

**GREENWOOD PLANNING COMMISSION
WEDNESDAY, AUGUST 14, 2019
7:00 P.M.**

1. CALL TO ORDER/ROLL CALL

Acting Chairman Steingas called the meeting to order at 7:00 p.m.

Members Present: Commissioners Dean Barta, Kelsey Nelson, and Commissioner David Steingas

Others Present: Zoning Administrator Dale Cooney

Absent: Chairman Pat Lucking and Council Liaison Kristi Conrad

2. MINUTES – April 10, 2019

Motion by Barta to approve the minutes as written. Motion was seconded by Nelson. Motion carried 3-0.

3. PUBLIC HEARINGS

3a. Consider the conditional use permit request of Patrick and Meredith Murphy, property owners at 5135 Weeks Road, to regrade the areas of their property and to install retaining walls within the lake yard setback.— Section 1140.19 (2) of the City Zoning Code requires a conditional use permit for any grading or site/lot topography alteration request that increases or decreases the average grade (existing compared to final conditions) by more than 1 foot in any 300 square foot area. Section 1176.04 (Subd. 7) of the city code states that retaining walls shall not be placed within the lake yard setback without a conditional use permit.

Steingas introduced the agenda item and opened the public hearing.

Patrick Murphy, property owner at 5135 Weeks Road, said that they acquired most of the former 5115 Weeks Road property and are trying to make that a more usable area. He said that they are also trying to make the side yard more usable. He said that they were not adding any fill in this area, just shaving of the high parts and moving it to the low areas. He said that the retaining wall at the rear of the house is also to help create a level area.

Steingas asked about the engineer comments. Cooney noted that there were some revisions requested including changing the contours a little in the northwest part of the property to allow water to continue to flow in that direction, and adding swales on the east side of the property to direct water to the north. Cooney said that these were easily achievable modifications.

Steingas asked Murphy if he was comfortable with the city engineer requests. Murphy said that he was.

Motion by Barta to recommend approval of the request based on the recommendation, findings, and conditions of staff. Motion was seconded by Nelson. Motion carried 3-0.

3b. Consider variance and conditional use permit requests of Henry and LuAnn Wudlick to encroach into the exterior side yard setback, and to regrade the property in conjunction with the construction of a home addition at 4930 Sleepy Hollow Road— Section 1120.15 of the Greenwood Zoning Code requires an exterior side yard (corner) setback of 30 feet and the proposed setback for the house addition is 18.3 feet. Section 1140.10 of the Greenwood Zoning Code requires that patios, decks, and slabs less than 30 inches in height at all points, excluding railing, be setback 30 feet from an exterior side yard setback. Portions of the proposed wheel chair access ramp would be as close as 4.6 feet from the property line. Section 1140.19 (2) of the City Zoning Code requires a conditional use permit for any grading or site/lot topography alteration request that increases or decreases the average grade (existing compared to final

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conditions) by more than 1 foot in any 300 square foot area. The proposed grading would exceed these thresholds.

Steingas introduced the agenda item and asked to hear from the applicant.

Brian Burdick, of 4950 Sleepy Hollow Road, said that the proceedings were invalid since the city and the applicant did not meet the requirements in Resolution 01-19 for application deadlines. He said that the city did not meet the Sun Sailor publication deadline.

Cooney said that the city has an alternate publication available in Finance & Commerce and that notice was placed in that publication on August 1st. He said that a notice was also published in the Sun Sailor on August 8th.

Burdick asked if they cannot to rely on the stated publication dates in the resolution. Cooney said that Finance & Commerce is a recognized alternate paper for the city in order to try and accommodate applicants since the planning commission only meets once a month.

Steingas said that the mailed notification was received by neighbors, and that the planning commission needs to move forward with the meeting. He said that if an irregularity occurred, that would need to be sorted out by the city council.

Cooney said that it was fine to challenge the city process and ensure the proper procedures were followed, but that it puts the planning commission in an awkward position to cancel a potentially valid meeting as it is happening.

Steingas asked to hear from the applicant.

Marta Wudlick Snow said that she is the applicant, architect for the project, and daughter of the property owners. She said that they are planning to build an addition to a house built in 1920. She said that the much needed addition will modernize the house. Snow said that her brother and father both use wheelchairs. She said that she originally drew the plans assuming that the setback was a standard 15 foot side yard setback. She said that was based on documentation in the property file and the definition of an exterior side yard in the city code which states that exterior side yard means "the space extending across the full width of the lot and lying between the edge of a second public right-of-way open and used for travel". Snow said that this side yard is not used for travel. She said that there is a sewer line and power line in the right-of-way, but it is not open for travel. She said that the historical precedent of the property would also indicate that this is a standard side yard. Snow said that this is not an intersection, there are not health/life/safety issues, and there are not light and air impacts.

Snow continued and said that the right-of-way has been used as a driveway for as long as anyone can remember and it is a natural access point to the house. She said that the grading in this area allows the residents to access the property at grade level, which is important, since it does not require an elevator to get into the house from the garage, which can be an issue when the power goes out. She said that the existing house is set on the high point of the property and then the property drops away steeply and that siting the house in this spot is a natural fit with the land.

Commissioner Nelson asked about the detached and attached garage. Snow said that the structure in the back was a shed and that there is not an attached garage.

Commissioner Barta asked where the right-of-way leads to. Cooney said that it connects with Minnetonka Boulevard. Steingas said that is where the power lines are.

Steingas said that his biggest concern is that, with a property of this size, is using the city ROW necessary, and what gives this property more rights to use this than other properties. He said that

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he would like to see a design that is focused on using only the private property. Steingas said that just because the access has been here doesn't mean it should stay here and that he is certain that they would not want to see the neighbors use this ROW as access to their rear garage. Steingas said that he understands that 15 feet is easier to do, but that he does not necessarily see the hardship for 15 feet versus 30 feet.

Snow mentioned grading as a practical difficulty. Steingas said that they are already proposing a grade adjustment. Snow said that was a driveway area only. Steingas said that the size of the structure could merit additional grading.

Steingas said that the existing structure would need to be brought up to code. Snow said that was not required by building code anymore and referenced the code. Steingas said that he apologizes and recognizes that the code has changed.

Snow said that the layout and topography were also to preserve trees.

Barta asked who owned the triangle piece of property. Snow said that was Brian and Trish Burdick. Barta asked how wide the ROW was. Snow said 12 feet. Barta asked if the detached garage was to remain. Snow said yes. Barta suggested that the driveway be moved out of the ROW. Snow said it was a topography issue. She said that the house is at the top of the hill and that the main living floor is at the highest point of the property. She said that this area is the only way to access the main level of the house via a wheelchair without having to use an elevator.

Nelson stated that the hill is the issue with moving the garage. Snow said that was correct.

Snow said that the Americans with Disabilities Act requires that jurisdictions make reasonable modifications via the variance process to accommodate people with disabilities.

Cooney noted that the planning commission can comment on the ROW encroachment agreement, but that it should not make a formal recommendation on this point since it is a council decision only.

Snow handed neighbor letters of support to the planning commission.

Steingas opened the public hearing.

Rob Wudlick, of 4930 Sleepy Hollow Road, said that removal of the existing structure would be cost prohibitive and require other living arrangements during construction and that the existing house would be upgraded in the future. He said that the use of the ROW is simply to upgrade the current use and that the ROW is basically a utility trench.

Brian Burdick, of 4950 Sleepy Hollow Road, said they are the immediate neighbors of the request. He said that this is not the right plan for the property. Burdick read a letter from his attorney which is attached to these meeting minutes. Burdick distributed copies of the letter and requested that the letter be included verbatim in the meeting minutes. He also gave copies of the meeting agenda and resolution 01-19 to be included in the minutes.

Burdick showed a drawing of the building envelope for the property and that the topography gets more gradual as it moves towards the south.

Barta asked where Burdick's driveway access is. Burdick showed Barta where the driveway access is for the property on a site plan.

LuAnn Wudlick of 4930 Sleepy Hollow Road, said that the house is too small for two wheelchairs. She said that her daughter has the required qualifications to design the house. She said that there are issues with the driveway as it exists now and that both she and her husband fell on it

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during the winter and had to call 911. She said that she has to do a lot of lifting with her son and that it is not a workable situation. She said that they designed it to be able to have access into the main level of the existing house. Wudlick said that if the Burdick's want to take them to court, they will get their lawyer from the ADA.

Steingas said that the planning commission is here to help resolve situations that might not comply with the city rules. He said that they try to make decisions to resolve those situations. He said that not everyone will get everything that they want nor will everyone be happy, but that the city needs to be able to justify a decision where others may come in and ask for the same thing. He said it would be difficult to defend using the ROW for personal use because the next person is going to come in and ask for the same privilege. He said that the planning commission is trying to help meet the needs of the property owners as well as the community. He said that, as a builder, he sees plenty of ways to design to comply with the rules. He said that there are a lot of options for access and topography that don't require the ROW. He asked if, based on the size of the property, if they would be willing to look at ways to comply with the ordinances.

Barta said that the issue is the setback because if the property owners were to do nothing, they'd still have the house in the location and the driveway in the location that they exist today. Barta asked if the driveway could be paved. Steingas said no. Barta asked how it is maintained. Rob Wudlick said that they add gravel to it from time to time.

Rob Wudlick said that they are asking for the agreement to allow them to pave and maintain the access that they use today, but that they are not asking for exclusive privilege to use the ROW. Steingas said that the lot is large enough is to make it work without the ROW.

Barta said that there was plenty of room to meet the ROW standards and asked if they considered that alternative. Snow said she considered many alternatives and this is the one that worked best.

Steingas said that the new house is within the 30 foot required setback and that the planning commission's goal is to comply with the regulations.

Cooney said that it is an important question if the intent of the exterior side yard setback ordinance was to require 30 foot setbacks from vacant, unused ROW. He said that he understands the ordinance purpose to regulate setbacks for houses that have setbacks on two or more sides of open public streets such as Meadville and Covington where a property owner has essentially two front yards. He said that it is important to determine if the ordinance was meant to apply in this particular situation or if it should be applied in this situation.

Steingas said that he is okay with the 15 foot setback as if this were a standard side yard, but that he would like to see the driveway removed from the ROW since it does not belong to any one neighbor for their personal use. He said that the new driveway should be built 5 feet from the Wudlick's property line because that is the ordinance requirement. He said that he thinks the ROW should remain an undeveloped ROW.

Rob Wudlick said that there should be clarity on if the new house needs to comply with building code. Steingas said that clarity would come from the building official. Wudlick said that other homeowners use the ROW for their access. Steingas said that he would prefer to break that precedent and not let everyone use the ROW. Steingas said that if the situation were reversed, they would not want people driving 8 or 10 feet from their house everyday using the vacant ROW.

Nelson said that the way it was designed, nothing would prevent others from using the ROW, only the first portion of it would be paved. Snow said that was correct and there are no structures proposed in the ROW. Nelson said that cars would be parked off of the ROW. Snow said that was correct.

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Snow asked what would happen to the ROW if their access was not within it. Steingas said it would stay unimproved. Snow asked if they would be towed. Steingas said if they were out of town and a powerline fell and parked cars blocked the way, the power company would need access to repair the lines.

Barta said that the only issue is the driveway. Steingas said that is a city council decision, but that his opinion is that it is not something he would support.

Barta said that the Burdick's access the ROW, but then also own a portion on both sides. Burdick said that was correct.

Nelson asked if there is an issue with access for others if they simply paved the driveway to their property and then stopped. Steingas said that the issue he sees is that there would not be a 5 foot setback from the adjacent neighbor's property.

Barta said that right now they need to meet the 5 foot setback. Cooney said that is correct for a new driveway. Nelson said that they could leave the access unpaved up to the driveway on their property line.

Burdick noted that a new driveway needs to be paved. Cooney said that there are code requirements about materials that can be used for driveways.

Cooney said that if he recommends taking the application to the city council to hear their input since they may raise other issues. He also said that, in light of the challenges Mr. Burdick made to the proceedings, it is important that those issues go before the council as well. He said that there should be recommendations on the requested items and commentary about the ROW can be included.

Snow said that it is important to get a determination on the 15 foot setback versus the 30 foot setback. She also wanted to know about the use of the ROW for visitors that may park there. She said that if the ROW remains unimproved and they don't use it, it will invite travel in the ROW. Steingas said that the new driveway would minimize that. Cooney said that they can plant shrubs and hostas in the ROW to eliminate that concern.

Barta asked if the ROW is open today. Burdick said that there are large trees within the ROW. Cooney said that if the utility companies needed to do work in the ROW, they could remove all of those trees.

Burdick said that the ROW could be planted, and that the rest of the ROW is grass bushes and trees along neighboring properties. He said that if there was a paved driveway next to the ROW, that is what would get used. Burdick said that the chairman is saying that this is a huge lot and that they don't have the right plan today. He said that there are many options for the property because of the size, and that because of the size is that there is not a hardship. Burdick said that, alternately, they have the right to keep the property as it exists today.

Steingas closed the public hearing.

Steingas asked staff for direction on making a motion since it is all related to whether or not the ROW is used for access. Cooney said that he understands the predicament, but thinks that it is important to make a recommendation. Cooney said that it may be best to break the issue into its component parts.

Barta said that he is supportive of the variance from the ROW setback, but that he would like to see the ROW vacated. Steingas agreed. Nelson said that she agrees, but she doesn't have as much of an issue with the existing ROW.

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Steingas said that he would like to see the new driveway and wheelchair ramp at least five feet from the property line. Barta said that if the ROW is redesigned then that could change this aspect of the request.

Cooney said that the other option for the planning commission, if it is too complicated, is to deny the request as proposed.

Steingas asked Snow when they were planning on starting the construction. Snow said as soon as possible. Steingas asked if they would consider looking at design alternatives or if they would proceed to council. Snow said that she thinks that there is a case to be made that the side setback does not require a variance based on how the code is written, but that she would consider looking at the driveway situation.

Steingas said that it might be better to deny the request since there are too many variables impacting the design if they do not use the ROW.

Barta asked why they want to keep the driveway access so badly. Snow said that it is a natural entry point to the existing house as well as the tree impacts for other locations for the addition.

Barta asked if the conflicted thoughts of the planning commission would be made clear. Cooney said that would be reflected in the meeting minutes. Steingas recommended going back to approving with conditions.

Motion by Steingas, second by Barta to recommend approval the exterior side yard setback encroachment request for the proposed house addition with the condition that the driveway access be removed from the public ROW. Motion carried 2-1 with Nelson voting against.

Motion by Steingas to recommend approval of the wheelchair access ramp with the condition that it be at least 5 feet from the property line. Motion was seconded by Barta. Motion carried 3-0.

Cooney said that driveway changes would change the grading, but if the city council is supportive of the driveway location, he thinks it is useful to get a recommendation on this request. Motion by Steingas to recommend approval of the grading conditional use permit as proposed. Second by Barta. Motion carried 3-0.

4. NEW BUSINESS

5. LIAISON REPORT

No city council liaison report was presented.

6. ADJOURN

Motion by Steingas to adjourn the meeting. Barta seconded the motion. Motion carried 3-0. The meeting was adjourned at 8:44 p.m.

Respectively Submitted,
Dale Cooney - Zoning Administrator