

CITY OF MEDINA
PLANNING COMMISSION
Special Meeting Minutes
Wednesday, October 24, 2012

1. **Call to Order:** Commissioner Charles Nolan called the meeting to order at 7:01 p.m.

Present: Planning Commissioners Robin Reid, Kathleen Martin, V. Reid, Charles Nolan, John Anderson and Randy Foote

Absent: Kent Williams

Also Present: City Planner Dusty Finke and NAC Consultant Nate Sparks.

2. **Public Comments on items not on the agenda**

No public comments.

3. **Public Hearing – Jacob Moser – Requests Variances to construct a new home in the Urban Residential (UR) zoning district along Ardmore Avenue (PID 18-118-23-24-0154).**

Commissioner R. Reid recused herself from the discussion on this matter.

Sparks presented the staff report. He listed the five variances being requested: 1) Front setback (15 feet instead of 30); 2) Palm Street setback (15 feet instead of 30); 3) Setback from ordinary high water level of Lake Ardmore (55 feet instead of 75 feet); 4) Upland Buffer Setback (10 feet instead of 15 feet); 5) Minimum lot size (18,000 sq. ft. instead of 20,000 sq. ft.). Sparks stated that the applicant proposed to bring in approximately 400-500 yards of fill in order to construct a two-story walkout home with approximately 900 square feet per level. He stated that the fill was intended so that the home sat above the street in order to help with drainage from the water coming from neighboring properties and City streets. Sparks noted that if all of the setback requirements were applied to the lot, there would be a very small building envelope of approximately 400 square feet, which would not meet the minimum size standard the City has established for a home. He stated that the applicant would need to replace a 54 inches of trees and to plant a vegetative upland buffer. He summarized the variance criteria for consideration and stated that staff believed that the request met the criteria, although the Commission may wish to discuss the matter of height.

Anderson inquired about fill brought in for the 2992 Ardmore driveway.

Sparks replied that they didn't have a survey to calculate, but the survey showed the house pad raised approximately six feet. Finke stated that the retaining wall on the property was a pretty good indicator of where the original grade was located.

V. Reid inquired about the Palm Street right-of-way. She stated that from the letters, neighbors use the right-of-way. She questioned what the City's position was on for the use for a driveway.

Sparks stated that, if the City Council determines to allow the driveway within the right-of-way, staff would recommend a license with conditions that would maintain access for the public. This may include a fence or hedge in order to prevent further use of the right-of-way.

V. Reid inquired if the City has ever denied an application for a variance which left a lot unbuildable.

Sparks stated that he was not aware of such a case in Medina and that doing so may create a concern of a taking.

Nolan inquired if the City would be interested in vacating the right-of-way, as it seems it would increase the buildable property.

Sparks stated that staff did discuss this matter and wanted to maintain the right-of-way for various purposes, including maintaining access for the public and the City to Lake Ardmore and the stream connecting to Lake Independence. Finke added that there was a potential for the right-of-way to be used for stormwater management when streets are reconstructed in the neighborhood.

Martin inquired how many variances were required. Sparks stated that there were 4.

Martin inquired if there were other variances in the neighborhood.

Sparks stated that the nearest that staff could find in the files was the property three to the north which were very similar to what is being requested in this case. He noted that there are large numbers of variances on other streets in Independence Beach for additions and reconstructions, and that many of the other existing homes would be considered non-conforming.

Martin inquired about the criteria related to whether the variance is consistent with the Comprehensive Plan.

Sparks stated that the use of the property as a single-family home is consistent with the Comp Plan. He also noted that the City will require compliance with its environmental ordinances, which maintains consistency with the Comp Plan.

Martin inquired what the minimum home size required in the district pursuant to the building and zoning code. She said she is struggling to balance the extent of the variances against the minimum that is required to be constructed.

Sparks replied that the minimum is a house that is 24x24 with habitable space at least 550 square feet. A garage of 440 square feet is also required.

Jacob Moser stated that he has owned the property for 7 years. He wanted to place a house that is similar to other house in the neighborhood and meets their needs.

Public Hearing opened at 7:57 p.m.

Dave Raskob (2864 Ardmore, builder working with applicant) stated that he has lived in the neighborhood for 27 years and built 7 homes. He stated that Mr. Moser owns and pays taxes on one of the largest lots in the neighborhood. They have worked with staff and changed plans a number of times in order to create a modest footprint that is well within the hardcover allowances. He believes 90% of homes in the neighborhood wouldn't be buildable without a variance. The house was pushed to the south in order to improve drainage from Balsam on the north. The house has to be raised in order to accommodate all the drainage from the neighbors. He stated that the side-load garage limits the width of the house and improves the aesthetics. He noted that there are five other homes in the neighborhood that utilize right-of-way for driveways. He believes the use is reasonable and would be a benefit the neighborhood and that it is in character with the neighborhood.

Brian McCool (lawyer representing Don and Stacy Brown 2935 Ardmore) stated that he had provided a written letter to the Commission a month ago. He stated that his clients are not opposed to the Mr. Moser using the property, but that this is too much. The variances requested are far beyond the minimum required. The combination of height and location from the street would make it the most imposing structure in the neighborhood. The fill exacerbates the height issue because height is measured from the grade. He noted that the property is different than others along Lake Ardmore because of the wetlands. City ordinances require that, on average, houses should be 50 feet from the wetland. Instead, this proposal places the whole house within 35 feet of the wetland. He stated that the hardcover calculations being used by staff do not consider the driveway in the right-of-way. He noted that staff's mention of the variance at 2992 Ardmore is not relevant because there is no such thing as having precedent in variances. He also noted that 2992 Ardmore is much different as it sits on the dead end and there is no wetland before reaching the lake. He stated that, in his opinion, the City would not be open to a takings claim, because the applicant could request, and the City could approve, of a much smaller house.

Nolan stated that there are 400 square feet, so some degree of variance or variances almost have to be granted. He inquired that, if that were the case, what the variances would McCool's clients prefer. Would they prefer pushing the house closer to the lake to increase the distance from the street?

Stacy Brown (2935 Ardmere) stated that she believed the three car garage is excessive and the height of house after the fill is excessive. Ardmere is the prettiest street in the neighborhood. What is being proposed feels like Plymouth and Woodbury.

Martin stated that she questioned earlier whether the City should consider the minimum building size allowable, or if the City should place more consideration with similar homes in the neighborhood. She asked McCool for a citation on the matter.

McCool stated that he did not have a citation but that there is substantial case law which gives cities latitude in how they weigh the reasonableness of the use against minimum standards and neighborhood standards. It is his and his clients' contention that the extent of the variances in this case is unreasonable and he believes the City would be safe to make such findings.

Jim Leviton (2945 Ardmere) presented a powerpoint presentation, which was provided for the record. He stated the lot was purchased for only \$40,000 and that the applicant should have known it was unbuildable. The setbacks were the same in 2006. He stated that the things the applicant is requesting are unreasonable: the applicant is requesting 4 variances; he wants to bring in 500 cubic yards of fill and cut down 10 of the largest trees; he wants to use the unopened right-of-way for part of his improvements. Leviton noted that water from the neighborhood runs onto this property and is filtered before running into Lake Ardmere, and from there to Lake Independence. He does not believe the first criteria for a variance has been met, because it is contrary to the spirit and intent of the Comp Plan's goals to protect natural resources and the natural environment. He stated that the requested variances are not the minimum and granting them would confer special privileges. The applicant has caused the need for the variances because he wants a big house with a three-car garage. He believes the applicant has created the need for the variance by requesting too large of a house. He believes that the house is like a billboard which would negative impact the neighborhood. He stated that the proposed house would negatively impact the visual characteristics, it would sit on higher ground, would block the path down to the lake, and would sit closer to the road than any other in the area. He concurred with McCool that the variance at 2992 Ardmere is not relevant and noted that the League of Minnesota Cities states that previous variances should not be used as precedent. He stated that it is the wrong house on the wrong lot.

Stacy Brown stated that she uses the right-of-way in order to drag a canoe down to Lake Ardmere and to ice skate. There are houses next door to the north that sit lower than the street, so she feels the fill is unnecessary. She noted that Lake Ardmere is impaired and adding more hardcover to it is a negative.

Andy Sooney – 2942 Ardmere – stated that run-off runs from the neighborhood flows down the Palm Street right-of-way. The fill is concerning because it might push

water onto his property. He also noted that the Palm Street right-of-way is the only access to the stream and wondered if the City would be able to get machinery in.

Public Hearing closed at 8:45 p.m.

Martin stated that her initial thought was to not recommend approval of the variance as presented. The comments from staff related to grading put her at ease that the proposal is consistent with the Com Plan. She believes the size of the lot leads to need for some of the variances. With regards to the character of the neighborhood, she believes the three car garage is out of character.

Foote stated that the Commission was coming really close to house design. He stated that he agreed with Martin that a smaller house likely makes more sense. He stated that he was bothered by the use of the right-of-way. Foote stated that he thinks the house would fit the character of the neighborhood.

V. Reid stated that she was concerned with the setback from the street. She believes the house is too large. She stated that she was not as bothered by the use of the Palm Street right-of-way. She said it is important to consider the fact that the land takes everyone else's water, but she is always a proponent of limiting grading and reducing the amount of fill.

Anderson stated that the property does have to handle a lot of other people's water, which is not the applicant's fault, so some fill is reasonable. He stated that he would recommend reducing the size of proposed house in order to reduce the variances.

Nolan stated he generally concurs with his colleagues. He stated that the easiest thing to reduce would be the three car garage. He stated that he has no concern with the use of the right-of-way for a driveway. He tends to be an advocate of hiding garage doors, but noted that the interests of the neighborhood and the City have to be protected in the license. He stated that the grading is a benefit and that it is not the applicant's fault that everyone else's water comes into this lot. The combination of the proximity to the street, the fill, and the height of the house seems to be the major issue. He suggested that perhaps alternatives would be to bring in the fill and build a one-story walk-out; or to not bring in the fill and build a two-story. He stated that he believed the buffer width is more important than the setback from the buffer. He noted that some people seemed to be quoting the minimum house size of 550 square feet with a 440 square foot garage, but he believes a very small structure such as this would be much more out of the essential character of the neighborhood.

Martin stated that she had two concerns with the right-of-way use. First, she feels that the applicant proposes to "hog" the right-of-way by pushing the driveway to the very middle. She noted that the driveway would not even meet setbacks if the City were to vacate the right-of-way. She was also concerned about the applicant having no alternative if the City wished to revoke the license for use of the right-of-way.

Nolan stated that he believed it appeared that all five Commissioners were likely to vote for a recommendation to deny the variance as it was being presented. He noted that the City Council rarely goes against a unanimous Commission recommendation. He inquired if the applicant was interested in taking the feedback from the Commission and updating the plans. Moser agreed to take another look at their plans and return to the Commission.

Motion by V. Reid, seconded by Martin, to table the Variance Request. Motion carried unanimously (Absent: R. Reid and Williams).

4. Adjourn

Motion by V. Reid, seconded by Anderson, to adjourn at 9:24 p.m. Motion carried unanimously. (Absent: Williams)