could go to to get all the information he needed. Mr. Alcorn displayed a photo taken prior to the start of deck construction showing the areas affected by the street construction project. He advised that he opted to put in a deck versus patio stones, concrete etc. for ease of installation and to make the ground level, which was important to him and his aging mother and handicapped sister. He stated he initially started this project to correct a safety issue due to the depressions in his front yard from the City's construction project. Although the depressions in his yard were corrected earlier this year he would like to complete the platform in its current location.

Chair Bartholomew stated he was disappointed to hear of a resident having this kind of problem in our community, and he was concerned that his contractor was not aware of the City building requirements.

Chair Bartholomew asked if the applicant understood that he could have used asphalt, pavers, etc. to avoid the setback requirements.

Mr. Alcorn replied that he knows that now.

Commissioner Lissarrague asked for clarification of when the street work began and was completed.

Mr. Alcorn replied it began in May 2009 and was completed fall of 2009.

Commissioner Lissarrague asked for clarification of how Mr. Alcorn tried to get information.

Mr. Alcorn replied that he worked with the City engineer assigned to the project, talked with city representatives working in the area, and eventually started emailing various city employees.

Commissioner Simon asked if Mr. Alcorn had his plan reviewed by City officials at any time prior to starting the project.

Mr. Alcorn replied that he had not as it was not necessary.

Commissioner Simon asked if the applicant's builder provided him with a plan and if at any time he brought that plan to the City asking what corrections needed to be made.

Mr. Alcorn replied that he never received a plan showing the measurements of the deck.

Commissioner Gooch noted that the Stop Work Order was posted in November 2011 and he asked why the request was just now coming before the City.

Mr. Alcorn replied that he did not know if he wanted to go through the variance process or remove the platform. Eventually he opted to apply for a variance.

Commissioner Wippermann asked for clarification of how large the applicant's deck could be without a variance, noting that the current deck dimensions were 12' x 20'.

Mr. Hunting replied that in its current location next to the front stoop the applicant would be allowed a six foot wide platform without a variance.

Mr. Alcorn stated that a six foot wide deck would not accommodate the needs of his family members in wheelchairs.

Commissioner Gooch asked what the restrictions were for wheelchair ramp structures should the applicant decide to build a ramp going up to the house.

Mr. Hunting replied that the ramp area itself does not have to meet any setbacks. He advised that the provision in the code allowing for six feet of flexibility was actually put in place to provide accessibility to the front of the house. He advised that a platform must be 3 or 4 feet wide to be ADA compliant and then a couple extra feet were added to give some extra room for maneuverability. The intent was primarily for a handicapped person to gain access to the home rather than to utilize the front yard.

Commissioner Hark asked if the Planning Commission was allowed to factor in the needs of a handicapped homeowner when reviewing the request for consistency with the variance criteria.

Mr. Hunting replied that technically they were not as they should look at the property itself rather than the situation of the individual property owner.

Jackie Alcorn, 3591 – 78th Street, stated they chose to build a wooden platform rather than a patio because of the instability of their front yard. She asked what the purpose of the setback was.

Chair Bartholomew stated the purpose is to keep structures away from areas that the City may need to access.

Ms. Alcorn noted that many homes in her neighborhood had egress windows, rocks, or trees that fell within the setback.

Chair Bartholomew advised that landscaping is allowed in the setback as well as egress windows, awnings, etc.

Ms. Alcorn noted that a platform could be moved whereas trees could not.

Planning Commission Discussion

Chair Bartholomew stated he was disappointed to hear that Mr. Alcorn did not get the response and information he was looking for from the City and therefore was tempted to consider the practical difficulty to be the lack of information and support from the City and the contractor.

Commissioner Wippermann stated he did not feel it was the purview of the Planning Commission

to determine whether or not staff provided the applicant with the proper assistance; rather City Council would be the one to make such a determination.

Commissioner Lissarrague stated the City needs to address the issue of why a citizen was not able to find the necessary information from the neither the City's website nor from staff.

Commissioner Scales stated he agreed with Commissioner Wippermann that it was Council's purview to determine whether there was an issue with the City, and he noted that the Commission had only heard one side of the story. He stated he struggled with the fact that the applicant had taken so much time before applying for the variance.

Commissioner Gooch stated it seemed as though the applicant spent over two years trying to get the front yard fixed from the construction project, then after the two years it took to get it resolved he decided to put in a wooden structure for stability and safety. In his opinion a wooden structure was perhaps the only option available because of the sinking in the front yard.

Planning Commission Recommendation

Motion by Commissioner Wippermann, second by Commissioner Elsmore, to deny the request for a variance to allow a deck to be located about 13 feet from the front property line whereas 24 feet is the minimum setback, for the property located at 3591 – 78th Street., for the reasons listed in the staff report.

Motion failed (4/5 – Lissarrague, Simon, Maggi, Gooch, and Bartholomew).

Motion by Commissioner Gooch to approve the request for a variance to allow a deck to be located about 13 feet from the front property line whereas 24 feet is the minimum setback, for the property located at 3591 – 78th Street. He asked for discussion regarding the hardship.

Chair Bartholomew stated he had previously suggested the lack of support from City officials as a hardship; however, Commissioner Wippermann made a good point that that is not for the Planning Commission to determine.

Commissioner Simon suggested the lengthy amount of time it took to resolve his lawn issues and the fact that a wooden deck was the only practical solution to a yard that was sinking and settling.

Commissioner Elsmore stated her understanding of the statute was that it needed to be an ongoing practical difficulty, and in this case the front yard is no longer a problem as it has been repaired.

Commissioner Maggi questioned whether they could be confident that the problem was resolved as the sinking yard could continue to settle over time.

Commissioner Elsmore noted that the applicant stated the issue had been resolved.

Chair Bartholomew noted that the Commission seemed to be struggling with a practical difficulty and he stated the request could be forwarded on to City Council without a recommendation.

Commissioner Gooch withdrew his motion.

Commissioner Elsmore stated that sending this on with no recommendation would send the message to Council that this was a very difficult situation.

This item goes to the City Council on July 23, 2012 with no recommendation from the Planning

Commission.

VLADIMIR SIVRIVER – CASE NO. 12-21V

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for a variance to allow a new home five feet from the corner-front setback whereas 30 feet is required, for the property located north of 4904 Boyd Avenue. 5 notices were mailed.

Presentation of Request

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that this property was recently reviewed for a vacation of the north half of 49th Street abutting this lot. The applicant is now coming forward with plans to construct the home and is requesting a variance from setbacks to allow the house to be five feet from the street right-of-way. He explained the setbacks from the property line, stating the thought at that time was that if the right-of-way area was vacated then it was no longer a street and the setback would be measured from the property line. Engineering, however, recommended that if the street was to be vacated, a street easement of the same width should be created, plus an additional ten foot drainage and utility easement. Staff incorrectly assumed the corner lot situation would be eliminated and the setback could be closer to the vacated street since it no longer would be a street. The code, however, requires the same front yard setback from a road easement as well. Therefore, the buildable area of the lot would not increase and the setback would be measured as currently exists whether it is right-of-way or easement. The applicant is now requesting a variance from that existing property line. Staff recognizes that the width of this lot, being on a corner, is too narrow for a proper home and that some flexibility should be granted. Because the street vacation request was recommended with a condition that a ten foot easement be put in place along the road easement, staff does not support allowing the building a five foot setback that would encroach into this easement. Staff does recommend approval of the variance with a ten foot setback.

Chair Bartholomew stated there appeared to be ample room on the lot for the applicant to reconfigure their house plan and expand eastward to make up for the five feet off the south side.

Commissioner Wippermann asked if this was premature as the Council had not yet made a determination on the vacation request.

Mr. Hunting replied it was not premature as both the vacation and the variance would be looked at simultaneously at the July 9 meeting; and whether it was denied or approved with staff's recommendation they would be dealing with the exact same line from where the setback would be measured from. He advised the only change could be if Council recommended approval of the vacation without the ten foot drainage and utility easement.

Commissioner Wippermann asked how vacating the road right-of-way would benefit the property owner.

Mr. Hunting replied that the applicant would have more yard to utilize as green space.

Commissioner Gooch questioned why the City did not vacate the southern half of the street right-of-way at the same time as the northern half to avoid going through this process again with other landowners.

Mr. Hunting replied because they had not received a vacation application from the property owner to the south.

Commissioner Gooch asked if a vacation of the southern half would be automatically approved if the request for vacation of the northern half was approved.

Mr. Hunting replied that he could not guarantee that; however, it would seem reasonable to suspect that City Council would act similarly on both halves.

Chair Bartholomew asked if the City could take back the vacated right-of-way if the City should decide to put a road through in the future.

Mr. Hunting replied that staff is recommending the City retain a street easement over that area so they would still have rights to the property.

Opening of Public Hearing

The applicant, Vladimir Sivriver, stated they are requesting a variance for a five foot setback because that is what is needed to build their original architectural house plan.

Chair Bartholomew stated he could not find a practical difficulty to support the five foot setback.

Mr. Sivriver replied that the practical difficulty was that a five foot setback would be needed to accommodate the house as it was originally designed.

Chair Bartholomew stated that the house could be built eastward to make up for the lost space.

Mr. Sivriver advised there was a hill on the east side of the proposed house location.

Chair Bartholomew replied that many lots have hills and contractors are able to work around it. He asked what the setback would be if the City did not grant the vacation.

Mr. Hunting replied that the setback would be measured from the same point whether the vacation was granted or denied. The setback would be 30 feet from the lot line if the variance was not approved.

Mr. Sivriver stated they would not be gaining anything by getting the vacation.

Planning Commission Discussion

Commissioner Maggi asked if the lot would be too narrow for a home should the variance not be granted.

Mr. Hunting stated it was not necessarily unbuildable, but it would be too narrow to build a home similar to the typical design found along Brent Avenue. Because of this, staff is willing to support a 10 foot setback.

Planning Commission Recommendation

Motion by Commissioner Gooch, second by Commissioner Lissarrague to approve the request for a variance to allow a new home **ten** feet from the corner-front setback whereas 30 feet is required for the property located north of 4904 Boyd Avenue.

Motion carried (9/0). This item goes to the City Council on July 9, 2012.

OTHER BUSINESS

Mr. Hunting advised that the July 17 Planning Commission meeting has been cancelled due to lack

of agenda items. Also, because Night to Unite falls on August 7, Mr. Hunting asked if the Planning Commission would like to reschedule their meeting for that night to Thursday, August 9.

The Planning Commission agreed to reschedule their August 7 meeting to August 9.

Commissioner Hark requested that an email reminder be sent to Commissioners regarding this change.

Respectfully submitted,

Kim Fox
Recording Secretary