MEETING MINUTES (Final)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 12/28/2023

Submitted by Michael Kraemer – secretary

COMMISSIONERS PRESENT: –– Andy Sorenson - Chairman, Michelle Maiers-Atakpu, Michael Kraemer, Michael McKenzie, Joe Evans

COMMISSIONERS ABSENT: none

OTHERS PRESENT: Joe Becker, Storm Gregorich, Greg Liengswangwong, Ben Wickstrom, Rebecca Kellen

TO ORDER: Meeting called to order by Chairman Andy Sorenson at 7:01PM.

1. PUBLIC FORUM
   1. none
2. APPROVE AGENDA
   1. Motion by Maiers-Atakpu, 2nd by McKenzie to approve agenda. Vote: Yes -5 , No – 0. Motion to approve agenda passed.
3. REGULAR AGENDA
   1. Item A – Review/Approve Nov 30, 2023 Planning Commission Meeting Minutes as modified.
      1. Motion by Evans, 2nd by Kraemer, to approve the minutes. Vote: Yes – 5, No – 0, Motion to approve the minutes as modified passed.
   2. Item B – 23-05-VB (23 Birchwood Lane) Variance
      1. Public Forum
         1. Joe Becker from Rosebud Construction was present to answer questions on the proposed deck construction.
      2. Review Variance Application
         1. Ben Wickstrom – City Planner reviewed the variance application requested a variance from City Code *320.020 Structure Location Requirements – All Structures must be set back 50’ from the White Bear Lake Ordinary High-Water Level,* to allow the placement of a deck 14’deep by 24’wide deck, 11’ into the 50’ set back.
      3. Review City Planner Memo
         1. Finding of Fact – The property at 23 Birchwood Lane is a legal non-conforming structure on a sub-standard riparian lot (11,800 sf vs 15,000 sf) and includes non-conforming side yard setback on the east side (7’ vs 10’).
         2. Facts supporting approval of the variance include:
            1. House was listed as built in 1902 which precedes current City code.
            2. A lakeside deck is a reasonable request.
            3. The character of the neighborhood would not be significantly altered with approval of the variance.
            4. Neighborhood property values will not be diminished as a result of variance approval and construction of deck.
         3. Fact supporting denial of the variance include:
            1. A 14’ x 24’ deck is not reasonably sized for a deck that requires a variance.
            2. A deck of different configuration could be constructed to lessen the variance needs and still be considered useable space.
            3. The proposed deck stairway would encroach in the west side yard setback by an estimated 3’.
            4. Sight lines of the house to the west would be impacted with variance approval.
            5. Homes along Birchwood Lane in the vicinity of the subject property meet the house structure setbacks but not all the deck setbacks from the OHWL of White Bear Lake.
      4. Commission Finding of Fact
         1. Current code and current site conditions allow for a 3’ to 5’ deep deck to be constructed between lakeside of the house and the 50’ OHWL setback line.
         2. The house previously had a wraparound deck that was removed because of its condition.
         3. “Variance Findings Form” Responses
            1. *#1. Is the request in harmony with the general purpose and intent of the ordinance?*

Advisory Vote: Yes – 2, No – 3

Rationale: Since a variance is requested it is not in harmony with the ordinance.

* + - * 1. *#2. Would granting the variance be consistent with the comprehensive plan?*

Advisory Vote: Yes – 2, No – 3

Rationale: If city code is consistent with comprehensive plan, then if variance is required it is not consistent with comp plan.

* + - * 1. *#3. Are there special conditions or circumstances that are peculiar to the land, structure, or building involved?*

Advisory Vote: Yes – 4, No – 1

Rationale: The non-conforming lot and location of the house prior to adoption of current city code created site limitations unique to this site.

* + - * 1. *#4. Were the special conditions or circumstances created by the applicant’s action or design?*

Advisory Vote: Yes – 2, No – 3

Rationale: Current owner had nothing to do with the on-conforming conditions.

* + - * 1. *#5. Will granting the variance result in increase in the amount of water draining from the property?*

Advisory Vote: Yes – 0, No – 5

Rationale: Deck is proposed to be built to City pervious/impervious standards so no additional runoff should be created.

* + - * 1. *#6. Will granting the variance impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area or in any other aspect impair the public health, safety, or welfare of the residents of the City?*

Advisory Vote: Yes – 0, No - 5

* + - * 1. *#7. The variance must not be granted simply because there are no objections.*

Advisory Vote: Yes – 0, (Was status of objections a consideration in the review of the variance.) No -5.

Rationale: Commission deliberation and decisions were made without consideration of presence or absence of objections or support.

* + - * 1. *#8. Does reasonable use for the property exist under terms of the Zoning Code?*

Advisory Vote: Yes – 5, No – 0

Rationale**:** The owner could elect not to construct a deck.

*NOTE: Commissioner Michael McKenzie asked that the minutes reflect that he does not find the current Variance Findings Form helpful and would like effort put into revising the format to be more useful.*

* + 1. Commission Recommendation
       1. **Non-conforming Use Approval - 23 Birchwood Lane**
          1. Commission recommends the Council consider recognizing the existing substandard riparian lot and non-conforming side yard setbacks at 23 Birchwood Lane as “practical difficulties” (I.e. structure was in compliance with code in effect at time of construction) and consider the lot and structure as “legal non-conforming use” during consideration of variance request.
          2. Advisory Vote: Yes – 5, No – 0
       2. **OHWL 50’ Setback Variance Recommendation**
          1. The Commission recommends the Council deny the variance request 23-05-VB (23 Birchwood Lane) for a 14’ deep by 24’ wide deck and supporting stairway.
          2. Advisory Vote: Deny – 4, Approve – 1.
       3. **OHWL 50’ Setback Variance Re-submital** 
          1. The applicant may elect to revises and re-submit variance plan and application to reflect a maximum 10’ deep (house toward OHWL) by 24’ wide deck with a supporting stairway. The resulting deck encroachment into the 50’ OHWL setback encroachment line is estimated to be approximately 5’ on the west side and 7’ on the east side of the deck.

Rationale: Current code and current site conditions allow for a 3’ to 5’ deep deck to be constructed between lakeside of the house and the 50’ OHWL setback line. Allowing the installation of a functional deck at a maximum depth of 10’ versus 3’-5’ may be a practical compromise for the property**.**

Advisory Vote: Yes – 3, No -2. (Yes: Evans, McKenzie, Kraemer. No: Sorenson, Maiers-Atakpu)

Recommended Re-submittal Conditions include:

Resubmittal of site survey in readable format identifying revised deck location and layout. (I.e., side yard setback dimensions, location of 50’ OHWL)

Revised deck construction plans and details.

1. ADJOURN 8:54 PM
   1. Motion by Maiers-Atakpu, 2nd by Evans to adjourn meeting. Vote: Yes – 5, No – 0. Motion passed.