



AGENDA OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
February 23rd, 2023
7:00 P.M.

CALL TO ORDER

APPROVE AGENDA

REGULAR AGENDA

- A. Approve Jan26 PC Meeting Minutes* (pp. 2-5)
- B. Ordinance 2023-02-01* (p. 6-8)
 - 1. Review and discuss
 - 2. Make recommendation to approve, amend, or deny

ADJOURN

MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 1/26/2023

Submitted by Michelle Maiers-Atakpu – secretary (substitute)

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

COMMISSIONERS ABSENT: Michael Kraemer

OTHERS PRESENT: Steve Thatcher - City Engineer, Christopher Sullivan – Birchwood Resident, Dan Schmidt – Civil Engineer, Kyle Hunt – General Contractor, Mike Sharratt – Architect, Eric Stabnon – General Contractor, Justis McCarthy, Kevin Heisdorffer – 423 Wildwood, Debbie Herrod – 483 Lake Ave, Ryan Hankins – 183 Wildwood, Kathy Madore – 413 Lake Ave. Present via Zoom: Rachel Vassar, Laurie Hunt, Dr. Jim Barthel – 469 Lake Ave (Applicant).

CALL TO ORDER Meeting called to order by Chairman Andy Sorenson at 7:00 PM.

1. PUBLIC FORUM – none
2. APPROVE AGENDA
 - a. Evans moved to add proceed with Item D before Item C, as listed in the Regular Agenda. 2nd by Maiers-Atakpu. Vote: Yes – 4, No – 0. Motion to approve amended agenda passed.
3. REGULAR AGENDA
 - a. Item A – Appoint Secretary to take Minutes for this 1/26/2023 Meeting
 - i. Michelle Maiers-Atakpu was previously asked to act as secretary for this meeting.
 - b. Item B – Review/Approve December 1, 2022 Meeting Minutes
 - i. Motion by Maiers-Atakpu, 2nd by Sorenson. Evans suggested we amend item 3.b.iv with the following: “CUP for rooftop solar arrays are uncommon in other cities. They instead just utilize the building permit process.” Evans made motion, Sorenson 2nd, Vote: Yes - 4, No – 0, Motion to approve the corrected minutes passed.
 - c. Item C – Review Current Commissioner Terms
 - i. The list of Commissioners and their terms was reviewed by the Planning Commissioners present. Motion by Sorenson, 2nd by Evans to approve the list as correct, except with the following changes: For Michael McKenzie, remove “Secretary” from “Role” and change Ryan Hanson to Ryan Hankins under “Notes”. Vote: Yes - 4, No – 0, Motion to approve the List of Commissioner Terms, as amended, passed.
 - d. Item D – Review Variance Application 23-01-VB (469 Lake Ave)
 - i. Variance Application
 1. Overview
 - a. Variance Request #1 (Impervious Surfaces)
 - i. Commission Chairman summarized the Variance application for all present.

- ii. It was noted that on the Petition for Variance Application, item 6 (page 007 of the Planning Commission Meeting packet) which states that “the existing attached garage to remain” is not correct. It should read “the existing unattached garage to remain”.

- ii. Resident Feedback – open forum and letters
 1. Debbie Herrod, 483 Lake Avenue spoke stating that she and her husband support Dr. Barthel’s variance application. She noted that the house he plans to build is more in compliance with City and Building Codes than the current home. Additionally, she stated that it will add value to the neighborhood. She also noted that the lots plotted in 1853 are undersized by today’s standards, so variances should be granted to construct a home meeting today’s standards. Ms. Herrod and her husband are 100% in favor of the project.
 2. Kathy Madore, 413 Lake Avenue spoke stating that she concurs with Ms. Herrod’s comments and supports the variance application.
 3. Sorenson read the letter from Michael and Candace Kramer, included in the Planning Commission package. The Kramer’s are in support of the variance request.
 4. Sorenson read the letter from Susan and Larry Mahoney, attached to the Planning Commission package. The Mahoney’s are opposed to the variance request.
 5. Sorenson closed the Public Forum

- iii. City Engineer, Steve Thatcher’s Review and Supporting Documentation
 1. Thatcher noted that his review included assurance that the Applicant has satisfied the conditions of Zoning Code section 302.050 items A thru K. He also noted that the proposed mitigated rate and volume of stormwater run-off will be less than the current conditions, if the variance is approved.
 2. Kyle Hunt discussed the submitted mitigation calculations and noted that they are complicated and take time to review and understand.
 3. Maiers-Atakpu commented that the mitigation proposed may not matter if the Planning Commission does not agree that there is a “practical difficulty” in keeping to the 25% maximum impervious surface as required by the zoning code. It is her opinion that the amount of lot square footage devoted to garage is excessive for the lot size and is causing the need for the Impervious Surface variance.
 4. Sorenson asked for an explanation of why the Applicant has added row 9 to the City’s Standard Application table (page 008 of the Planning Commission Packet). Hunt noted that the standard table does not allow for mitigation calculations.
 5. Sorenson questioned whether item 11 of the application should be check as “No”, rather than “Yes” as selected by the Applicant. Sorenson does not believe that Fire Trucks or Ambulances will be able to navigate the narrow driveway, between the existing garage and the neighbor’s garage. Hunt noted that Emergency vehicles are not required by code to drive onto the property to provide emergency services – the existing site construction does not currently

have room for access. Sorenson believes that improvements to the property should improve the situation and allow for emergency vehicle access onto the property.

6. Maiers-Atakpu read the meeting minutes from the 3/8/22 City Council meeting, where the Council “voted to deny the Applicants previous variance request for impervious surface on the basis that it does not meet practical difficulty and exceeds 25% impervious surface as per city code.” She further noted that the Application at that time proposed an “impervious surface of 29.56% and 42.7% including the pervious pavers.” And that “Mayor Wingfield reminded the Council that an impervious surface of over 35% has not been historically permitted by the Council. The application is incompatible with the city’s open space, values, and the Council’s decisions in the past. Mayor Wingfield expressed concern regarding setting a precedent and reiterated that the Council imposed a standard to deny any variance request over 25% impervious surface.” Hunt noted that the current application has been updated so that the impervious surface (without mitigation) is actually 28.2%. McKenzie noted disagreement with Mayor Wingfield’s concern about setting a precedent.
7. Sharrett reiterated all the practical difficulties of the site. Maiers-Atakpu noted that 3 variances have already been approved by the City Council to accommodate the fact that the property is a “non-conforming site”. However, the property is large enough to construct a residence keeping to the 25% impervious surface limitation. Excessive garage square footage is causing the impervious surface to exceed 25%. Evans commented that even if one can physically mitigate all the runoff, should that be the case? Thatcher noted that the existing impervious driveway – between the road and the existing garage – is perhaps the problem in that it takes the impervious surface calculation over 25% by 421 sq. ft. Schmidt noted that there is not 3 feet of separation between this area of the property and the ordinary high water mark, so pervious pavers cannot be used. Evans wondered if that situation actually poses a practical difficulty.
8. Sorenson asked Hunt to reiterate the practical difficulties that the property poses to the Applicant. Hunt noted that that question should be addressed to the Applicant, Dr. Barthel. Sorenson addressed Dr. Barthel asking the same question. Barthel noted that as he ages, having an attached garage is necessary. He further commented on the question of emergency vehicle access, noting that shrubs on the property line, along the driveway will be removed, improving the space between his existing garage and the neighbor’s garage. He further noted that he will be vastly improving the structures on the property – the current residence had problems with mold and rodents. It has outlived its useful life and needs to be replaced. Aesthetic improvement of the property will be significant. He noted that he has engaged a wonderful building team to construct a quality home. Further, the proposed mitigation will improve the impervious/pervious ratio of the property. That said, since 1998 when Barthel purchased the property, he has not experienced stormwater run-off problems. He noted that

there are many homes along Lake Avenue that are not in compliance with City Zoning – due to the narrowness of the lots in that area of Birchwood.

- iv. Original Documentation Received.
 - 1. Initial documentation that was received but was resubmitted at a later date and replaced by documents in the agenda packet page 21-107.
- v. Complete Variance Findings Form
 - 1. The Commissioners reviewed the Variance Findings form with the following results:
 - a. #1 – Sorenson, Evans and Maiers-Atakpu “Is Not”. McKenzie “Is”
 - b. #2 – Sorenson - “Is Not” impervious surface over 25%; Evans – “Is” because the granting of a variance would meet the City’s comprehensive code because it betters the property; McKenzie – “Is Not” because 25% impervious surface is a hard and fast rule; Maiers-Atakpu - “Is Not”, impervious surface over 25%.
 - c. #3 – Sorenson and Maiers-Atakpu “Are Not”. Evans and McKenzie “Are”
 - d. #4 – Sorenson, Evans, McKenzie and Maiers-Atakpu “Were”.
 - e. #5 – Sorenson, Evans, McKenzie and Maiers-Atakpu “Will not”.
 - f. #6 – Sorenson, Evans, McKenzie and Maiers-Atakpu “Will not”.
 - g. #7 – Sorenson, Evans, McKenzie and Maiers-Atakpu “No”.
 - h. #8 - Sorenson and Maiers-Atakpu “Does”. Evans and McKenzie “Does not”
 - i. What is your decision: Sorenson and Maiers-Atakpu “Deny”. Evans and McKenzie “Approve”
 - j. If approved, what conditions would you impose? Evans – maintenance agreement (it was noted that a maintenance agreement would already be part of a variance); McKenzie – none.

vi. **Commission Action:**

- 1. The advisory motion is split – 2 to deny, 2 to approve.

4. ADJOURN 9:10 PM

- a. Motion by Sorenson, 2nd by McKenzie to adjourn meeting. Vote: Yes – 4, No – 0. Motion passed.

Memo by Margaret Ford, 2/7/2023

Revision of 301.070

The ordinance 301.070 governing conditional uses applies to those uses that have greater than usual chances of creating safety hazards, impact on neighboring people and property, and nuisance situations.

Under 301.070

1.e. A conditional use permit is required for any solar energy systems for heating, cooling, electrical generation or other purposes. This ordinance was written when solar energy systems intruded on open spaces. Residential solar panels that attach and are within the bounds of the roof surface should not require a conditional use permit and should be exempt from this provision.

Therefore, I propose the following ordinance:

An ordinance amending section 301.070 Zoning code conditional uses.

The City Council of Birchwood village hereby ordains that section .070 1e of chapter 301 of the Municipal Code of the City of Birchwood village is hereby revised to read:

e. Solar energy systems for heating, cooling, electrical generation or other purposes. Residential solar panels that attach and are within the bounds of the roof surface do not require a conditional use permit and are exempt from this provision.

ORDINANCE 2023-02-01

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

AN ORDINANCE AMENDING SECTION 301.070 METERS

The City Council of the City of Birchwood Village hereby ordains that Section 301.070 (Meters) of the Municipal Code of the City of Birchwood Village is hereby amended to read as follows:

301.070. CONDITIONAL USES. Certain accessory uses permitted within the City have greater than usual chances to present safety hazards, impact on neighboring people and property, and nuisance situations. Because of these greater effects, the City requires these uses to be covered under Conditional Use Permits. Applications for Conditional Use Permits must comply with all provisions of Section 306. **CONDITIONAL USE PERMITS.**

1. A Conditional Use Permit shall be required for the following projects:

- a. Any land disturbance activity where the slope is toward a lake, pond, wetland, or watercourse leading to such waters, and the alteration is closer to such waters than the structure setback requirement. See Note at end of Section 301.070.
- b. Any land disturbance activity where such work involves an area greater than four hundred (400) square feet and/or more than fifty (50) cubic yards in volume. See Note at end of Section 301.070.
- c. Any swimming pool with a capacity over three thousand (3000) gallons or with a depth of over three and one-half (3 1/2) feet of water.
- d. Any tennis court.

e. Solar energy systems for heating, cooling, electrical generation or other purposes. Residential solar panels that attach and are within the bounds of the roof surface do not require a conditional use permit and are exempt from this provision.

~~e. Any solar energy system for heating, cooling, electrical generation or other purposes.~~

This ordinance becomes effective from and after its passage and publication.

Passed by the City Council of The City of Birchwood Village, Minnesota this ____ day of Month, Year.

Margaret Ford, Mayor

Attested:

Rebecca Kellen, City Clerk-Administrator