



AGENDA OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
January 23rd, 2025
7:00 P.M.

CALL TO ORDER

PUBLIC FORUM

APPROVE AGENDA

REGULAR AGENDA

- A. Approve December 19, 2024, PC Meeting Minutes* (pp. 2-6)

- B. Planning Commission Discuss and Make Recommendations on Administrative Appeals – Ryan Hankins* (p. 7-17)
 - 1. Administrative Appeal Fee
 - 2. An Ordinance Amending Ordinance No. 310 and Titled “Administrative Appeals.”
 - 3. An Ordinance Amending the City Fee Schedule
 - 4. Appeal of Administrative Decision Form

ADJOURN

* Denotes items that have supporting documentation

MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 12/19/2024

Submitted by Michael Kraemer – secretary

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

COMMISSIONERS ABSENT: None

OTHERS PRESENT: City Building Official, Ben Wikstrom – City Planner, Joe Galatowitsch, Therese Galatowitsch, Len Pratt, Trevor Morehead, City Council Member – Ryan Hankins

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 – Approve November 20, 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 – 4 Five Oaks Concept Plan Review.
 - i. Concept Plan Review
 1. December 19, 2024 memo titled 4 Five Oaks Concept Plan (future variance discussion) from City Planning Consultant Ben Wikstrom was included in packets and reviewed.
 2. Trevor Morehead home owner was present to discuss the revisions that had been made to the previous concept plan for an addition to home at 4 Five Oaks.
 - a. Existing home appears to legal conforming structure meeting code.
 - b. Proposed addition concept plan appears to be compliant with city code except for front yard setback from city street.
 - c. Concept plans included:
 - i. Scaled site layout.
 - ii. Scaled building elevation and concept drawings.
 - iii. Aerial photos of neighborhood.

d. Modifications of note to the previous plan for review at December 19, 2024 included following:

- i.* The orientation and dimensions of the proposed addition were changed. The orientation was changed from running perpendicular to running parallel to the existing house. The resulting change in depth of the addition (due to the re-orientation) to 24 feet resulted in reduction of the required front yard setback “variance” needed from 10 feet to 3 feet. (City code is 30 feet setback to structure from street right-of-way. 27 foot setback is being proposed.)
- ii.* The orientation and the length of the addition at 30 feet parallel to the existing house achieves compliance with the 10-foot side yard setback requirement.

ii. Planning Commission Comments

- 1. Plan modifications appear to demonstrate effort to achieve most of the code requirements except the “front yard setback” variance which although reduced in magnitude will still be required.
- 2. Appears there are no unique site constraints other than the location of the existing house complicated by the size and layout of the addition proposed by the owner.
- 3. Appears the proposed addition is a reasonable approach consistent with limitations of the site and the nature of the neighborhood.
 - a. As identified in the property owner’s submittal, it is noted that there are numerous existing neighborhood examples of structure’s failure to achieve side yard and front yard setbacks.
- 4. A survey will be required to determine the exact measurements at the time of application for the variance, along with calculations of the existing and proposed impervious surface on the lot to determine permitting requirements.

c. Item C – 131 Wildwood Concept Plan Review

i. Concept Plan Review

- 1. December 19, 2024 memo titled 131 Wildwood Avenue Concept Plan (future variance discussion) from City Planning Consultant Ben Wikstrom was included in packets and reviewed.
 - a. Major points included

- i.* Lot is pre-existing non-conforming according to zoning ordinance.
 - 1.** The following code excerpts apply:
 - C, A non-conforming pre-existing structure or non-conforming pre-existing use may not be moved or expanded except:*
 - a.** *If the expansion or move brings the non-conforming pre-existing structure or use into conformance with the zoning code: or*
 - b.** *The conforming portion of a non-conforming structure may be expanded provided that such modification or expansion does not increase the portion of the structure that is non-conforming, and provided that the modification otherwise conforms to the provisions of the zoning code: or*
 - c.** *The non-conforming portion of the non-conforming structure may be modified so long as the modification does not increase the horizontal or vertical size of the non-conforming portion.*
 - ii.* Both the existing house and garage had non-conforming setbacks from property lines.
 - iii.* Existing house with deck appeared to be non-conforming with setback from OHW of White Bear Lake.
 - iv.* The plat of the existing site appears to indicate two lots which will need to be combined.
- 2.** Len Pratt, builder for the property owners Joe and Therese Galatowitsch reviewed concept plans.
 - a.** Concept Plan packet included:
 - i.* Topographic survey of existing site prior to demolition.
 - ii.* Concept plan of proposed structure replacement.
 - iii.* Site photos of shoreline, pre- and post-demolition

- b. Previous dwelling had reached its useful life expectancy and replacement was the reasonable alternative.
- c. Proposed concept plan in general is to achieve the setbacks of the garage and the principal structures. This includes use of 6-foot-wide deck on lake side to achieve conformity to OHW set back.
- d. The concept plan proposes to increase the size of the home in areas where the setbacks are conforming and replaces the structure as allowed in areas of non-conformity.
- e. The concept plan makes reference to achieving impervious code goals and improving stormwater runoff treatment through the use of pervious pavers, bioswales, and raingardens. No details or examples were provided

ii. Planning Commission Comments

- 1. The proposed home concept plan appears to be reasonable and consistent with the scale and nature of the neighborhood.
- 2. The proposed house structure dimensions and placement should be adjusted to achieve side yard setbacks otherwise variance may be required.
- 3. The proposed garage reconstruction should be adjusted to achieve side yard and street set back requirements otherwise variance may be required.
- 4. Impervious surface and runoff code requirements must be complied with including establishment of Riparian buffer as required by City code if needed. IF code is not complied with, variance may be required.
- 5. A survey and final plans will be required to determine the exact measurements at the time of application for any variance, along with calculations of the existing and proposed impervious surface on the lot to determine permitting requirements.
- 6. Lots must be joined prior to construction.

d. Item D – Discuss and Make Recommendations on Administrative Appeals.

i. Planning Commission Review

- 1. The Planning Commission reviewed the following documents included in the packet:
 - a. Administrative Appeal Fee.
 - b. Ordinance No. 2024-XX, An Ordinance Amending Ordinance No. 310 and Titled “Administrative Appeals”.
 - c. An Ordinance Amending the City Fee Schedule
 - d. Appeal of Administrative Decision Form

ii. Planning Commission Comments

1. The Planning Commission discussed and unanimously supports the concept, ordinance, forms, and fees as presented in the example documents.

ADJOURN 8:34 PM

- e. Motion by Kraemer, 2nd by Muhm to adjourn meeting. Vote: Yes - 5, No – 0.
Motion passed.

To: Birchwood Planning Commission
From: Ryan Hankins

You reviewed an earlier version of the following Administrative Appeals ordinance at your December meeting. Thank you for doing so! I would like to add it to the Planning Commission agenda for you to review again if you would like to do so.

Holding a meeting to review it again is at your option as a Planning Commission. You can also send me comments individually.

To: Birchwood City Council
From: Ryan Hankins

In light of recent zoning appeals and the resulting burdens and costs to the city, please consider this revision of our administrative appeals ordinance, with a corresponding update to our fee schedule.

The intent of these ordinances is to reduce frivolous appeals and to recoup some portion of city costs deriving from appeals and to ensure appellants and staff provide sufficient information for the planning commission and council to decide matters.

For reference, other cities charge the following for administrative appeals.

Mahtomedi \$250

White Bear Township \$35 fee + \$150 escrow

Dellwood \$200 + 1000 escrow

White Bear Lake \$150

Stillwater \$250

Thank you to the planning commission and Justin McCarthy for their work on the ordinance proposal. The planning commission reviewed the ordinance at its December meeting and may review the updated version in January.

For the benefit of a new council, the following requirements exist for amending our zoning code:

1. The planning commission must have the opportunity to review the ordinance.
2. The city council holds a "first reading" introducing the ordinance.
3. The city publishes notice of a public hearing on the ordinance in the White Bear Press.
4. The city council holds a public hearing and passes the ordinance.

5. The ordinance is published in the White Bear Press and takes effect.

ORDINANCE NO. 2024-XX
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
AN ORDINANCE AMENDING ORDINANCE NO. 310 TITLED “ADMINISTRATIVE APPEALS.”

The City Council of The City of Birchwood Village, Minnesota ordains:

Section 1. Ordinance No. 310 and titled “ADMINISTRATIVE APPEALS” is amended to read:

310. ADMINISTRATIVE APPEALS

310.010 **BOARD OF APPEALS AND ADJUSTMENTS.** As stated in Section 304.005, the City Council shall serve as the Board of Appeals and Adjustments. These powers include hearing and deciding appeals in which it is alleged that there is an error in any administrative order, requirement, decision, or determination made by an administrative officer in the interpretation or enforcement of Chapters 200 and 300 of this code.

310.015 **ADMINISTRATIVE APPEALS.** A person who deems themselves injured by an alleged error in any order, requirement, decision or determination (hereinafter, “administrative decision”) made in the interpretation or enforcement of any provision of chapters 200 and 300 of this code, may appeals the order, requirement, decision, or determination to the Board of Appeals and Adjustments.

310.020 **PROCEDURE FOR APPEALING AN ADMINISTRATIVE DECISION.** A person who wishes to appeal any order, requirement, decision, or determination made in the interpretation or enforcement of any provision of chapters 200 and 300 of this code may do so by filing a written appeal with the City Administrator or his or her designee within 30 days after the date of such order, requirement, decision or determination.

310.020.1 **APPEAL REQUIREMENTS.** For each order, requirement, decision, or determination appealed, a complete appeal shall include the following.

1. A completed appeal form provided by the City.
2. For each matter, a description of the decision made by the City.
3. For each matter, a detailed explanation of why the appellant believes the order, requirement, decision, or determination made by the City is in error. The explanation must be stated with particularity. An example explanation stated with particularity would be: “The building official approved a building permit for a house that was only nine feet from our shared property line in violation of the setback requirement of section 302.020.” An example statement that is not particular would be: “The building official approved a building permit for a structure that does not conform the building code.” The example statement that is not particular fails to point out specifically why the structure does not

conform to the building code. A determination of whether the particular matter is pleaded with particularity is wholly within discretion of City staff.

4. For each matter, a detailed explanation of how the appellant was injured by the City's alleged error. The alleged injury must be a concrete and particularized injury that is actual or imminent and not hypothetical. The injury must be directly traceable to the decision of the City, and a favorable decision by the board of appeals and adjustments must be likely to remedy the injury.
5. All evidence supporting the appeal.
6. The fee and escrow required for the appeal.

For each matter, the appellant may include a reference to the section of the City code, statute or other requirement that the appellant is appealing. If the appellant does not include such a reference, City staff may determine whether references apply and include them in the City's response. When possible, specific numeric references shall be included. For example, if the appeal relates to whether a riparian buffer is sufficient, the reference to 302.050(6)(c)(b) shall be provided.

310.020.2 APPEAL COMPLETENESS. Upon submission of an appeal, City staff shall determine, within fourteen days, whether the appeal is complete. If the appeal is incomplete, City staff shall provide a written explanation to the appellant. The appellant shall then have ten days to complete and resubmit the appeal. If the appeal is not resubmitted or not complete, it shall be deemed abandoned and final.

310.020.3 APPEAL FEE. The appellant shall pay a fee in the amount specified in the City fee schedule. If specified in the fee schedule, the applicant shall provide an additional escrow for the City's expenses in evaluating the appeal. If the appeal is substantially sustained by the Board of Appeals and Adjustments, the fee and escrow shall be refunded to the appellant. In all cases, any unused portion of the escrow shall be refunded to the applicant. Whether an appeal is substantially sustained will be determined in the sole discretion of the Board of Appeals and Adjustments and such determination is not administratively appealable.

310.020.4 CITY RESPONSE TO APPEAL. City Staff shall evaluate and respond to the merits of each requirement appealed and shall provide that response to the Planning Commission and Board of Appeals and Adjustments.

310.020.5 THIRD PARTY COMMENTS. A third party affected by the outcome of the appeal may, but is not required to, provide written comments relating to both the contents of the appeal and the City's response. An example of a third party so affected includes, but is not limited to, a property owner whose building project is the subject of an appeal initiated by a neighbor.

310.025 **BOARD OF APPEALS AND ADJUSTMENTS HEARING.** Once the Planning Commission has had a reasonable opportunity to review and report to the Board of Appeals and Adjustments on the merits of the appeal, the Board of Appeals and Adjustments shall decide the appeal. Notice of the decision shall be mailed to the appellant and permittee explaining why the appeal was approved or denied. The Board shall maintain a record of its proceedings relative to the appeal, which shall include the minutes of its meetings and final order concerning the appeal. Where applicable, notice of the final order shall be sent to other government agencies such as the Minnesota Department of Natural Resources (DNR), as required by law. The Board of Appeals and Adjustments will provide notice to all affected parties and an opportunity to be heard during the hearing.

310.025.1 **APPEAL STANDARD.** The Board of Appeals and Adjustments shall determine whether the appellant was injured by any matter appealed and, if so, shall determine whether the decision of the City was reasonable. The appellant shall bear the burden of proof to demonstrate that he or she was injured by the decision, and the decision was unreasonable.

310.025.2 **EVIDENCE AND ARGUMENT DEADLINE.** Appellants and Third Parties injured by the decision may not submit new arguments or evidence after the Planning Commission has held public hearings unless given express permission by the City.

310.030 **NOTICE OF HEARINGS.** A notice of hearings for appeals of administrative decisions shall be given to the appellant and shall be published in the official newspaper once at least ten days before the day of the Board of Appeals and Adjustments hearing. If City permits or permit applications are subject to the appeal, the City shall provide a copy of the appeal to the permittee or applicant within five days of the date the City determines the appeal is complete.

Section 2. This ordinance becomes effective from and after its passage and publication.

Passed by the City Council of The City of Birchwood, Minnesota this 13th day of February 2024.

Mayor

Attested:

City Clerk

ORDINANCE NO. 2024-XX
CITY OF BIRCHWOOD VILLAGE

WASHINGTON COUNTY, MINNESOTA
AN ORDINANCE AMENDING THE CITY FEE SCHEDULE

The City Council of the City of Birchwood Village hereby ordains that the fee schedule is amended by adding the following fee:

| | | | |
|---|---------------------------|-----------|----------|
| PLANNING AND ZONING FEES, ESCROWS AND DEPOSITS | Administrative Appeal Fee | 310.020.3 | \$300.00 |
|---|---------------------------|-----------|----------|

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

Passed by the City Council of The City of Birchwood, Minnesota this 13th day of February 2024.

Mayor

Attested:

City Clerk



CITY OF BIRCHWOOD VILLAGE
APPEAL OF ADMINISTRATIVE DECISION

207 Birchwood Ave., Birchwood, MN 55110

651-426-3403 • info@cityofbirchwood.com

A. Appellant's Name:

Telephone:

Home:

Work/Cell:

B. Address (Street, City, State, ZIP):

C. Appeal 1

1. Reference to the section of the City code, statute or other requirement.. The specific numeric sections shall be included where applicable (optional, but recommended).

2. Description of the decision made by the City.

3. Explanation of why the appellant believes the order, requirement, decision, or determination made by the City is in error.

4. Explanation of how the appellant was affected by the City's alleged error

D. Appeal 2

1. Reference to the section of the City code, statute or other requirement . The specific numeric sections shall be included where applicable (optional, but recommended).
2. Description of the decision made by the City.
3. Explanation of why the appellant believes the order, requirement, decision, or determination made by the City is in error.
4. Explanation of how the appellant was affected by the City's alleged error

[Include additional sections for each matter appealed]

Signature _____ . Date _____

310.020.1 APPEAL REQUIREMENTS. For each order, requirement, decision, or determination appealed, a complete appeal shall include the following.

7. A completed appeal form provided by the City.
8. For each matter, a description of the decision made by the City.
9. For each matter, a detailed explanation of why the appellant believes the order, requirement, decision, or determination made by the City is in error. The explanation must be stated with particularity. An example explanation stated with particularity would be: "The building official approved a building permit for a house that was only nine feet from our shared property line in violation of the setback requirement of section 302.020." An example statement that is not particular would be: "The building official approved a building permit for a structure that does not conform the building code." The example statement that is not particular fails to point out specifically why the structure does not conform to the building code. A determination of whether the particular matter is pleaded with particularity is wholly within discretion of City staff.
10. For each matter, a detailed explanation of how the appellant was injured by the City's alleged error. The alleged injury must be a concrete and particularized injury that is actual or imminent and not hypothetical. The injury must be directly traceable to the decision of the City, and a favorable decision by the board of appeals and adjustments must be likely to remedy the injury.
11. All evidence supporting the appeal.
12. The fee and escrow required for the appeal.



CITY OF BIRCHWOOD VILLAGE

APPEAL OF ADMINISTRATIVE DECISION

207 Birchwood Ave., Birchwood, MN 55110

651-426-3403 • info@cityofbirchwood.com

EXAMPLE APPEAL

A. Appellant's Name: *Woody Birch*

Telephone:

Home: *651-555-1234*

Work/Cell: *612-555-1234*

B. Address (Street, City, State, ZIP):

123 Woodwild Ave., Birchwood, Minnesota, 55110

C. Appeal 1

1. Reference to the section of the City code, statute or other requirement. The specific numeric sections shall be included where applicable (optional, but recommended).

I applied for a permit to increase my impervious surface to 29%, and I am creating a riparian buffer. Under section 302.050(6)(c)(i)(a), "The buffer shall consist of trees, shrubs, or low ground cover of native plants and understory consistent with natural cover shorelines."

2. Description of the decision made by the City.

I used the native plant encyclopedia in the DNR Restore Your Shore guidance provided in the city code to choose to plant the black raspberry, but the city rejected that plant within my plans.

3. Explanation of why the appellant believes the order, requirement, decision, or determination made by the City is in error.

When I talked to the city planner, he said he is allergic to raspberries and wouldn't approve them because he can't get near them. However, because the black raspberry is listed in the Native Plant Encyclopedia that the city code encourages for planning shoreline riparian buffers, I should be allowed to plant black raspberries.

Proof that the black raspberry is included is available at:

https://apps.dnr.state.mn.us/restore_your_shore

Here is a screenshot of that website, showing the black raspberry.

| | | | | | | | | | |
|-----|-------------------------|---------------------------|------------------|--|-----------------------|-------------|-------|-------|----------|
| (+) | Black Chokeberry | <i>Aronia melanocarpa</i> | Trees and Shrubs | transitional, upland moist, upland dry | full sun, partial sun | 3.0 - 6.0 | 3-6 | White | May-June |
| ✓ | Black Raspberry | <i>Rubus occidentalis</i> | Trees and Shrubs | upland moist, upland dry | full sun, partial sun | 3.0 - 6.0 | 4-8 | White | May-June |
| (+) | Black Spruce | <i>Picea mariana</i> | Trees and Shrubs | transitional | full sun, partial sun | 30.0 - 70.0 | 10-30 | --- | --- |

I believe the City planner's decision is not reasonable because he is arbitrarily applying his own standard, not the standard that the City set in its code.

4. Explanation of how the appellant was affected by the City's alleged error

I harvest raspberries in the summer and I enjoy them. This decision reduces my right to enjoy my property.

Signature Woody Birch. Date 12/2/2024

determination appealed, a complete appeal shall include the following.

13. A completed appeal form provided by the City.
14. For each matter, a description of the decision made by the City.
15. For each matter, a detailed explanation of why the appellant believes the order, requirement, decision, or determination made by the City is in error. The explanation must be stated with particularity. An example explanation stated with particularity would be: "The building official approved a building permit for a house that was only nine feet from our shared property line in violation of the setback requirement of section 302.020." An example statement that is not particular would be: "The building official approved a building permit for a structure that does not conform the building code." The example statement that is not particular fails to point out specifically why the structure does not conform to the building code. A determination of whether the particular matter is pleaded with particularity is wholly within discretion of City staff.
16. For each matter, a detailed explanation of how the appellant was injured by the City's alleged error. The alleged injury must be a concrete and particularized injury that is actual or imminent and not hypothetical. The injury must be directly traceable to the decision of the City, and a favorable decision by the board of appeals and adjustments must be likely to remedy the injury.
17. All evidence supporting the appeal.
18. The fee and escrow required for the appeal.