



AGENDA OF THE PLANNING  
COMMISSION  
CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA  
January 25th, 2023  
7:00 P.M.

**CALL TO ORDER**

**PUBLIC FORUM**

**APPROVE AGENDA**

**REGULAR AGENDA**

- A. Approve December 28 2023 PC Meeting Minutes\* (pp. 2-5)
- B. Review Draft of Permit, CUP, and Variance Process Document\* (pp. 6-9)
- C. Review and Update Variance Findings Form\* (pp. 10-13)

**ADJOURN**

\* Denotes items that have supporting documentation

MEETING MINUTES (Draft)

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

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

1. PUBLIC FORUM
  - a. none
2. APPROVE AGENDA
  - a. Motion by Maiers-Atakpu, 2<sup>nd</sup> by McKenzie to approve agenda. Vote: Yes -5 , No – 0. Motion to approve agenda passed.
3. REGULAR AGENDA
  - a. Item A – Review/Approve Nov 30, 2023 Planning Commission Meeting Minutes as modified.
    - i. Motion by Evans, 2<sup>nd</sup> by Kraemer, to approve the minutes. Vote: Yes – 5, No – 0, Motion to approve the minutes as modified passed.
  - b. Item B – 23-05-VB (23 Birchwood Lane) Variance
    - i. Public Forum
      1. Joe Becker from Rosebud Construction was present to answer questions on the proposed deck construction.
    - ii. 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.
    - iii. 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:
        - a. House was listed as built in 1902 which precedes current City code.

- b. A lakeside deck is a reasonable request.
  - c. The character of the neighborhood would not be significantly altered with approval of the variance.
  - d. 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:
- a. A 14' x 24' deck is not reasonably sized for a deck that requires a variance.
  - b. A deck of different configuration could be constructed to lessen the variance needs and still be considered useable space.
  - c. The proposed deck stairway would encroach in the west side yard setback by an estimated 3'.
  - d. Sight lines of the house to the west would be impacted with variance approval.
  - e. 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.
- iv. 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
    - a. #1. *Is the request in harmony with the general purpose and intent of the ordinance?*
      - i. Advisory Vote: Yes – 2, No – 3
      - ii. Rationale: Since a variance is requested it is not in harmony with the ordinance.
    - b. #2. *Would granting the variance be consistent with the comprehensive plan?*
      - i. Advisory Vote: Yes – 2, No – 3
      - ii. Rationale: If city code is consistent with comprehensive plan, then if variance is required it is not consistent with comp plan.
    - c. #3. *Are there special conditions or circumstances that are peculiar to the land, structure, or building involved?*
      - i. Advisory Vote: Yes – 4, No – 1

- ii. Rationale: The non-conforming lot and location of the house prior to adoption of current city code created site limitations unique to this site.
- d. *#4. Were the special conditions or circumstances created by the applicant's action or design?*
  - i. Advisory Vote: Yes – 2, No – 3
  - ii. Rationale: Current owner had nothing to do with the on-conforming conditions.
- e. *#5. Will granting the variance result in increase in the amount of water draining from the property?*
  - i. Advisory Vote: Yes – 0, No – 5
  - ii. Rationale: Deck is proposed to be built to City pervious/impervious standards so no additional runoff should be created.
- f. *#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?*
  - i. Advisory Vote: Yes – 0, No – 5
- g. *#7. The variance must not be granted simply because there are no objections.*
  - i. Advisory Vote: Yes – 0, (Was status of objections a consideration in the review of the variance.) No -5.
  - ii. Rationale: Commission deliberation and decisions were made without consideration of presence or absence of objections or support.
- h. *#8. Does reasonable use for the property exist under terms of the Zoning Code?*
  - i. Advisory Vote: Yes – 5, No – 0
  - ii. 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.*

- v. Commission Recommendation
  - 1. **Non-conforming Use Approval - 23 Birchwood Lane**
    - a. 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.

b. Advisory Vote: Yes – 5, No – 0

2. **OHWL 50’ Setback Variance Recommendation**

a. 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.

b. Advisory Vote: Deny – 4, Approve – 1.

3. **OHWL 50’ Setback Variance Re-submittal**

a. The applicant may elect to revise 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.

i. 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.

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

iii. Recommended Re-submittal Conditions include:

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

2. Revised deck construction plans and details.

4. ADJOURN 8:54 PM

a. Motion by Maiers-Atakpu, 2<sup>nd</sup> by Evans to adjourn meeting. Vote: Yes – 5, No – 0. Motion passed.

# Permit, CUP and Variance Process Documentation

## PERMIT PROCESS FOR

### Building, Mechanical, Plumbing, Sewer & Water, and Zoning Permits

#### 1. APPLICANT INITIATES PERMIT REGISTRATION ONLINE

Applicant registers online to gain access to our permitting portal.

#### 2. ADMIN ACCEPTS APPLICANT REGISTRATION

Admin must accept applicants' registration before the applicant can proceed.

Once accepted, the applicant receives an email notice of registration approval

#### 3. APPLICANT COMPLETES PERMIT ONLINE AND SUBMITS

The completed permit will arrive in our Admin permit portal.

#### 4. ADMIN REVIEWS PERMIT

A. Birchwood Admin reviews the application for needed details for processing

Those details may include any of the following.

Insurance Certification-required and must be current

Contractor License Number-required and must be verified

Drawings-specific and detailed

Pictures

Survey

#### 5. PERMIT IS APPROVED BY ADMIN

All required forms and information are complete

#### 6. ADMIN FORWARDS TO INSPECTOR FOR REVIEW AND APPROVAL

Inspector reviews permit, verifies fees, marks drawings, stamps and dates their approval

***Note: Inspector may request engineering review. Admin then refers the requests on to engineering and Admin oversees the outcome. Once complete, then the permit is approved***

#### 7. UPON INSPECTOR APPROVAL-REQUEST PERMIT PAYMENT FROM APPLICANT

Payment may be made in the form of a check or credit card.

## **8. ISSUE PERMIT TO APPLICANT**

Upon receipt of payment, forward permit application to include all required forms.

**Forms are;** permit, payment receipt, , certificate of insurance, record card, and marked drawings

## **9. APPLICANT REQUESTS BOTH ROUGH IN AND FINAL INSPECTIONS**

## **10. INSPECTOR PROVIDES FINAL INSPECTION CARD TO BIRCHWOOD**

# **CONDITIONAL USE PERMIT (CUP) PROCESS**

## **1. APPLICANT REGISTRATION**

Applicant registers online to gain access to our permitting portal.

## **2. BIRCHWOOD ADMIN ACCEPTS REGISTRATION**

Birchwood admin accepts/approves the registration request for the applicant.

Once approved, the applicant receives a notice and can create their permit.

The permit site will direct the specific needs for the permit type for the applicant.

## **3. APPLICANT COMPLETES PERMIT ONLINE AND SUBMITS**

The completed permit will arrive in the permit portal.

## **4. PERMIT REVIEWAL PROCESS BY BIRCHWOOD ADMIN—ESTABLISH NEEDS**

A. Birchwood Admin reviews the application for needed details to process

Those details may include any of the following.

Insurance Certification-required and must be current

Contractor License Number-required and must be verified

Drawings

Pictures

Survey

Engineering or Planning Review and approval

RCWD Involvement

## **5. PERMIT REVIEWAL PROCESS BY CITY PLANNER**

Planner reviews the permit for completeness.

If incomplete administration reaches out to applicant for required information.

If complete move on to step 6.

#### **6. ADMINISTRATION NOTIFIES NEIGHBORS AND DOES PUBLIC ANNOUNCEMENT.**

Letters to neighbors within 300 feet are to be sent at least 10 days before planning commission review.

Public notification in the newspaper completed at least 10 days before planning commission review.

#### **7. CITY PLANNER COMPLETES PLANNER REVIEW IN PREPARATION OF THE PLANNING COMMISSION MEETING.**

#### **8. PLANNING COMMISSION REVIEW**

The planning commission reviews the application and city planner's assessment.

The planning commission makes a recommendation to the city council.

#### **9. CITY COUNCIL REVIEW**

The city council, at its next meeting, will review the recommendation of the planning commission to approve the conditional use permit.

#### **10. CUP IS APPROVED.**

City Administration informs the applicant that the CUP has been approved.

### **VARIANCE PROCESS**

#### **1. VARIANCE APPLICATION IS RECEIVED**

City Administration receives variance application and payment.

#### **2. REVIEW OF VARIANCE APPLICATION**

City Planner reviews application for completeness.

If complete, move to step 3. If not then city administration reaches out to applicant to request additional information. Once all required information is received, move to step 3.

#### **3. ADMINISTRATOR NOTIFIES THE APPLICANT THAT THEY ARE GOING TO INVOKE THE 60 DAY EXTENSION.**

#### **4. ADMINISTRATION NOTIFIES NEIGHBORS AND DOES PUBLIC ANNOUNCEMENT.**

Letters to neighbors within 300 feet are to be sent at least 10 days before planning commission review.

Public notification in the newspaper completed at least 10 days before planning commission review.

#### **5. CITY PLANNER COMPLETES PLANNER REVIEW IN PREPARATION OF THE PLANNING COMMISSION MEETING.**

#### **6. PLANNING COMMISSION REVIEW**



The planning commission reviews the application and city planner's assessment.

The planning commission makes a recommendation to the city council.

#### **7. CITY COUNCIL REVIEW**

The city council, at its next meeting, will review the recommendation of the planning commission to approve the variance or not.

#### **8. VARIANCE IS APPROVED OR NOT.**

City Administration informs the applicant whether the variance has been approved or not.

#### **9. IF VARIANCE APPROVED**

Applicant completes a permit application for work to be completed. See Permit Process.



# BIRCHWOOD VILLAGE

## Variance Findings Form

EACH OF THE FOLLOWING CRITERIA MUST BE SATISFIED TO APPROVE

### #1: Is the request in harmony with the general purposes and intent of the ordinance?

The specific Ordinance states \_\_\_\_\_  
(state ordinance requirement), the purpose of which is to \_\_\_\_\_  
\_\_\_\_\_ (explain what the ordinance requirement is intended to prevent or protect).

The proposed variance is for: \_\_\_\_\_  
\_\_\_\_\_ (explain proposal and potential effects).

This variance is/is not in harmony with the purpose and intent of the specific Ordinance because: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (explain how the proposal is in harmony with or undermines the purpose of the ordinance).

### #2: Would granting the variance be consistent with the comprehensive plan?

The Comprehensive Plan contains the following policies and goals regarding this request: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (list applicable policies, goals, and maps, including citations).

Granting the variance is/is not consistent with the comprehensive plan because: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (explain how; relate details of the request to specific policies, goals, and maps).

### #3: Are there special conditions or circumstances that are peculiar to the land, structure, or building involved?

There are/are no circumstances unique to the property that would prevent compliance with the specific Ordinance because: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(describe any physical characteristics of the land that are unique to this property that prevent compliance with the ordinance requirement, and whether the applicant has demonstrated that no other reasonable alternative exists that would comply with the ordinance; explain what makes this property different from other properties to justify why this applicant should be able to deviate from the ordinance when others must comply).

**#4: Were the special conditions or circumstances created by the applicant's action or design solution?**

The conditions that resulted in the need for the variance **were/were not** created by the applicant **because:**

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\_\_\_\_\_ (if there are special conditions or circumstances, describe whether they were created by some action of the applicant/property owner).

**#5: Will granting a variance result in any increase in the amount of water draining from the property?**

Granting the variance **will/will not** increase the amount of water that drains from the property **because:**

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\_\_\_\_\_ (if granting the variance will increase the amount of water that drains from the property, explain how and how much it will increase).

**#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 respect impair the public health, safety, or welfare of the residents of the City?**

Granting the variance **will/will not** impair light and air to adjacent property, or diminish or impair property values in the area, or impair the public health, safety, or welfare of Birchwood residents **because:**

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\_\_\_\_\_ (if granting the variance could be detrimental to neighbors or other Birchwood residents, explain how).

**#7: A variance must not be granted *simply because there are no objections or because those who do not object outnumber those who do?***

Has this variance been granted only because of the number of objections to the request:  Yes  No

Explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (If you believe that the decision has been determined simply because of the number of supporters or objections, explain how).

**#8: Does reasonable use for the property exist under terms of the Zoning Code?**

Reasonable use for the property **does/does not** exist under terms of the Zoning Code **because:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (Describe how the Zoning Code does or does not allow for reasonable use of the property. If reasonable use of the property *does* exist under terms of the Zoning Code, the applicant's financial gain or loss shall not be considered in your decision).

***What is your decision? (Approve or Deny)***

\_\_\_\_\_

\_\_\_\_\_

**Remember - ALL criteria MUST be satisfied to approve.**

***If approved, what conditions will you impose?*** (Findings must support the conditions; explain the impacts of the proposed development and the conditions that address those impacts. Remember that findings must be directly related and proportional to the impacts created by the variance. Set specific timeframes and deadlines, and consider requiring the following to help ensure compliance with the conditions:

- *financial sureties to ensure that the required activities are completed within specified deadlines,*
- *as-built drawings and/or photos as proof of completion within the terms of the conditions, and/or*
- *long-term maintenance and operation agreements for stormwater best management practices and vegetation that must be protected or restored as a condition of approval, along with notices of restrictions recorded against properties to ensure that future property owners are aware of their responsibilities and don't unknowingly "undo" any conditions.)*

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