



AGENDA OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
June 22th, 2023
7:00 P.M.

CALL TO ORDER

PUBLIC FORUM

APPROVE AGENDA

REGULAR AGENDA

- A. Approve May 25, 2023, Planning Commission Meeting Minutes*(pp.2-6)
- B. Setback Amendment*(pp.7-10)

ADJOURN

* Denotes items that have supporting documentation

MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 5/25/2023

Submitted by Michael Kraemer – secretary

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

COMMISSIONERS ABSENT

OTHERS PRESENT: Council Member – Justin McCarthy, Council Member – Ryan Hankins, Sue Reiss, Al Reiss, Ellen Maas, Kenneth Mass, Jamie Heisdorffer, Kevin Heisdorffer, John Berg, Ben Wikstrom – New City Consulting Planner, Rebecca Kellen – City Administrator, Ann Tessler, Swan Mercer, Lucy Voltz, Jim Berg, Judy Berg, John Berg

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

1. PUBLIC FORUM – No one present
2. APPROVE AGENDA
 - a. Maiers-Atakpu, moved, 2nd by McKenzie, to approve the agenda as presented.
Vote: Yes – 5, No – 0. Motion to approve agenda passed.
3. REGULAR AGENDA
 - a. Item A – Review/Approve April 27, 2023, Meeting Minutes
 - i. Motion by McKenzie, 2nd by Evans to approve the minutes. Vote: Yes – 5, No – 0, Motion to approve the minutes passed.
 - b. Item B - Introduction of Ben Wikstrom – Newly hired consulting City Planner
 - c. Item C – 2023-02-VB (127 Wildwood Ave) Variance.
 - i. Public Forum –
 1. Sue Riess presented a handout to the Commission that included:
 - a. Photo of existing deck at lake shore proposed to be removed.
 - b. Enlarged plat showing location of existing house, existing deck at the lake, and site of proposed deck to be added on house.
 - c. “Areas Planned for Change or Redevelopment” segment from City 2040 Comprehensive Plan
 - d. DNR – Healthy Shorelines paper from MNDNR discussing what a Shore Impact Zone.
 2. Sue Riess discussed following:
 - a. Existing deck is too close to OHW. (8 feet away from OHW)
 - b. Existing deck abuts and sits on the common north property line.

- c. Proposed new deck attached to remodeled house would be 35 feet from OHW (City code requires 50')
 - 3. Sue Riess offered following comments on why City Engineer – Steve Thatcher’s review memo comments were incorrect.
 - a. Engineer’s comments that the relocated deck was not in harmony with City ordinance and not consistent with the comprehensive plan was incorrect in that the relocated deck would solve some of the property line setback requirements and eliminate the existing structure within the OHW.
 - b. She stated that since the existing remodeled house was non-conforming (I.e. within 50’ of OHW) the only way for any deck on the lake side of the house could be conforming was by variance.
 - 4. Lucy Voltz spoke in opposition to the granting of the variance. She indicated the following points:
 - a. The structure at 127 Wildwood Ave. has always been close to the bluff line.
 - b. She felt the addition of the deck on the lake side of the structure would impact the sight lines from their property which is the lot to the north of 127 Wildwood Ave since their house honors the 50 foot set back from the OHW.
 - 5. Ellen Maas spoke in opposition to the granting of the variance and asked why the deck location and setbacks were not taken into consideration when the existing structure reconstruct occurred over the past year. She stated the lower deck on the water is not a visual impact because of the elevation of the slope, but the addition of the deck on the house would be.
 - 6. Ken Maas spoke in opposition to the granting of the variance indicating the addition of a 26’ x 9.5’ deck on the lake side of the house is not a small deck especially given the bluff line is 6’ to 11’ away.
 - 7. Closed Public Hearing at 7:37.
- ii. Review Variance Application
 - 1. Commission Finding of Fact
 - a. The existing deck and the proposed deck relocation to the lakeside of the house are both in violation of City Code 302.020 Structure Location Requirements.
 - b. The existing deck falls within the DNR and the City’s Shore Impact Zone and the Bluff Impact Zones.

- c. The existing deck could qualify to be grandfathered in for potential rehabilitation and repair.
- d. The Planning Commission agrees with the property owner that the removal of the deck down at the waterfront would be a benefit to the aesthetics of the White Bear Lake lakeshore.

iii. Discussion and Recommendations to City Council

1. Commission Recommendation's.

- a. The granting of the variance is in harmony with the city ordinance. Advisory Vote: Is Not – 4, Is – 1.
- b. The granting of the variance is consistent with the Comprehensive Plan. Advisory Vote: Is Not – 4, Is – 1
- c. Are the circumstances unique to the property? Advisory Vote: Is unique – 2, Is not unique – 3
- d. Where the circumstances created by the applicant's actions? Advisory Vote: Yes – 5. No – 0
- e. Does reasonable use exist under the code? Advisory Vote: Yes – 5, No – 0
- f. **PLANNING COMMISSION ACTION. The Commission recommends deny the variance because of none compliance with City code and availability of reasonable uses under city code. Advisory Vote: Yes – 5, No -0**

d. Item D – 2023-04-VB (423 Wildwood Ave) Variance.

i. Public Forum

- 1. John Berg – 429 Wildwood Ave spoke in favor of the development and granting of the variance.
- 2. Jim Berg – 419A Wildwood Ave spoke and indicate he was generally in favor of the granting of the variance provided the contours and access to his property remained in place and as is.
- 3. Jonathan Fleck – 400 Wildwood submitted a letter in opposition to the granting of the on the basis of safety concerns non-code shorter driveway lengths.

ii. Review Variance Application

- 1. Property owners Kevin and Jamie Heisdorffer presented their application.
- 2. The Heisdorffer's indicated they attempted to match the nature of the neighborhood wherein due to aggressive slopes the houses sit below the garages on the lot.
- 3. The aggressive lot slope created challenges to meet the City building height restriction code which they achieved

4. The Heisdorffer's had worked with Steve Thatcher to work up options for creation of a pervious paver system. No details were provided with the application and must be checked to see if compliance with the City's Impervious Surface code needs a separate variance application.
 5. Kevin Heisdorffer submitted an email dated 2:26 PM, May 23, 2023 rescinding the request for variance on the north property line setback. They indicated they will comply with the code required 10' setback.
- iii. Comments by City Planner
1. City Planner - Ben Wickstrom that he had review the proposed plan indicating the following:
 - a. Proposed detached 3-car garage and loft style house was a reasonable use for a difficult site.
 - b. He felt it was the best option for the site and did not change the character of the neighborhood.
 - c. The need to work with the 35' change in elevation of the site created unique challenges to the site.
 - d. "Set-back averaging" proposed of the site was commonly done.
- iv. Discussion and Recommendations to City Council
1. Commission Finding of Fact
 - a. The granting of the variance is in harmony with the city ordinance. Advisory Vote: Is Not – 4, Is – 1.
 - b. The granting of the variance is consistent with the Comprehensive Plan. Advisory Vote: Is Not – 4, Is – 1
 - c. Are the special circumstances unique to the property? Advisory Vote: Is unique – 5, Is not unique – 0
 - d. Where the circumstances created by the applicants' actions? Advisory Vote: Yes – 5. No – 0
 - e. Does reasonable use exist under the code? Advisory Vote: Yes – 5, No – 0
 - f. **PLANNING COMMISSION ACTION. Motion by Sorenson and 2nd by Maiers-Atakpu, to recommend approval of the Variance with conditions. Advisory Vote: Yes – 5, No -0**
 2. **Conditions of Support**
 - a. Modify the variance to require a 30' structure setback from the street ROW
 - b. The pervious paver system design and construction and perpetual maintenance agreement (which is to be registered with the property) shall be reviewed by and get

the approval of the City Planner and City Engineer before the variance application goes before the City Council for consideration.

c. Advisory Vote: Yes – 5, No – 0.

e. Item E – Solar Panel Proposed Ordinance Review

i. Review and Discussion

1. The Commission reviewed the sample revised Solar Ordinance submitted by Council Member Hankins. We applaud Councilor Hankins effort to make city code as thorough as possible

ii. Discussion and Make Recommendation to City Council

1. **PLANNING COMMISSION ACTION:** The Commission recommends adoption of the Solar Ordinance with Commission edits by the City Council. Advisory Vote: Yes – 5, No -0.

f. Item F – New Variance Application Form Review

i. Review and Discussion:

1. The Commission reviewed a sample revised Variance Application form submitted by Council Member Hankins. We applaud Councilor Hankins effort to make city forms as simple and useful as possible.

2. **PLANNING COMMISSION ACTION:** It was suggested the proposed Variance Application form be submitted to the new City Planner for review and input and then brought back to the Planning Commission for review.

4. ADJOURN 9:27 PM

a. Motion by Evans, 2nd by McKenzie to adjourn meeting. Vote: Yes – 5, No – 0.
Motion passed.

To: Planning Commission
From: Justin McCarthy, City Council.
Re: Setback requirements.

Dear members of the Planning Commission. Please find below the attached proposal to amend the city setbacks. I believe that the current 40 foot front setback is extreme and in my conversations with folks in the City, nobody seemed to have an answer as to why the setbacks were so large other than “that’s the way they have always been.”

In my surveys of White Bear Lake, White Bear Township, Mahtomedi, and other communities it seems that 30 feet is more common and accepted. Thus, I have changed the street setbacks to 30 feet. In addition, for corner lots, it seems like folks on corner lots are particularly hit hard. In addition to reducing the setback from 40 feet to 30 feet, I have added a section in the code that allows for reducing the setback an additional 5 feet for one of the street setbacks of a corner lot. That is, from 30 to 25 feet for one side. This is conditioned on there being sufficient off-street parking for 4 cars (not including garage parking).

This condition ensures that corner lots do not build so close to the street as to need to regularly utilize on-street parking – which may be especially dangerous on corner lots where visibility for turning around these parked cars may be impaired, or where parking may not be legally allowed at all.

Please provide me with your feedback and/or comments. The exact language of the proposed amendments to 302.020 are given below.

Thanks
Justin

302.020. STRUCTURE LOCATION REQUIREMENTS

1. GENERAL REQUIREMENTS. All structures must be located so that minimum setback requirements are met or exceeded. All measurements (in feet) as set forth below shall be determined by measuring from the foundation of the appropriate structure perpendicular to the appropriate lot line.

Exceptions: Front, back, side street and other lot line setback requirements shall not apply to chimneys, flues, belt courses, sills, pilasters, lintels, ornamental features, cornices, eaves, gutters, and the like, provided they do not project more than two (2) feet into a required yard setback.

2. MINIMUM SETBACK REQUIREMENTS:

<u>Lot line or Land Boundary</u>	<u>TYPE OF STRUCTURE</u>		
	<u>Fences</u>	<u>Driveways & Walkways</u>	<u>All Other Structures</u>
Municipal Street Front, Back, and Side	20 ft.	0	40 ft. <u>30 ft.</u>
County Road Front, Back, and Side	20 ft.	0	50 ft. <u>30 ft.</u>
Ordinary High Water Level of Lost Lake	75 ft.	75 ft.	75 ft.
Ordinary High Water Level of White Bear Lake, Hall's Marsh, and other wetlands	50 ft.	50 ft.	50 ft.
All Other Lot Lines	0 ft.	1 ft.	10 ft.

The ordinary high water levels of three water bodies have been established to be the following:

ORDINARY HIGH WATER LEVELS (Feet Above Mean Sea Level)

DNR ID #82-167	White Bear Lake	924.7 (NGVD, 1929)
DNR ID #82-134	Lost Lake	925.6 (NGVD, 1929)
DNR ID #82-480W	Hall's Marsh	924.7 (NGVD, 1929)

3. ACCESSORY STRUCTURES. No accessory building or structure, unless an integral part of the principal structure shall be erected, altered, or moved to, within five (5) feet of the principal structure except fences, driveways, walkways, and decks which may be as close as actually abutting the principal structure.

4. SETBACK REQUIREMENTS EXCEPTIONS.

- a. Dock and Pier Setbacks: Setback requirements from the ordinary high water levels shall not apply to piers and docks. Locations of piers and docks shall be controlled by applicable state and local regulations.
- b. Retaining Wall Setbacks: Front, back, side street and other lot line setback requirements shall not apply to retaining walls except that the ordinary high water level setback requirements shall apply to retaining walls.
- c. Nominal Structures: Front, back, side street and other lot line setback requirements shall not apply to nominal structures such as small arbors, moveable yard furniture, moveable docks, storage boxes, dog houses, mail boxes, library small boxes, lock boxes, flagpoles, lawn ornaments and other similar items, which shall be exempt from setback regulations, but not including decks, platforms, or shelters such as pergolas.
- d. Corner Lots: Corner lots may deduct an additional 5 feet from the minimum structure setback requirements 302.020(2) from municipal streets or county roads for either the front or side yard, provided that sufficient parking exists for 4 cars off-street, not including garage spaces.

“AMENDED BY ORDINANCE 2013-08-01; AUGUST 13, 2013.”

“AMENDED BY ORDINANCE 2021-01-01; FEBRUARY 9, 2021”

5. STRUCTURES IN WETLANDS. No structures are allowed within any wetlands.

“AMENDED BY ORDINANCE 1997-2; AUGUST 12, 1997.”

“AMENDED BY ORDINANCE 2003-1; FEBRUARY 12, 2003.”

302.030. HIGH WATER ELEVATIONS. All buildings shall be located such that the lowest floor surface is at a level at least three

(3) feet in elevation above the highest known water level of any lake, pond, or wetland adjoining the lot. For three water bodies the high known water levels are:

HIGHEST KNOWN WATER LEVELS (Feet Above Mean Sea Level)

DNR ID #82-167	White Bear Lake	926.7 (NGVD, 1929)
DNR ID #82-134	Lost Lake	927.0 (NGVD, 1929)
DNR ID #82-480W	Hall's Marsh	926.7 (NGVD, 1929)