

MEETING MINUTES (Final)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 11/20/2024

Submitted by Michael Kraemer – secretary

COMMISSIONERS PRESENT: – Andy Sorenson - Chairperson, Michael Kraemer, Casey Muhm, Michael McKenzie, Michelle Maiers-Atakpu

COMMISSIONERS ABSENT: None

OTHERS PRESENT: Susan Mahoney, Larry Mahoney, Jack Kramer – City Building Official, Ben Wikstrom – City Planner, Rebecca Kellen – City Administrator, Debbie and Jim Harrod (via Zoom meeting)

1. CALL TO ORDER: Chairman Sorenson called meeting to order at 7:00 PM.
2. PUBLIC FORUM
 - a. None
3. APPROVE AGENDA
 - a. Motion by Maiers-Atakpu, 2nd by Muhm to approve agenda. Vote: Yes -5, No – 0. Motion passed.
4. REGULAR AGENDA
 - a. Item A – Review/Approve October 24, 2024 Planning Commission Meeting Minutes.
 - i. Motion by Muhm, 2nd by Maiers-Atakpu to approve the minutes. Vote: Yes – 5, No – 0, Motion passed.
 - b. Item B – Appeal Regarding Approval of the Building Permit at 483 Lake.
 - i. Review of Appeal
 1. Input was received from Larry and Susan Mahoney, Jack Kramer – City Building Official, and Ben Wickstrom – City Planner, and Deb Harrod.
 - ii. Recommendation on the Appeal for the City Council.
 1. Based on discussion and input from the Mahoney’s, city staff present, and the Planning Commission, the Appeal review process was set up to review, discuss and evaluate the Appeal based on the applicable Village Codes that were determined to reflect and respond to the issues presented in the Mahoney Appeal Letter dated October 24, 2024. Larry and Susan Mahoney were asked at the beginning of the Appeal Review process to add any ordinances or requirements to their appeal that they believed should be addressed. The Mahoney’s were asked if the code

standards proposed to be addressed (and listed below) composed their appeal, and they did not add additional standards.

a. The city codes that were suggested as applicable to the Appeal included the following:

- i.* 302.070 (2) – Notification to Neighbors (for Fence Construction}
- ii.* 302.020 – Structure Location Requirements (Setback Requirements)
- iii.* 302.050 – Impervious Surfaces and Lot Coverage
- iv.* 302.070 (4) – Fence Height
- v.* 304.040 – Variance Requirements and Criteria

2. Planning Commission Findings

a. 302.070 (2) – Notification to Neighbors (for Fence Construction)

i. **Claim:** Zoning code requires neighbors to be notified of construction.

1. **Planner’s Memo Response:** ..”The zoning ordinance requires notification of neighbors with whom a property line is shared when a fence is being constructed along that line; a building permit does not require notification of neighbors.”

ii. **Claim:** Wall being constructed is not a continuation or like replacement of what was previously a privacy fence and labeled as such on previous plans.

1. **Planner’s Memo Response:** ...” What was previously on the site and what is being constructed in no way meets the ordinance definition of a fence. What someone labeled it on a building permit sketch previously has no bearing on the definition or determination. It is a structure built onto a deck, as it was before. Whether or not it is a like replacement is the purpose of this hearing,” ... “While the level of opaqueness does not define the structure, the fact that it is a wall rather than a fence is important, as a wall has no opaqueness requirement, regardless of height, placement, setback, etc.”

iii. Planning Commission Recommendation:

Advisory motion by McKenzie, 2nd by Maiers-Atakpu that the appeal claims of “improper notification for fence construction” and “The wall being constructed is not a continuation of like replacement” be denied. Commission supports the staff determined the structure is being built in the same footprint and the replacement deck vertical structure meets the definition of a wall and not a fence and thus has no opaqueness requirements thus the addition of siding is not an expansion of a non-conforming use. Advisory vote: 5 – yes, 0 – No.

b. 302.020 – Structure Location Requirements (Setback Requirements)

i. **Claim:** This will add 20 feet of siding, 5 feet from line, making 104 feet of continuous siding.

1. **Planner’s Memo Response:** “Part of this is the appeal to the City; the question is whether the siding is an expansion of a legal, non-conforming structure. The length of the siding has no bearing on the decision. For clarification, the house may be 5’ from the property line, but the deck and wall are not. Based on information from previous permits and court decisions, the deck is estimated to be 7.75’ from the property line and is being built in the same location.”

ii. **Planning Commission Recommendation:** Motion by Maiers-Atakpu and 2nd by Sorenson that the appeal be denied on this point since the deck structure can legally be re-built in its original location and the length of the siding has no bearing on the decision. Advisory vote 5 – yes, 0 – No.

c. 302.050 – Impervious Surfaces and Lot Coverage

i. **Claim:** Pergola will have a roof and increase impervious.

1. **Planner Memo Response:** “This is false; the pergola has screen material on all sides, including the ceiling/roof. There will be no

increase in impervious, and the amount of impervious on the subject property has not been investigated.

ii. Planning Commission Recommendation:

Planning Commission recommends denying the appeal related to this claim. This claim is false and the inaccuracy of the claim was verbally acknowledged by the Mahoney's at the meeting. Advisory motion by Muhn and 2nd by Sorenson declaring this claim of increased impervious is a moot point that should be denied in the appeal. Advisory Vote: 5 – yes, 0 – no.

d. 302.070 (4) – Fence Height

i. Claim: (Raised verbally by Susan Mahoney at the Planning Commission meeting.) The newly constructed vertical wall component on the replacement deck appears taller than the previous wall component.

1. The Harrod's builder indicated through the Harrods (on the Zoom call) that the newly constructed wall structure is 1.5" shorter than the previous wall structure. The Planning Commission asked that the builder submit that statement in writing to the City Council.

ii. Planning Commission Recommendation: The Appeal be denied relative to this claim upon written verification from builder.

e. 304.040 – Variance Requirements and Criteria

i. Claim: Pergola is a non-conforming structure built on a non-conforming deck, so a variance is required.

1. Planner's Memo Response: "The building inspector and I ensured that the pergola is not supported by the wall. It is supported by footings below and inside the footprint of the deck. Other types of construction may have been possible – such as a pergola kit one would place on the deck, or using post base anchors on the surface of the deck or notched construction on the deck

joists, etc. – but this construction type makes the most sense and isn't non-conforming.”

- ii. **Planning Commission Recommendation:** Motion by McKenzie and 2nd by Maiers-Atakpu to decline the appeal on this claim as the pergola is a free-standing structure, was identified and paid for as part of the building permit and is not an expansion of the legal non-conforming structure. Advisory vote: 5 – yes, 0 – no.

f. **Planning Commission Recommendation Summary**

- 1. It is the recommendation of the Planning Commission that the Administrative Appeal of the Building Permit for deck reconstruction and pergola construction at 483 Lake Ave as filled by the Mahoney's in their letter dated October 24, 2024, be denied in its entirety.

ADJOURN 8:14 PM

- c. Motion by Muhm, 2nd by Maiers-Atakpu to adjourn meeting. Vote: Yes - 5, No – 0. Motion passed.