

**MINUTES
CITY OF EDINA, MINNESOTA
PLANNING COMMISSION
CITY COUNCIL CHAMBERS
JULY 27, 2011
7:00 P.M.**

I. CALL TO ORDER

Chair Grabiell called the meeting of the Planning Commission to order at 7:00 P.M.

II. ROLL CALL

Answering roll call were Commissioners Carpenter, Scherer, Staunton, Fischer, Forrest, Platteter, Stefanik and Rock

Excused: Schroeder and Potts

III. APPROVAL OF MEETING AGENDA

Chair Grabiell continued the agenda as is.

IV. APPROVAL OF MINUTES

Commissioner Scherer moved approval of the July 13, 2011, meeting minutes as submitted. Commissioner Forrest seconded the motion. Commissioner Carpenter asked to amend the minute's page 12 to expand on his comment on parking concerns. All voted aye; motion carried.

V. COMMUNITY COMMENT:

No comment.

VI. PUBLIC HEARINGS

Project Description	2011.0005.09a	Subdivision with Variances Kirby Herman 5829 Brookview Avenue, Edina
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Staff Presentation

Planner Teague reported that Kirby Herman is proposing to subdivide his property at 5829 Brookview Avenue into two lots. The existing home would be torn down, and two

new homes built on the new lots. Teague explained that to accommodate the request the following is required:

1. A subdivision;
2. Lot width variances from 75 feet to 50 feet for each lot; and
3. Lot area variances from 9,000 square feet to 6,703 and 6,702 square feet.

Continuing, Teague explained that both lots would gain access off Brookview Avenue. Within this neighborhood, the median lot area is 6,769 square feet, median lot depth is 134 feet, and the median lot width is 50 feet. The new lots would meet the median width and depth, but would short of the median lot size.

Planner Teague said staff believes that the findings for a Variance are not met with this proposal. Per state law and the Zoning Ordinance, a variance should not be granted unless it is found that the enforcement of the ordinance would cause practical difficulties in complying with the zoning ordinance and that the use is reasonable. As demonstrated below, staff believes the proposal does meet the variance standards, when applying the three conditions:

- a) *Will the proposal relieve practical difficulties that prevent a reasonable use from complying with the ordinance requirements?*

No. Reasonable use does not mean that the applicant must show the land cannot be put to any reasonable use without the variance. Rather, the applicant must show that there are practical difficulties in complying with the code and that the proposed use is reasonable. "Practical difficulties" may include functional and aesthetic concerns.

Staff believes that the property already has reasonable use with a single family home that complies with all minimum lot size requirements. It is similar in size to several lots on the block. Reasonable use of the property would still exist should the city deny the request. While there are 50-foot wide lots and 6,700 square foot lots on this block, similar to what is proposed; however, there are also several lots wider than 50 feet and over 6,700 square feet, including two lots to the north, one to the south and three to the west, including one 100-foot wide lot across the street.

The median lot size in this neighborhood is 50 feet wide, 134 feet deep and 6,769 square feet in size. The proposed lots would be 50 feet wide, 134 feet deep and 6,703 and 6,702 square feet in size. Therefore the median lot size would not be met by either lot.

The action or request by the applicant to subdivide the property causes the practical difficulty. The request to subdivide the lot causes the need for the variances; therefore the practical difficulties are self-created.

- b) *There are circumstances that are unique to the property, not common to every similarly zoned property, and that are not self-created?*

The condition of this oversized lot is not unique to the Brookview Avenue. While many lots are 50 feet wide and 6,700 square feet in size, there are several in the neighborhood that are wider and larger in area. As mentioned above, there are two lots to the north one to the south, one to the south, and three across the street to the west. Again, this is a self-created hardship or practical difficulty caused by the applicant's request to subdivide. The circumstances are self-created due to the request to subdivide the property.

- c) *Will the variance alter the essential character of the neighborhood?*

No. The proposed improvements requested by the variance would not alter the essential character of the neighborhood. The neighborhood includes single-family homes on 50-foot lots as proposed.

Planner Teague concluded that staff recommends that the City Council deny the proposed two lot subdivision of 5928 Brookview Avenue and the lot width variances from 75 feet to 50 feet for each lot, and lot area variances from 9,000 square feet to 6,703 and 6,702 square feet. Denial is based on the following findings:

1. The proposal does not meet the required standards and ordinances for a subdivision, because the proposed lots do not meet the Zoning Ordinance requirements.
2. The two proposed lots do not meet the minimum lot area or lot width requirements.
3. The proposed lots do not meet the median lot width in the area.
4. The proposal does not meet the required standards for a variance, because:
 - a. The property exists as a conforming single-family residential lot with a single-family home. Reasonable use of the property exists today.
 - b. If the City denies the variance request, and the subdivision, the applicant would not be denied reasonable use of the property.
 - c. The practical difficulty is self-created by the applicant's proposal to subdivide the property.
 - d. The proposed lots do not meet the median lot area for lots in this neighborhood.
 - e. The existing lot is similar in size to several oversized lots to the south, west and north.

Appearing for the Applicant

Kirby Herman

Comments/Questions

Commissioner Fischer asked for clarification on lot width variances per zoning ordinance vs. subdivision requirements. Planner Teague responded the 75-foot lot width is a requirement of Zoning Ordinance No. 850. Continuing, Teague noted that although the majority of the lots within this neighborhood were platted at 50-feet (before the 75-foot requirement was established) a variance is required regardless of the calculations found in 810's 500-foot neighborhood requirements. Concluding Teague noted that Subdivision Ordinance 810 reads "In a subdivision which has a lot with a median lot width greater than 75-feet, then the minimum lot width shall be not less than the median lot width of lots in such neighborhood"; reiterating these lots are 50-feet in width.

Chair Grabiell asked if the original platting of this area was 50-foot wide lots. Planner Teague responded in the affirmative. Expanding, Teague reiterated the neighborhood was platted with 50-foot wide lots; however, some individuals purchased more than one lot; combined them for tax purposes and built accordingly. Grabiell asked if there was a process for re-platting the two lots into one lot. Teague explained the process is minimal. One fills out a form and presents the form to Hennepin County. Grabiell asked Teague what could be built on the two lots if approval were granted. Teague stated the area is zoned R-1, Single Dwelling Unit District and that's what could be built; one dwelling per lot.

Commissioner Platteter asked how large of homes could be constructed on two lots. Teague reported that lot coverage requirements for lots less than 9,000 square feet was 2,250 square feet or 30% whichever comes first. Setbacks must also be adhered to. If the lot remained as one lot coverage is 25% and setbacks must also be adhered to.

Applicant Presentation

Mr. Herman addressed the Commission and delivered to them a handout and neighborhood petition indicating the neighbors that support the proposal. Herman reported that he canvassed the neighborhood; sharing his plans with his neighbors, reiterating there is neighborhood support for the subdivision. Continuing, Herman said he believes this request is consistent with the original platting of the area, and there is no difference between this request and the recently approved subdivision request on Oaklawn Avenue.

Mr. Herman said he believes that in the future more redevelopment will occur on these smaller lots. Herman explained his house is small and outdated and redevelopment was practical. Herman said constructing new smaller houses makes more sense than building one overly large house.

Mr. Herman pointed out in Planner Teague's staff report that Teague referred to a number of larger lots on his block vs. the previously granted subdivision on Oaklawn where all lots were 50-feet. Herman explained there were reasons some of the lots on

his block had a greater lot width; one was the result of a sanitary sewer line and another was right of way platting when certain streets were not extended.

Concluding, Herman asked the Commission for their support.

Commissioner Staunton referred to Mr. Herman's petition and inquired if all neighbors were approached. Herman responded that he spoke to all his neighbors.

Chair Grabiell noted for the record that there was one letter of dissent from a resident within 500-feet. Grabiell also acknowledged that he spoke with the applicant prior to the Commission meeting.

Chair Grabiell opened the public hearing and welcomed comments.

Public Comment

Leslie Sullivan, 5845 Brookview Avenue spoke in support of the subdivision. Ms. Sullivan said younger families need to move into these older neighborhoods. Ms. Sullivan encouraged the Commission to support the subdivision as presented.

Motion

Commissioner Carpenter moved to close the public hearing. Commissioner Platteter seconded the motion. All voted aye; motion carried.

Discussion

Commissioner Scherer said she has been on the Planning Commission for several years and questioned if the original plat "trumps" City Code. Scherer said a consistent approach needs to be taken and if 75-feet is the City's minimum lot width regardless of the plat or 500-foot "neighborhood" the City needs to be cautious. Planner Teague responded that the zoning ordinance "trumps" the original plat.

Commissioner Fischer said reviewing this proposal as it relates to two City Ordinances was a struggle. Fischer said he believes it's great to encourage new families into the City with affordable housing options, adding in his opinion the character of this neighborhood would be better maintained by retaining the two lots. Continuing, Fischer said retaining these small lot neighborhoods and keeping them vital should be approached either through policy or ordinance. A variance might not have been required if this was approached differently.

Planner Teague reported that in both the zoning and subdivision ordinances there are minimums for lot width, depth and area. Reiterating that in this instance the lots do not meet the zoning ordinance which requires lots to be 75-feet in width.

A discussion ensued on the recent change in State Code regarding variances and the findings under "Practical Difficulties" and the caveat that the "plight of the petitioner is due to circumstances unique to the petitioner's property and the unique circumstances were not created by the petitioner". Carpenter said in this instance it could be argued that the plight was created by the petitioner.

Commissioner Staunton asked Planner Teague if he could explain the differences between this subdivision and the recently approved subdivision on Oaklawn Avenue in the same neighborhood.

Planner Teague responded the subdivision on Oaklawn which was recently approved was the only lot on that block with a lot width of 100-feet. Continuing, Teague pointed out that on the 5900 block of Brookview (subject block) there are a few lots in excess of 50-feet. Subsequently, the approval of the Oaklawn Avenue subdivision/variances would not alter the character of the block; all lots were 50-feet in width. Teague also reported that the lots on Oaklawn visually gave the perception that there was two lots' not one lot. Concluding, Teague said staff viewed the Brookview proposal as different.

Commissioner Staunton said that although the term "practical difficulties" was new, the old term referred to a self-created hardship; both are legalities but similar. Continuing, Staunton added that he has a concern that two years ago both the Planning Commission and City Council approved a similar subdivision request in the same neighborhood; noting that the Oaklawn subdivision was also granted lot width variances.

Commissioner Fischer said he struggles with neighborhood character and maintaining that character. Fischer pointed out that majority of lots within this neighborhood have lot widths of 50-feet and in his opinion retaining the original plat is more conforming; not less.

Commissioner Staunton asked Planner Teague to clarify again the 75-foot minimum lot width requirement. Planner Teague said the 75-foot wide requirement has been "on the books" for a number of years and was City wide. Teague acknowledged that the 75-foot lot width requirement placed a large number of Edina's lots into a legally non-conforming category. Staunton said he feels he is moving toward recommending approval of the subdivision; not denying it; as per the staff report.

Mr. Herman interjected and reiterated that the larger lots on this block resulted from City right-of-way and sanitary sewer line locations.

Chair Grabiell stated he views this request as the Commission wrestling whether this was self-created; and if so, when was the "non-conformity" created; when Ordinance was amendment to 75- feet or was the difficulty created when the applicant applied to subdivide his lot(s). Grabiell observed if the "practical difficulty" was the result of the applicants request to subdivide his lot(s) anytime a property owner wants to add on to their home or garage and a variance was required that could be considered self-

created. Continuing, Grabiell said regardless of the outcome of this hearing he would not be in favor of granting any variance(s) to build a new home on one lot or two depending on the outcome of the Commission and Council meeting.

Commissioner Platteter noted as previously mentioned by Planner Teague that it's relatively easy to combine lots into one lot for tax purposes; however, once that "form" is filled out and multiple lots become one to reverse that action a property owner has to go through the subdivision process to achieve the original plat. Continuing, Platteter questioned what would happen to these smaller lot neighborhoods if people purchased lots and combined them to create overly large lots to build larger homes. Wouldn't the reverse; easily allowing two lots or more to be combined into one also impact neighborhood character. Platteter concluded that in this opinion combining small lots into larger ones would totally change the character of these small lot neighborhoods.

Commissioner Forrest said that she doesn't buy the affordable housing argument. She said if new houses are built on this lot(s) they would be expensive. Forrest also said that the "self-created" caveat should be seriously weighed when making any decision. Forrest acknowledged that an ordinance or policy clarity may need to be established; however, any request for variance needs to be taken seriously.

Commissioner Fischer said this topic reminds him of the minimum driveway width issue the City tackled last year. Fischer pointed out that the majority of Edina's zoning ordinance requirements were established in the 1970's or earlier and since that time no one has taken the time to adjust the language. Fischer said in his opinion from a practical perspective the unique circumstance was created by the City when it amended its ordinance requiring all lots to be 75-feet in width.

Commissioner Forrest asked how #1 of the variance findings was satisfied. Chair Grabiell said in his opinion "reasonable" is in maintaining the character of this 50-foot wide lot neighborhood.

Motion

Commissioner Staunton moved to recommend preliminary plat approval with variances based on the following findings of the Commission:

- a. The majority of the lots on the subject block are platted at a lot width of 50-feet; the lots in the "neighborhood" are also comprised of lot widths of 50-feet.**
- b. A practical difficulty is requiring that this lot is required to be 100-feet in width; and not allowing the originally platting of two 50-foot lots; which is the character of the neighborhood.**
- c. The circumstance that is unique to the property is that it was originally platted as two 50-foot wide lots before the applicant purchased the property. If the**

application were denied the property owner would be denied a use of his property, at 50-feet which is the current lot size within this neighborhood.

d. If approved the variance would not alter the character and symmetry of the neighborhood. The neighborhood is defined by 50-foot wide lots, not 100-foot wide lots.

e. It should also be noted that the some of the lots on the subject block with lots widths greater than 50-feet are the result of right of way and utility easements.

and subject to division conditions; Commissioner Platteter seconded the motion. Aye's Staunton, Fischer, Platteter and Grabiell. Nays; Carpenter, Scherer, and Forrest. Motion to approve carried 4-3.

Project Description:

Variance

Kelsey Smith

4801 44th Street West, Edina

Front Yard Setback Variance

Staff Presentation

Planner Teague reported that a 3.52 foot front yard setback variance for a closet addition to match the existing front yard setback of the home and an 8.6 foot front yard setback variance to allow a deck expansion to match the front yard setback of the porch for property located 4801 West 44th St.

The subject property is located on the south side of west 44th St. consisting of a walk-out rambler with a side loading tuck-under, two car garage. The property is currently under construction. The project received a variance in 2009 to allow an enclosed front entryway with porch and the expansion of two small bedrooms into the front yard area. The homeowner would like to modify their plan to allow a small closet area to be even with the front entry addition and to allow a deck area to be even with the front porch. The attached 2009 plans and minutes refer to a 6.3 foot front yard setback variance for the living space addition and a 1.4 foot front yard setback variance for a porch addition. The proposed closet and deck encroachments will be the same distances from the street as the previous request for encroachments.

The reason for the difference in variances needed are as a result of an amendment to the zoning ordinance requiring that front yard setback be determined by averaging the closest points of the homes to the front lot line on either side of the subject property which actually reduced the required front yard setback from 30 feet to 27.2 feet, resulting in a 3.52 foot front yard setback variance instead of a 6.3 foot front yard setback variance for the living space addition. Porches not exceeding 80 square feet in area may encroach the front yard setback but may be no closer than 20 feet to the front lot line. The approved

setback for the front porch is 18.6 feet from the front lot line with a variance granted of 1.4 feet. The deck area, (that will match the 18.6 foot front yard setback of the porch), is required to maintain the average front yard setback of 27.2 feet instead of 20 feet for a porch. The deck will match the setback of the porch, but requires an 8.6 foot front yard setback variance. It should be noted that all new encroachments into the front yard will match the approved improvements. All conditions in support of a front yard setback variance as stated in 2009 for the property remain.

The property owners are hoping to raise the roof of their home as part of the plan to address ice dam/water issues they experienced over this past winter. The plan will raise the roof from a 3/12 to a 6/12 pitch and incorporate insulation to address the problems that have occurred with the original roof line. The approved plan from 2009 kept the existing roof and added decorative gables along the front. The new plan replaces the low pitched roof and will address the water concern. The increased roof height does not require a variance. As part of the modified plan, the homeowner would like to add a closet to match the setback of the entry foyer and a side deck adjacent to the porch that will match the front yard setback of the porch. A survey, Floor plans and elevations of the approved and proposed plan are attached as Figure B.1 – B.7.

Teague concluded that staff recommends approval is based on the following findings:

- 1) With the exception of the variances requested, the proposal would meet the required standards and ordinances for the R-1, Single Dwelling Unit District.
- 2) The proposal would meet the required standards for a variance, because:
 - a. The proposed use of the property is reasonable; as it is consistent with the approved 2009 plan and will match the approved front yard setbacks.
 - b. The improvements are minor in scope and scale.
- 3) The intent of the ordinance is to maintain adequate spacing from the street. Spacing from the street will remain the same.
- 4) The unique circumstances are the property's shallow lot depth, low pitched roof and floor plan that limit design options.

Approval of the variance was also subject to the following conditions:

- 1) Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions; Survey date stamped: July 20, 2009 and building elevations date stamped: July 2011.

Appearing for the Applicant

Property owner and applicant, Kelsey Smith.

Discussion

Chair Grabiell noted that in the past the subject property received variances and asked Planner Teague when those variances were granted. Teague responded to the best of his knowledge the first variance was granted some time ago and expired. Teague explained that subsequent variances were not "acted on" and the applicant was granted extensions through the variance process. To clarify Teague explained that once a variance is granted the applicant has one year to pull a building permit before the variance lapses. Teague said that this request was different in design from the previously approved variance, adding that variance was also not "acted on" and expired.

Chair Grabiell referred to letters from neighbors that indicated support for the project; however their letters also expressed concern over the length of time it has taken the applicant to complete a project. Continuing, Grabiell asked if there is a limitation on a building permit. Teague responded that a building permit expires after six months if no action was taken.

Commissioner Staunton asked Planner Teague how long the current project has gone on. Planner Teague responded construction has been going on for at least one year.

Applicant Presentation

Mr. Smith explained that his home was constructed in the early 1960's as a walkout. Smith said his goal is to improve his home, adding that the walkout basement area gets very cold during the winter months. He also pointed out that the front façade of the home is very bland and the improvements to the front facade will benefit not only him but the entire neighborhood. Smith acknowledged the concerns expressed by the neighbors.

Continuing, Mr. Smith said much of the problems and delays that occurred during the past year were the result of contractor issues, and the weather. Smith said the weather; especially the rain was the hold up, adding they actually had to create a mote around the house. Concluding, Smith reported things got better in mid-April and he envisions the project proceeding more smoothly.

A discussion ensued with Commissioners in agreement they could support the variance; however, were concerned with the time it has taken the applicant to complete a project. The Commission was of the opinion that the applicant be given a completion deadline; however, after assurances from Mr. Smith they did not formally add a deadline date as a condition of approval.

Chair Grabiell opened the public hearing.

No one spoke to the issue.

Commissioner Staunton moved to close the public hearing. Commissioner Platter seconded the motion. All voted aye; motion carried.

Motion

Commissioner Carpenter moved variance approval based on staff findings and subject to staff conditions. Commissioner Scherer seconded the motion. All voted aye; motion carried.

Commissioner Staunton requested that Mr. Smith proceed with his project in a timely fashion. Mr. Smith agreed.

VII. CORRESPONDENCE AND PETITIONS

Chair Grabiell acknowledged receipt of the Council Connection.

VIII. CHAIR AND COMMISSION MEMBER COMMENTS

Commissioner Staunton briefed the Commission on the Grandview Small Area Plan process. Staunton reported that the Steering Committee has been meeting monthly and the Committee has been busy interviewing consultants. After they are selected the consultants would craft a work plan that would be brought to the Steering Committee for their comments on August 18th. Staunton said that he envisions public input on the process sometime in the fall.

Chair Grabiell said the only comment he has was to add to the zoning ordinance update bucket list a discussion on Edina's small lots Create policy/ordinance?. (75' and under)

IX. STAFF COMMENTS

Planner Teague updated the Commission on York Gardens. Teague reported that the City Council approved the site plan and the Council also required noise abatement screening to be installed.

X. ADJOURNMENT

Commissioner Carpenter moved adjournment at 8:41 pm. Commissioner Platteter seconded the motion. All voted aye. Meeting adjourned.

Jackie Hoogenakker
Respectfully Submitted