

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Wednesday, August 2, 2023 – 7:00 p.m.
City Council Chambers – 8150 Barbara Avenue

1. CALL TO OFFICE

Chair Niemioja called the Planning Commission Meeting to order at 7:00 p.m.
The Pledge of Allegiance was recited.

2. ROLL CALL

Commissioners Present: Elizabeth Niemioja (Chair)
Scott Clancy (Vice Chair)
Jonathan Weber (Secretary)
Dennis Wippermann
Aida Schaefer
Jason Teiken
Lance Twedt
Trisha Presley
Robert Heidenreich

Staff Present: Heather Botten, Associate Planner
Stacy Bodsberg, Community Development Support Specialist

4. CONSENT AGENDA

A. Approval of the July 18, 2023 Planning Commission Meeting Minutes.

The minutes were approved as presented.

Chair Niemioja noted it looked like, at the end of the minutes, that the meeting originally scheduled on National Night Out and Election Night was changed from August 1st. She meant those meetings were changed separately. National Night Out would be pushed for this meeting (to Wednesday) and would not be pushed in November on Election Night. There was no election on August 1st.

5. PUBLIC HEARINGS

A. Consider a Comprehensive Plan Amendment to change the land use from CC, Community Commercial to LI, Light Industrial, Rezoning from B-3, General Business District to I-1, Limited Industry District, and a Conditional Use Permit for a contractor's yard with outdoor storage for the property located at 9150 Jefferson Trail. (Corey Dotas - Case No. 23-28ZC).

Reading of Public Notice

Commissioner Weber read the Public Hearing Notice. The notices were mailed to 19 property owners on July 19, 2023.

Presentation of Request

Associate Planner Heather Botten discussed the request for property located on the corner of Jefferson Trail and Rich Valley Boulevard, zoned B-3, General Business District. The applicant purchased the property in December 2021, and is currently using it to operate his tree service business. This type of use is considered a contractor's yard with outdoor storage in the zoning code. The recommendation is to get the request in compliance with what the applicant is currently using it for. The lot is 1.14 acres with an existing home that was built in 1926 along with

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a couple of detached accessory buildings. The home is not allowed to be used for residential purposes. It could be used for an office, meeting room, break rooms, or anything else related to a business.

If this request is denied, the use of a residential lot has lost its grandfathering rights as it has been vacant and not used as a residential house for longer than 1 year. The property is currently zoned commercial. The applicant plans to change the land use to Light Industrial and the zoning to I-1, Limited Industry District. Existing commercial zoning and land use is spot zoning, there are no other commercial zones in the area. The property is unique as it is tucked between two major roads making access a challenge. Any high traffic use would not be a good fit for the property. The proposed industrial use is a low impact use. There is other industrial property to the north. The property is screened with vegetation to the south and east, to the west there is almost 200 feet of space and right of way that includes a highway and a railroad up to residential properties.

Staff believes the proposed zoning and land use change would be compatible with existing land uses in the neighborhood. There are no building additions at this time. The applicant has added landscaping to the property and proposes to add trees to the east for additional screening to the residential home. The applicant has moved the main access to Rich Valley Boulevard. The contractor's yard would not generate noise inconsistent with I-1 zoning. The site drains into MnDOT right-of-way. The applicant has received their MnDOT drainage permit. The City Engineering Department takes no exception to the request. Staff recommends approval of all 3 requests with the conditions listed in Alternative A. Staff has heard from two residents; one inquired about the site, the other concern was about possible contamination and inquired if there was a spill prevention plan in place. Associate Planner Botten stated that she checked with the Inspections Department and the Fire Marshal, nothing like that is required with this type of use. If there is more than a 5-gallon spill, there are reporting requirements from the landowner. They would have to work with the Fire Department for an illicit discharge and the Minnesota Pollution Control Agency.

Planning Commission Discussion

Chair Niemioja asked if the spill plan was applicable in other zoning areas. Associate Planner Botten responded in the affirmative.

Opening of the Public Hearing

Corey Dotas, 13261 Couchtown Court, Rosemount, Applicant, stated he has read and understands the staff report.

Commissioner Wippermann complimented Mr. Dotas on the improvements he has made to the property.

Chair Niemioja asked Mr. Dotas how long his business has been operating.

Mr. Dotas replied he has owned the business since 1995. They were in Apple Valley for a while. This property came along and was a good fit. He fixed everything up and realized it was not zoned for his sort of business.

Paul Johnson, 9163 Rich Valley Boulevard, stated that his property is located close to Mr. Dotas' property. He said he was the one that brought up the spill prevention plan. He mentioned he has been around the trucking industry for about 35 years and worked for UPS. If there was any type of spill, they had to take care of it. He is aware of what can happen. He asked Mr. Dotas what his plan was if there was a leak. He mentioned there is another business in the neighborhood, Windscapes, right across from the property. They have some big trucks and

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equipment, which could leak, but are on blacktop which is easier to contain to spill. There was another business, Fast Repair, which was road ready and has about 20-40 semis in there. His concern was if there was a spill prevention plan. It was a lot of antifreeze and oil that could contaminate all area wells.

Chair Niemioja stated that the Commission did not have information on those businesses tonight. He could call the city. She said it was stated that most areas have to have some type of reporting process after a 5-gallon spill.

Mr. Johnson mentioned that the applicant has cleaned up the property. He said sometimes cities make people put up boards against the fence line if someone doesn't like it. His last concern was if Mr. Dotas decided to sell, the next person comes in, brings in 15 semis and the Planning Commission finds out a year or two later. He said it was like Fast Repair, it is something that is a concern. He asked the Commission to check on the storm planning within the neighborhood.

Chair Niemioja asked Associate Planner Botten if there was a board requirement on fencing.

Associate Planner Botten replied there is not a requirement with boards. If fencing is a requirement sometimes a solid fence is done. In this case there is screening. Staff believes there is enough landscaping for the property to the south with additional trees to fill in spots to the east.

Mr. Dotas addressed spill prevention stating there are a couple of trucks there. At the end of the day, it's what is in the gas tank. If someone were to drill a hole in it, it would leak out. He does not have fuel tanks on site, they do not change their own oil, that gets done at the shops.

Chair Niemioja closed the Public Hearing.

Planning Commission Discussion

Commissioner Weber said this was pretty straightforward. He does not have a problem with it. He drives by several times a day, it looks better. He said he was willing to make a motion to approve.

Commissioner Schaefer said she was unsure if the same principles apply for a proposed change to the Comprehensive Plan as for a Variance request.

Commissioner Weber responded no.

Commissioner Schaefer said if this were a Variance request, the plight of the landowner would be a consideration and a practical difficulty. She said it seemed a change to the Comprehensive Plan or a change to zoning would be better than a Variance, but sounded like a Variance has a stricter set of rules.

Commissioner Weber questioned if the Met Council would have to approve a Comprehensive Plan change.

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Associate Planner Botten replied that was correct. When a Comprehensive Plan change goes to the City Council it requires a 4/5 vote. A Rezoning and a Variance requires a 3/5 vote. The Variance is where a practical difficulty is needed. With a Rezoning and Comprehensive Plan change, they look to see if the request is compatible with the uses in the neighborhood, if there is a benefit to the city, and if it meets the best physical interest and development of the city. A practical difficulty or hardship is not needed in this case.

Chair Niemioja stated there is a concept that the Comprehensive Plan is not completely static. The plan is supposed to develop and grow. She said she thought there is supposed to be some flexibility in where the city is going and how are they getting there.

Associate Planner Botten said in this specific case, it is currently zoned and guided for commercial. If the Commission believes a commercial use is better for this property, they would not support the change to industrial.

Commissioner Schaefer replied she would. She asked if another way to achieve the purpose of allowing the operation to continue if a Conditional Use Permit would work.

Associate Planner Botten responded that a Conditional Use Permit is part of this request. The contractor's yard with outdoor storage is not allowed in the B-3 District. It must be changed to I-1 zoning first and then the Conditional Use Permit comes along with it. It is not just a permitted use in the I-1 district. Some uses are permitted and others like this one, still need a Conditional Use Permit to be approved. That is one of three parts in front of the Commission.

Commissioner Weber questioned if it was about two years ago that the Comprehensive Plan was reviewed and all B-3's were looked at. Several were moved to I-1 partially due to mini storages and outdoor storages.

Associate Planner Botten responded in this case the property was overlooked, she was unsure why. In her opinion, it didn't make sense to be commercial. If the Commission felt like it could be a commercial use, the Rezoning and Comprehensive Plan could be denied.

Chair Niemioja mentioned historically the Commission would never deny a Conditional Use Permit if it met the standards. If moving forward on the Comprehensive Plan Amendment and Rezoning, if standards are met for a Conditional Use Permit, it would be moved forward. It's a process of notification so everyone knows this would be happening and have the opportunity to come and speak.

Chair Niemioja reopened the Public Hearing.

Mr. Johnson said his home was zoned light commercial when he moved into his place 23 years ago. After a few years he received a letter from the city stating they wanted to rezone it to residential. At that time he had a discussion and asked if the city would give him money for the loss he would take. The city told him they were going to leave it. Years went by and the last time he checked the city took it away from him. He said he was told 20 years ago that the city would never allow a business south of Rich Valley. Today the city is allowing another business to go in, but took away his light commercial property. He would like the Commission to look into this and offer an explanation.

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Chair Niemioja replied this evening the Commission is not looking into his parcel; they do not have the history or information about it. She mentioned the Planning Commission makes the assessment as to whether or not these are good decisions. What was decided 20 years ago is not necessarily going to make it today. The Commission and Council will make a decision.

Chair Niemioja closed the Public Hearing.

Chair Niemioja stated there were three action items to take:

- Comprehensive Plan Amendment
- Rezoning
- Conditional Use Permit

If doing a white ballot, it means taking all of the above with the rationale stated by whoever makes the motion. They can also be separated out.

Planning Commission Recommendation

Motion by Weber, Second by Clancy, to Approve the Comprehensive Plan Amendment from Community Commercial to LI, Light Industrial, subject to the two (2) conditions; Approval of the Rezoning of the property from B-3, General Business District, to I-1, Limited Industry District; and Approval of the Conditional Use Permit for a contractor's yard with outdoor storage subject to the five (5) conditions for property located at 9150 Jefferson Trail.

Ayes: 9

Nays: 0 Motion carried. Item tentatively goes before City Council August 28, 2023.

B. Consider a Variance for an accessory structure exceeding the allowable square footage on the property at 1565 82nd Street West. (Tim Hill - Case No. 23-32V).

Reading of Public Notice

Commissioner Weber read the Public Hearing Notice. The notice was mailed to 6 property owners on July 20, 2023.

Presentation of Request

Associate Planner Botten discussed the request located east of Argenta Trail, north of 82nd Street, zoned Agricultural. The request is for a Variance to allow an accessory structure 3,704 square feet in size whereas 2,400 square feet is the maximum square footage allowed. The applicant's property is 13 acres that includes a single-family home with an attached garage and a barn with a portion of it converted to temporary living space. It is the applicant's desire to add principle living space to the backside of the barn and utilize the original homestead for an accessory building. In order to do that, the applicant is requesting a Variance. Based on Dakota County information, including the garage size as the square footage of the building equals 3,704 square feet. Rural residential properties greater than 5 acres are allowed to have up to 2,400 square feet. The applicant has stated that they need the space to store their own personal items. This would be in compliance with other zoning requirements such as impervious surface, setbacks, and exterior building materials. The city recognizes that larger accessory structures may be appropriate for large lot residential properties. Regulations are in place to limit the massing of structures and aesthetics.

Associate Planner Botten stated that the City Council has directed staff to review the accessory structure ordinance for lots larger than 5 acres. That code amendment would be brought before the Planning Commission later this year. At this time there is no specific maximum allowed or what the recommendation would be. Staff does not believe the size of the proposed accessory building is consistent with the current ordinance as presented. The property owner has created

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the need for the Variance request by choosing to add the addition of the principle living space behind the barn instead of demoing the existing house or adding onto the existing house. Utilizing the existing home for an accessory building could be considered more of a convenience to the applicant and not a practical difficulty. Properties surrounding the area are mostly large lot residential. Due to the size of the lots, existing vegetation, and the fact that the structure exists, it does not appear to alter the neighborhood. Based on the information presented and the reasons listed in Alternative B, staff recommend denial of the Variance request as presented. Staff has not heard from any of the abutting property owners.

Planning Commission Discussion

Chair Niemioja asked when the original house was built.

Associate Planner Botten replied she did not know; the applicant could respond.

Commissioner Weber asked if staff will be proposing to change to the ratio used with 2.5-5 acre lots.

Associate Planner Botten replied she was unsure. The City Council discussion spoke of a maximum and maybe going back to a range like the smaller lot sizes. This will be up for discussion at a future meeting.

Commissioner Weber mentioned as noted in the property to the east of this property where they split the lot for a garage and a house and made it two residential lots. He said it was hard for him to turn something like this down when they could go through an application process, split a lot out for 2.5 acres, and keep the house on the lot.

Associate Planner Botten replied the property is located in the northwest area. In order to do a subdivision like the one to the east, a minimum of 20 acres is needed. This lot does not meet that requirement and would need a separate Variance to do so and is unsure if a lot split would be approved.

Commissioner Teiken questioned if what was being proposed is beyond what the City Council is proposing.

Associate Planner Botten replied that any proposed change to the Ordinance would come to the Planning Commission for a recommendation. Staff is unsure what the maximum would be. She suggested the Commission look at what is in front of them at this time. The applicant could decide to table it and wait until the amendment is done, or if denied, she would present to the Council that at some point the structure would have to be removed. Staff would make sure the date is after the Council changed the Ordinance just in case it ends up being approved, then it would be allowed.

Commissioner Teiken asked if there was a risk of this going on the back burner and not happening, or if it is believed to happen.

Associate Planner Botten stated that it could and has happened with Ordinance Amendments in the past. This is one that is a priority and will make it through the process.

Commissioner Teiken said he would hate to think it would happen and then it never does. Chair Niemioja mentioned the Commission sees this issue a lot. The Council is aware this needs to be addressed for the community.

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Opening of the Public Hearing

Mark Welch, 14070 Highway 52 S.E., Chatfield, G-Cubed Engineering, Consultant representing the Applicant. Mr. Welch stated that the applicant purchased the property in 2019 and looked at a different location on the property to build a house. Things changed and they made temporary occupancy within the barn area expecting that they would be able to continue to build onto that. Mr. Welch stated that it came up that they may have to tear the house down to do the addition. Splitting the property isn't something they can do. The property is also in an area that could be developed in the future if utilities come out, there is also other flexibility that could be done on the property. Timing is an issue. They have been through the process of trying to move forward with an architect to do the plans for the addition on the barn but cannot get the building permit because of the structure being considered non-compliant. Mr. Welch stated they were not aware that the city would be looking to review the square footage of allowed accessory structures on large lots. He wasn't sure they wanted to table the item at this time because they have standing that shows it's not the hardship of the owner wanting to move forward with building an addition on the property. One of the hardships is that the property is located in the northwest area which requires 20 acres in order to split the lot. If they could split the house off, that could be an opportunity, there are other options out there. At this point they may be able to get the Variance and move forward based on the fact that it is not an accessory building being constructed, the structure is already there. It would be more of a hardship to tear the structure down considering the value it has and the cost to remove.

Chair Niemioja asked if the practical difficulty would be the other Variance. She was trying to understand what their practical difficulty stated.

Mr. Welch replied the northwest area requires 20 acres for a lot split.

Chair Niemioja stated it would also require another Variance.

Mr. Welch agreed and stated that they could request the Variance and create the split, but the Applicant was not ready to bring that house up to Building Code standards.

Chair Niemioja asked if there was a different practical difficulty other than the other Variance.

Mr. Welch stated the practical difficulty was that they don't have 20 acres. The property was split in 1995, prior to the northwest area being created. The northwest area ordinance requires 20 acres, the property is under that criteria. All of the other criteria required for splitting the property is there. There is plenty of land, septic areas, and locations for it.

Chair Niemioja wanted to make sure Mr. Welch understood that what he just said would also require another Variance.

Mr. Welch stated that the other Variance could be the hardship. The creation of the second parcel would also require well and septic. The existing house is disconnected from that. The applicant isn't ready to bring that house up to residential standards. This would allow them time to make the improvements they want with the addition. It gives time to find out how the city would further develop in the area and gives the applicant time to assess what they want to do with that structure. Moving forward now, if denied, there would be a request to tear the house down, that is a hardship. He mentioned in 2019 when they proposed a new house, a letter was sent from the city consultant at the direction of the prior City Engineer that had requirements for potential streets. There would be a requirement for an 80 foot right-of-way on the east side of the property in addition to the 50-foot easement for Xcel Energy's current power line, and an

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additional right-of-way would be dedicated on the south side where a second street and easements for drainage could be. It would be the same easements required if platting the property. The 2019 letter stated they would not require platting but would have to require all easements the same as platting. This became a hardship too because they were giving up road right-of-way on the east side of the property when it was unknown if there would ever be a need for the road. That steered them away from building a new house. This makes all structures closer together. If the property is developed, being able to do the addition off the existing barn area and maintain the house there keeps the building massing in one location as opposed to being spread throughout the property. That was another component to the timeline and is why they are asking for the Variance.

Chair Niemioja questioned how old the house was to be used as an accessory.

Mr. Welch replied 1967. He mentioned there were other potential options that they have not explored because they would either split the house off with the Variance or request a Variance for the accessory structure. The accessory structure Variance seemed like the most straightforward.

Chair Niemioja asked if building would commence immediately if possible.

Mr. Welch replied the applicant needs to start with an architect before construction can begin.

Chair Niemioja closed the Public Hearing.

Planning Commission Discussion

Chair Niemioja stated she was looking for a practical difficulty that was not reliant on the code. It is a tough precedent to set. She mentioned she was hoping for a more historical building, as that has been used in the past.

Commissioner Schaefer asked if it was possible the practical difficulty could be because of the size of the lot, under the 20 acres needed to do the split his neighbor has, and the easements which further limit the ability to construct a house. She commented it makes sense where he is proposing to expand. In her opinion it was consistent with the character in the area. She mentioned that the applicant has planted close to 100 trees to create a fence around the entire property, creating a rural home. These are citizens that have invested in their place and want to stay and live there. She said she felt it was a residential request; the size of the lot and the easements cannot be changed and are well beyond the landowner's control. If knowing there would be a change to the future code for ADU's, some type of approval could be done with a condition that if the resulting code change makes it that the ADU is compliant, the applicant would have to come back for a variance or have it torn down.

Associate Planner Botten clarified when mentioning the easements on the easterly property line, that was a requirement in 2019 from the previous city staff member. Seven documents were created to enter into an agreement with the applicant, but those were never signed or completed. Those easements were never given to the city, there are no easements along the eastern property line at this time. Associate Planner Botten mentioned that an ADU is a different use, it's an Accessory Dwelling Unit, which is allowed on a property, but with a maximum size of 1,000 square feet. If going that route, the applicant would still need a Variance for an ADU. Going through a Variance for minimum lot size in the northwest area would be another route. There are different routes that could be chosen, all require Variances. What is in front of the Commission is for an accessory structure, like a garage, but using the original homestead.

Commissioner Schaefer corrected herself stating it could not be an accessory dwelling unit because it does not have a septic system, it's an accessory structure.

Commissioner Schaefer stated it was 1,500 square feet too big on 15 acres.

Commissioner Weber stated it was 1,304 over on 13 acres.

Commissioner Schaefer stated it was 15 acres due to the easement.

Commissioner Weber replied there is no easement off of the property.

Associate Planner Botten stated that Dakota County includes the right-of-way of 82nd Street, which is why it could be 14.75 acres. Looking at buildable area, they exclude current right-of-way. It is not a future or proposed right-of-way. 1.75 acres is under right-of-way. It's a 13-acre lot when looking at buildable acreage.

Commissioner Weber questioned when looking at full lot size, for example, the lot on Barnes Avenue had a lot that was into the street. He asked if they used road right-of-way.

Associate Planner Botten replied they do not use road right of way when looking at lot size.

Chair Niemioja asked Commissioner Weber what the calculation was using the formula.

Commissioner Weber replied he always uses the ratio they came up with when doing the 2.5 to 5 acres. Based on a buildable area of 13.01, this allows for 6,244 square feet of structure, making this an allowable non variance type issue. He said he was guessing the city would never use the ratio all the way up to 20-acre parcels. He mentioned that sometimes the Commission has looked at agricultural land in a different light. He can think of 7 agricultural properties in the city way over their allowed size. He questioned if storing hay or chickens on the property have been a reasonable use for agricultural.

Associate Planner Botten responded it has to be the primary use of the structure.

Commissioner Weber mentioned he struggles with a property like this, someone is taking actual care of the property, maintaining, and bringing it up to a high-level standard. He struggles with allowing for storing hay and building it larger than allowed, then someone that wants to use it for a reasonable use has to tear it down or put their life on hold for a bit because there is an opportunity coming. If knowing the opportunity is coming, he wished there was a way to sunset this and find a way for the applicant to move forward with his project. He suggested having a backup in the event city code doesn't change. He said the practical difficulty could be the fact that the city knows this is up for discussion and if it could be reeled back if allowing this to move forward.

Commissioner Clancy asked if there has been any history of using a time-based contract to say for example: "if x happens, y can proceed, if x doesn't happen, y has to be rescinded". He said they could possibly get through the permitting process in the time it takes and as they learn about the potential amendment.

Associate Planner Botten replied if denying, they could have a date that it has to be removed after Council action of the code amendment. For example: 30 days after the 3rd Reading to remove the structure if the Ordinance Amendment doesn't, then the structure could be allowed.

Commissioner Wippermann stated there were sunset clauses in temporary use permits; for example, after three years.

Commissioner Teiken commented the nature request helps inform whether or not to break the precedent with certain things. Maybe it wasn't always the nature of something that should have us break that precedent. They don't want to alienate residential, businesses, or agriculture. He said he is interested in the dichotomy of the nature requests versus the value of the precedent and where to hold both on the scale. He said the applicant stated something he felt was key, that was this may be the most forward Variance available. It may not be the best one. He said he did not care for the other options.

Chair Niemioja asked if he had a practical difficulty.

Commissioner Teiken replied no. He said he wish he knew what the Council was considering for a new ordinance.

Chair Niemioja stated she appreciated knowing that the Council was working on this. She said if the Commission didn't know that the Council was working on this, she didn't believe the Commission would be debating it for this long. She was not sure she was comfortable saying that she doesn't understand what the Council is doing so that will be a practical difficulty. She appreciates the concept of requesting if they were to deny, she doesn't see a legal practical difficulty. She said she would request there be some sort of delay on requiring the applicant to remove the building.

Commissioner Wippermann mentioned that the Council has more latitude on these kinds of issues than the Planning Commission. He was not able to come up with a practical difficulty. As a Planning Commission, he felt they should probably be following what the guidelines are. If the Council feels there is reason to make a change, they have the latitude to do so.

Commissioner Clancy stated that in the past the Commission has rejected or followed up by a note stating they highly encourage the Council to take a look at their own upcoming agendas and changes planned. He said the Council was elected into the position, if knowing this is something coming, to use that foresight to weigh in on this proposal. He believed that to be an excellent way to close out this evening.

Commissioner Twedt said he would support this because he thinks it's a logical step for the applicant to make in order to do some of the things that he wants to do on his property. It gives the City Council and the applicant the opportunity to evaluate their options. He said this seems logical for them to make their request and make further requests down the line.

Chair Niemioja asked if Commissioner Twedt had a practical difficulty.

Commissioner Twedt replied he does not.

Commissioner Clancy questioned if the practical difficulty could be at the time of this date, the Planning Commission was under the impression that this potential amendment was coming, so in the future if that amendment never came or was shot down, the Commission could refer back to the same precedent. He asked Commission Twedt if he was thinking in terms of that direction.

Commissioner Twedt confirmed, but he also didn't want to put words in the City Council's mouth.

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Commissioner Heidenreich mentioned the Commission has denied these in the past, he believes they will have to deny this tonight and not set the precedence. He would be in favor of the applicant getting their way but doesn't believe the Planning Commission should do that. He said as it was stated, the City Council has more latitude, know that possible changes are coming, and can overrule any decision this Commission makes. He said to maintain standards and not provide bad precedence, to deny the request.

Commissioner Weber referenced the League of Minnesota Cities that has a section called "Other Considerations" for practical difficulties. One of them "is the Variance in harmony with the purposes and intent of the ordinance". He said to that he would say yes. Another stated "the purpose puts the property in use in a reasonable manner".

Chair Niemioja replied that was not a practical difficulty, it was a standard for a Variance.

Commissioner Weber said when you read through it further it is part of one of their practical difficulties. He said he would love to say yes, but agrees it's a slippery slope for the Commission. He said the Commission has denied six properties that were between 2.5-5 acres until the ordinance changed. They no longer see those Variance applications anymore because people stay within those bounds. He said it is unfortunate with this one, but the timing is off.

Chair Niemioja reopened the Public Hearing.

Mr. Welch stated the practical difficulty is the timing. It was not just because the city is entertaining changes to the ordinance, it's the timing of other development in the area. The letter from 2019 made assumptions of development and requires easements be granted for public roadways that were not planned. The practical difficulty across the board for all Variances is timing. He said they know this property could be developed with public sewer and water which would change the scope. In the meantime, they are trying to build on an addition without having to tear down the existing house. He said if the Commission cannot make a strong recommendation for approval or denial, he suggests they make a non-recommendation to the City Council.

Chair Niemioja closed the Public Hearing.

Associate Planner Botten stated that when the City Council met at the July 10th meeting, the amendment to the accessory structure ordinance was discussed and staff was given the direction to go forward and go through the public hearing process. It is not in the Council's hands, it's in staff's hands. Staff is meeting with the City Attorney in 2 weeks to go through the entire accessory structure ordinance and determine what parts need to be amended. There are other parts of the code that talk about accessory structures as well. The next step would be to come before the Planning Commission for a public hearing. After the Planning Commission and staff's recommendation it would go to the City Council. The City Council may not have an idea of what they want to see yet. It will depend on discussions and recommendations. Staff was given direction to go forward with the ordinance amendment.

Ms. Botten stated that where the applicant is today with the property is unique in the fact that they started in 2019 with one plan, came back again in 2020 with another plan, and now the current request that is in front of the Commission. There was another version that demoed the house. There have been three versions; the first couple versions never had two principal structures on a property. Staff has normally seen, in other parts of the city and other properties, a request to build a second primary building on a property, but want to keep one until the other is complete. Staff makes them sign a legal document with the city stating they can do that, but

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after the new house is complete the applicant would have to demo the original house.

Commissioner Weber asked if the applicant could enter into an agreement with the city that they would sign something like that unless the ordinance changed where they could transfer or change this into an accessory use building.

Associate Planner Botten replied where things stand now, they would go back and draft it and say they want to be able to keep the principal structure until they add the other one and then figure out what happens with the code amendment. Going through the variance process and denying it means there would be time after the code amendment. It would probably be easier, cheaper, and shorter than having the attorney draft the agreement and go to Council and get approved. If denying the variance, they would still have a date to remove the structure after going through the process to amend the accessory structure ordinance.

Commissioner Weber questioned if Associate Planner Botten said they should deny the variance. The applicant would go back to staff and state they are proposing to do a new principal structure, maintain the current existing principal structure until the new one is complete at which time, they would demo 6 months out. He said if a caveat could be placed stating if the code were to change in that amount of time, they could keep the second structure as an accessory building.

Associate Planner Botten replied this request is unique because there is a different living space within the barn that was granted as temporary living space as they were supposed to demo the house and rebuild. She questioned if Commissioner Weber was asking to keep the structure until the other one is done.

Commissioner Weber replied they are trying to build a new principal home. In the process of building the new principal structure, they continue to hold the old structure. When they receive their Certificate of Occupancy on their new principal structure, they have 30, 60, 90 days from that point either the code changes to be able to keep it as an accessory structure or they would have to demo it. He questioned if the Commission denies the request, if the applicant could come to staff with something like that in a proposal instead of having to go through the Variance process.

Associate Planner Botten believed they were getting the same outcome. What is in front of the Commission is already in the works, the other would have to go to legal, another agreement would have to be drafted, and then go to Council.

Commissioner Teiken said they are less certain of a timeline for any potential development as mentioned by Mr. Welch. A denial of this Variance, keeping with the Commission precedence, does not eliminate options for the applicant moving forward. Not everything would be over if denying the Variance.

Chair Niemioja said timing as a practical difficulty is not one the Commission goes with. The Commission is looking at a denial, but a recommendation. She mentioned the Commission frequently makes recommendations when it goes outside the scope of their powers, such as this request. It would be recommended there be some sort of agreement to begin construction and a hold in place that this building would be able to be open while the process is going through.

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Commissioner Twedt said what could happen if approving the request is that the City Council does not act on increasing the square footage, but may say no, but could do this. Making the decision to approve does not mean the Council cannot do their work and approve or deny later.

Chair Niemioja reopened the Public Hearing.

Tim Hill, 1585 82nd Street West, Applicant, mentioned the reason they didn't go with their first plan was because 50% of their property was going to be taken away with easements. The second idea was living in an old house with six kids, but wasn't suitable. They had space in what used to be a horse barn, tore the old horse barn out and redid it. It is about 2,300 square feet with the idea that they would redo the other home and build up. He said the architect had mentioned, based on the 2019 proposal, there would be a road within 30 feet of the home. That is when they decided to stop and do the addition onto the barn. He said they were looking for more house in the region, and may have to tear down a 50-60-year-old home. He said it seems odd as they are looking for more housing density.

Chair Niemioja said the Commission has to look for a practical difficulty with a legal standard. There are other people who come to the Commission asking for the same thing. The Commission is trying to apply the current rules.

Commissioner Teiken said he did not believe anyone on the Commission wanted Mr. Hill to have to tear anything down. They are trying to determine what the step would be in order to be able to maintain compliance before the ordinance changes.

Chair Niemioja stated the City Council has more latitude to take that into consideration because of the practical difficulty factor.

Chair Niemioja closed the Public Hearing.

Chair Niemioja said she cannot recall a time when they failed to make a decision. The Commission could table, but typically make a recommendation to deny or approve.

Associate Planner Botten agreed. There have been split votes, tonight that could not happen unless someone abstains.

Planning Commission Recommendation

Motion by Weber, Second by Presley, to Deny the request based on the factors and fact that the Planning Commission cannot come up with a practical difficulty with the following recommendations: Deny the Variance application with the three-rationale listed in the staff report.

Move forward with a Recommendation that the Denial of the Variance request to allow the accessory structure of 3,704 in size whereas 2,400 square feet is the maximum size shall include the condition that the original home be demolished and removed by the property owner. If the City Council moves forward with this because of the potential of the future ordinance change, to delay demolishing, if it does meet criteria, they would not have to demolish at all for property located at 1565 82nd Street West.

Ayes: 9

Nays: 0

Motion carried.

Item tentatively goes before City Council August 28, 2023.

5. REGULAR BUSINESS None.

6. ADJOURN

Motion to adjourn the Planning Commission Meeting at 8:11 p.m.

Respectfully submitted, Sheri Yourczek, Recording Secretary