

PLANNING COMMISSION
Wednesday, September 10, 2014

Chairman Angie Plantenberg called the meeting of the Brainerd Planning Commission to order at 6:02 p.m. in the City Hall Council Chambers.

Noted present were Commissioners Pritschet, Hayden Shaw, Matten, Plantenberg, Norwood, and Straw. Commissioner Cole was noted absent. Also present was City Planner Ostgarden.

City Planner Ostgarden requested an amendment to the agenda adding Complete Streets as item 4b.

#2 Approval/Amendment of Agenda

MOTION AND SECONDED BY COMMISSIONERS NORWOOD AND STRAW, DULY CARRIED, TO APPROVE THE AGENDA AS AMENDED.

#3 Approve minutes of the regular meeting of August 13, 2014

MOTION AND SECONDED BY COMMISSIONERS STRAW AND NORWOOD, DULY CARRIED, TO APPROVE THE MINUTES FOR THE REGULAR MEETING OF AUGUST 13, 2014.

#4 NEW BUSINESS

a. Public Hearing – Fence Height and Appearance Variance – Jerrold and Jill Seaver – 801 Lake Street

City Planner Ostgarden described the location of the property and noted it is in an R-1 (Single Family Residential) District with the adjacent property being R-3 (Multiple Family Residential) District with a six-plex located on the east side of 801 Lake Street. He stated the petitioner has constructed a six and a half (6-1/2) foot tall privacy fence in the front yard of the property between the house and the property and out to the street. He noted in that location only fences up to four (4) feet in height are permitted.

City Planner Ostgarden stated the Planning Commission will be reviewing the fence that is located on private property and whether or not there are practical difficulties that would call for granting the variance. He noted the City Council will have to address the ability to keep the portion of the fence that is located within the street right-of-way.

City Planner Ostgarden stated the other part of the variance is regarding the appearance of the newly constructed fence which has the “good side” of the fence facing in when it is required to face out to the adjacent property. He noted the older portion of the fence also has the good side facing in but that portion was constructed prior to the adoption of the Zoning Ordinance fence requirements therefore it is “grandfathered” in and does not need a variance.

City Planner Ostgarden stated a letter was received today from an attorney firm that is representing the Bements who own the property to the west. The letter states their concerns regarding the fence and their opposition to the variance.

City Planner Ostgarden also noted the fence was installed without a permit. He stated past practice when a fence is installed without a permit has been to inspect the fence and if it's in compliance the property owner must apply for the permit after the fact. If the fence is not in compliance the property owner must either take the fence down or apply for a variance.

Discussion was held regarding the reason for the four (4) foot height requirement in the front yard and the requirement to get permission from the adjacent property owner to have the fence located on the property line.

The Public Hearing was opened at 6:18 p.m.

Mrs. Jill Seaver, 801 Lake Street, stated this spring they took down a 30 foot diseased blue spruce and after the removal realized what a privacy buffer the tree had provided. She noted the neighborhood has changed over the years and described some of the problems they have had in the recent years such as people breaking into the house, inappropriate conversations from neighbors regarding watching her work in the yard and sunbathing in the yard, an assault against Jerry that occurred in the yard, and concerns about the grandchildren playing in the yard because of these issues. She stated they also would like the fence as they have two new puppies and it's nice to have the fenced in yard for them also.

Commissioner Matten asked if the Seavers had received the letter from the attorney representing the Bements as there are other concerns within that letter such as removal of shrubs that were not on the Bement's property. City Planner Ostgarden stated that portion is not relevant to the variance request.

Commissioner Shaw asked if they felt a six foot fence instead of a four foot fence was more for safety or privacy. Mrs. Seaver stated it is for both because of a lot of issues they are having in the neighborhood and it has made her feel more comfortable being in her back yard.

Mr. Jerry Seaver, 801 Lake Street, gave a history of the fences located on the property and the verbal permission he stated he receive from the City to construct the split rail fence within the right-of-way (which he noted was taken down when needed during street construction). He also noted he did receive permission from the Bements to construct the older portion of the fence on the property line noting there is also a gate in the back that he has to go across the Bement property to access. He stated when he removed the shrubs and constructed the new fence he feels it improved the appearance. He noted he did construct a gate to use instead of the gate in the back of the property assuming it would be ok with adjacent property owner, but if there is an issue he will remove the gate. He stated the six (6) foot is necessary for both safety and privacy because of all the issues in the neighborhood.

Mr. Seaver stated the fence is located eight (8) feet from the curb and approximately twelve (12) feet of fence is located in the right-of-way. He stated the shrub that was located there prior to the fence was more of a site issue than the fence. He also noted he will correct the appearance of the fence.

The Public Hearing was closed at 6:30 p.m.

Commissioner Norwood read the findings-of-fact into the record as follows:

1. The property owner has constructed a six and one half (6 ½) foot tall fence along the rear and street side yard property lines where Zoning Ordinance Section 19 – 7 specifies a four (4) foot tall fence is permitted.
2. That portion of the fence constructed on the east property line was constructed with the “bad” side facing the neighboring property. Zoning Ordinance Section 19 – 5 specifies the good side shall face the neighboring property.
3. The fence was constructed without a city issued fence permit.
4. The property is located in an R-1 (Single Family) Residential District. The lot is adjacent to a six (6) unit apartment building.
5. Lake Street is a short residential street measuring about 265 feet and it has four (4) lots with street frontage.
6. The fence is also constructed within the Lake Street right-of-way. Fence construction in a street right-of-way is prohibited. Permitting the fence to remain in the right-of-way is a City Council issue

The Commission agreed to add the following finding-of-fact: 7. The petitioner spoke and raised concerns with safety and privacy. 8. One letter was received in opposition to the variance and opposition to allowing the fence in the right-of-way was received.

The Commission agreed to add a condition, based on the property owner’s statement that the good side of the fence must face out to the adjacent property.

Commissioner Hayden Shaw stated she agrees to grant the variance because of privacy and safety concerns but she hopes the Council will require them to move the fence back to the property line as she feels it does cause a site distance issue.

Discussion was held regarding keeping the fence on the east property line. The Commission agreed the issue of the fence being on the property line between the two properties is between the property owners.

MOTION AND SECONDED BY COMMISSIONERS PRITSCHET AND NORWOOD, DULY CARRIED, TO RECOMMEND APPROVAL OF THE VARIANCE REQUEST TO ALLOW THE SIX AND ONE HALF (6-1/2) FOOT FENCE FROM THE FRONT OF THE HOUSE TO THE FRONT PROPERTY LINE WITH THE EIGHT (8) FINDINGS-OF-FACT AND THE CONDITION THAT THE GOOD SIDE OF THE FENCE WILL FACE OUT.

b. Complete Streets

City Planner Ostgarden stated he sent the Planning Commission a draft copy of a policy for complete streets. He noted this came out of the Green Step Committee as a complete street policy is a requirement of a green step city. He stated a complete street policy was drafted to present to the Walkable/Bikeable City Committee for review/comment and possible adoption which would then be presented to the Planning Commission with possible future recommendation to the City Council. He stated a Complete Street policy will require looking at

all modes of transportation, including non-motorized and transit operation, when designing streets for construction/reconstruction. He noted this will also include the right-of-way area and making sure there is sufficient green space.

City Planner Ostgarden stated this will be coming to the Commission in the future. He stated there will need to be discussion on what street projects this will be included on. He stated this will be presented to the City Engineer for his input.

Commissioner Hayden Shaw asked the Commission to look through the draft policy and provide their opinions. She stated this is a blank slate and it needs to be tailored to Brainerd. She noted the part of the policy that lays out when the City Council can exempt the policy will be an important part that will need the most finesse.

#5 **PUBLIC FORUM** – Time allocated for citizens to bring matters not on the agenda to the attention of the Planning Commission – Time limits may be imposed.

The new owner of the former Wausau paper plant introduced himself to the Planning Commission.

#6 **OLD BUSINESS**

None

#7 **Commissioners' Questions/Comments**

Commissioner Hayden Shaw stated she would like to revisit the parking requirements specific to the number of spaces required for businesses and hopes the Commission can review that in the future.

Discussion was held regarding a workshop after the regular October meeting to discuss the parking requirements, discussion with the Building Official regarding the building permit process, and the possible discussion of signs in the right-of-way.

#8 **City Planner's Report**

City Planner Ostgarden invited the Planning Commission to attend the ribbon cutting ceremony for the first bike lane in the City of Brainerd. It will be Tuesday, September 16 at 5:30 pm in front of St Andrew's Church on Willow Street.

City Planner Ostgarden noted the article on the A-Frame signs and the previous discussion about signs and other items within the right-of-way, especially downtown, and the possibility of drafting an ordinance regarding this issue

City Planner Ostgarden stated the Mississippi Riverfront project is moving along and noted the visual representations of the priorities will be presented October 2. He stated he's hoping what is being presented will be accepted by the Steering Committee and once accepted will go to the City Council.

City Planner Ostgarden stated the City Council is currently reviewing the 2015 budget and there is a possibility the funding for the Riverfront project along with the request for funding for the Comprehensive Plan review will likely be cut.

City Planner Ostgarden stated there is potential to have a special meeting towards the end of September regarding the Brainerd Industrial Center Interim Use Permit. He stated he is waiting on a complete application.

#9 **Adjournment**

As there was no further business the meeting adjourned at 7:03 p.m.

Respectfully submitted,

Mark Ostgarden AICP
City Planner

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