

CITY OF APPLE VALLEY  
PLANNING COMMISSION MINUTES  
APRIL 21, 2010

**1. CALL TO ORDER**

The City of Apple Valley Planning Commission meeting was called to order by Chair Churchill at 7:00 p.m.

Members Present: Jeannine Churchill, Tom Melander, David Schindler, Ken Alwin, Keith Diekmann, and Paul Scanlan

Members Absent: Tim Burke

Staff Present: Community Development Director Bruce Nordquist, Associate City Planner Kathy Bodmer, Associate City Planner Margaret Dykes, City Attorney Sharon Hills, Assistant City Engineer David Bennett and Department Assistant Barbara Wolff

**2. APPROVAL OF AGENDA**

Chair Churchill asked if there were any changes to the agenda. Hearing none she called for a motion.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Alwin, to approve the agenda. The motion carried 6-0.

**3. APPROVAL OF MINUTES OF APRIL 7, 2010**

Chair Churchill asked if there were any changes to the minutes. There being none, she called for approval of the minutes.

MOTION: Commissioner Schindler moved, seconded by Commissioner Diekmann, to recommend approval of the minutes of the April 7, 2010, meeting. The motion carried 4-0. Commissioners Melander and Alwin abstained.

**4. CONSENT ITEM**

--NONE--

**5. PUBLIC HEARING**

- A. Dick's Valley Service Conditional Use Permit – Consideration of an amendment to the existing conditional use permit to allow for the expansion of the current outdoor storage area.**

Associate City Planner Margaret Dykes stated that the applicant is requesting an amendment to an existing Conditional Use Permit (CUP) for outdoor storage of vehicles on the subject site. The "I-

2" zoning district allows for the outdoor storage of vehicles provided the items to be stored outside are screened. The City approved a CUP for outdoor storage of vehicles on August 24, 2004. The original approved plans indicated a future storage area with 84 parking spaces would be constructed on the northern portion of the lot. However, the approved CUP resolution stated that this area would remain unimproved, unless and until, the property owner needed to construct additional storage space on the lot. The applicant is now requesting to amend the CUP because he wishes to expand the existing outdoor storage area to accommodate a growth in businesses.

The outdoor storage area is proposed to be expanded 135 feet to the north, and an additional 84 parking spaces would be added. The storage area meets all required setbacks. The plans show the storage area will be screened with a two foot (2') high berm and an eight foot (8')-tall fence on top of the berm. As part of the original approval, the City required that an eight foot (8') high solid, opaque vinyl fence be constructed on top of a four-foot (4') high berm to screen the north and east sides of the outdoor storage area. The plans must be modified to raise the berm an additional two feet (2') to meet the requirements of the original CUP. The combination of berming and fencing will meet the screening requirements stated in the Code, which requires a minimum six foot (6') tall opaque screen surrounding industrial property that abuts residentially zoned lots.

As part of the original plan review, a sightline study was submitted showing the view for residents of the townhouses in the Midtown Village development, who will be located approximately 130 feet from the outdoor storage area. The study showed that with the fence constructed on top of the berm, the majority of outdoor storage area would be screened. The new storage area would be approximately 140 feet from the closest residents located in the Cedar Isle development.

The City Engineer has reviewed the plan and states that an infiltration area must be constructed to accommodate the additional impervious surface. An erosion control plan is also necessary.

Dykes asked for comments or questions from the Planning Commission.

Commissioner Melander stated that the applicant already has a conditional use permit and asked Dykes if this plan was specified in that CUP for future expansion.

Dykes answered yes. She said that staff is asking for a striking plan that shows the berm. She said it is consistent with what the applicant has originally shown.

Commissioner Scanlan asked if the existing landscaping will be transplanted to the new location.

Dykes said yes, although there will be a timing issue. If the trees cannot be moved at the opportune time, they will plant something new.

Commissioner Schindler asked what the setback is from 145<sup>th</sup> Street West.

Dykes said it is 20 ft. from the property line. The proposal does meet all the setbacks.

Chair Churchill clarified that the 20 ft. setback is from the property line not the street.

Dykes said that is correct. It is about 140 ft. from the residents of Cedar Isle and 130 ft. from the residents of Midtown Village.

Chair Churchill asked to hear from the petitioner.

Jeff Tuthill, property owner, said that he is trying to be a good neighbor, keep everything clean and grow at the same time.

Chair Churchill asked Mr. Tuthill if he had anything to add to the changes that Dykes stated.

Mr. Tuthill said that he has met with the City Engineer and he agrees with everything staff says. He said they have no issues on their end.

Hearing no questions from the Planning Commission, Chair Churchill thanked the applicant.

Chair Churchill asked for any comments from the public.

Richard Huber, 14587 Florissant Path, said his condo is on the ground level and faces the facility. He asked if the owners of the condos on the 2<sup>nd</sup> and 3<sup>rd</sup> floors would be able to see cars in the new facility when it is completed.

Chair Churchill said that the owners may see some cars if they are parked farther into the property.

Mr. Huber said he is concerned that it will lower the property values when a person looks from their patio and sees cars and tow trucks parked. He's looking for some type of further solution to help block the cars such as very tall pine trees.

Chair Churchill said there is a landscaping plan that does show plantings along the outside of the fence. It would be between the fence and the property line.

Dykes said there will be a mix of trees; about 20 ft. tall. There will be some visibility of vehicles.

Mr. Huber asked what he can do as a citizen to stop this.

Chair Churchill said that Mr. Huber has the right to voice his opinion this evening and also the right to voice his opinion to the City Council. She said that this is a conditional use permit and it is an issue that was brought forth in 2004 and the petitioner, at that time, reserved the right to be able to come back and request an opportunity to expand the parking. She said this is not something new or surprising to the City at this time.

Mr. Huber said that he just purchased his condo a couple of months ago and it doesn't make him happy.

Dykes suggested that staff can work with the applicant to explore other landscaping alternatives.

Mr. Huber asked if the new parking lot would be at the same grading level as the current one.

Dykes said it will be the same grade as the existing parking lot and a requirement for the 4 ft. high berm all the way along the north property line, connecting to the existing 4 ft. berm on the east property line and then the 8 ft. fence. She said there will be 12 ft. of screening from grade.

Mr. Huber requested that he would like to see fuller trees planted.

Chair Churchill said that staff would work with the petitioner on the selection of the trees.

Chair Churchill hearing no further comments closed the public hearing.

Chair Churchill asked Dykes if she would like to add anything relative to the conformance of the proposal with the CUP.

Dykes said that with the addition of the berm and the fencing on top of that, it complies with the zoning code in terms of the screening requirement.

Chair Churchill said if the petitioner meets the requirements of the zoning and the conditional use permit, then the City cannot force them to do anything beyond that. And anything additional that the applicant does is in the spirit of being good neighbors. She said that the applicant wants a nice facility and also wants to be a good neighbor.

**B. CrossFit NorthStar Conditional Use Permit – Consideration of a conditional use permit to allow for an athletic training facility in a “BP” (Business Park) zoning district.**

Associate City Planner Kathy Bodmer stated that the petitioner, Sean A. Flaherty of CrossFit NorthStar, LLC, requests a conditional use permit (CUP) to operate an athletic training facility in the Apple Valley Warehouse building located at 5708 Upper 147th Street West on the southwest corner of Upper 147th Street and Energy Way. The training facility will be operated in a single 3,000 square foot suite within the 30,000 square foot multiple tenant building. The athletic training facility would be located in Suite 109 which is on the east side of the building. No changes to the building or the site are requested in conjunction with this CUP request.

The Apple Valley Warehouse building lies within the “BP” (Business Park) zoning district. In the BP zone, a conditional use permit is required to operate swim and fitness clubs, exercise and similar commercial recreation facilities when contained within a building. This allows the City to review the proposed facility and place reasonable conditions upon it to ensure it does not negatively impact adjacent properties.

The petitioner states that the facility will provide training stations for a maximum of 10 students at any one time. Classes are offered five days a week with two classes offered in the morning and two classes offered in the evening most days (Monday, Tuesday, Wednesday and Friday). One class is offered Saturday morning. The facility is closed Thursday and Sunday for maintenance. There is a 15 minute break between the class sessions. Given the fact that there are no locker rooms provided, it

is not likely that there will be an overlap with the students who are leaving the building and students who are arriving for the next class session. Parking should be available for each class.

The number of parking spaces required for this use is based on the maximum occupancy load of the recreational area and the size of the office area. The maximum occupancy of the recreation area is 30 people which will require a total of 10 parking spaces; the office area is 1,000 sq. ft. which will require a total of 6 parking spaces. A total of 16 parking spaces are required for this use. The parking requirement for the suite based upon the office/warehouse/manufacturing layout would have been 10 spaces.

Although the parking requirement is 16 spaces, the City may make upward or downward revisions to the parking requirement based upon its experience with the use. In this case, the floor plan will limit the number of students that may be in the facility at any one time to 10. If two trainers are at the facility, no more than 12 parking spaces will be needed. If the petitioner either increases the number of training stations in the facility or increases the size of the facility, he will need to amend his CUP. The number of parking spaces that would be required would have to be reevaluated at that time.

The petitioner states that if the size of a class reaches a maximum of 10 students, instructors will park in the rear area of the building to ensure adequate parking in front of the building. The rear of the building is the receiving and loading area. Additional space is available for parking in the rear of the building which will not interfere with deliveries and truck circulation.

Bodmer stated that although it is not the policy of the Planning Commission to take action on an item on the night of its public hearing, the petitioners are requesting that the Commission take action this evening if no additional issues are raised. She asked for comments or questions from the Commission.

Commissioner Melander said that there are other similar athletic uses in the area. He clarified that this is zoned business park.

Bodmer stated that is correct. She said it is similar to the Jazzercise that was recently approved and a similar parking study was done. She said there are also a couple of dance studios in the area. Staff has not heard of any parking problems with those businesses.

Chair Churchill hearing no further comments from the Planning Commission asked for the petitioner to come forward.

Sean Flaherty, President of CrossFit NorthStar, said that their current facility is in Rosemount and it is similar in square footage although they do have fewer parking spaces available. He said that many of their clients are married couples or people that rideshare, and they haven't had any issues with parking.

Chair Churchill asked the petitioner for the hours of operation.

Mr. Flaherty said that there would be classes on Monday, Tuesday, Wednesday and Friday at 5:30 a.m., 7:00 a.m., 5:15 p.m. and 6:30 p.m. He stated that each class would be approximately 60 minutes in length. He stated that there are not any classes during peak business hours.

Hearing no further questions from the Planning Commission, Chair Churchill asked if there was anyone from the public who would like to speak to the issue.

Chair Churchill hearing no comments closed the public hearing.

Chair Churchill said that although it is not the policy of the Planning Commission to act on an item the same evening as the public hearing, staff is asking for a recommendation this evening. She asked for a motion.

**MOTION:** Commissioner Melander moved, seconded by Commissioner Diekmann, to recommend approval of a conditional use permit to operate an athletic training facility in a “BP” (Business Park) zoning district at 5708 Upper 147th Street West with the following condition:

1. The CUP shall be conducted in accordance with the floor plan received in City offices on March 30, 2010.
2. The facility is limited to 10 training/workout stations.
3. No more than 10 patrons may be using the facility at one time, provided there may be overlap of patrons between class sessions, not to exceed a 20 minute period.
4. The site provides sufficient parking for the use as permitted under the conditional use permit.

The motion carried 6-0.

## 6. LAND USE/ACTION ITEMS

- A. **Menards Remodeling Project – Consideration of site plan/building permit authorization request to allow for the remodel of the outdoor yard area that will include a garden center and lumber warehouse; and the relocation of the yard entrance from the southeast corner of the site to off of Flagstaff Avenue, which will require the reconstruction and reconfiguration of Flagstaff Avenue, from Florence Trail to 147<sup>th</sup> Street West (*Tabled at the request of the petitioner*).**
- B. **Panda Express C.U.P. – Consideration of a conditional use permit to allow for a Class II restaurant in the “RB” (Retail Business) zoning district, as well as a variance to locate a Class II restaurant closer than 1,000 feet from institutional or residential uses and site plan/building permit authorization to allow for the remodel of the former Proex building into a restaurant with an outdoor dining area.**

Associate City Planner Kathy Bodmer stated that Panda Restaurant Group, Inc., wishes to remodel the former Proex building located at 7735 150th Street West. They are requesting the following actions:

- Conditional use permit (CUP) for Class II restaurant in an “RB” (Retail Business) zoning district.

- Variance to locate a Class II (fast food) restaurant closer than 1,000 feet from institutional or residential uses.
- Site plan review/building permit authorization to remodel the former Proex building, reconfigure the site and create an outdoor dining area.

Panda Express requests a CUP, variance, and site plan review/building permit authorization to remodel the Proex building to create a 2,357 sq. ft. Class II (fast food) restaurant. The existing drive-thru lane would be removed to create an 18' x 28' outdoor dining and landscaped area. The restaurant would have a total of 51 seats with 32 additional seats in the outdoor dining area.

The property is zoned "RB" (Retail Business) which allows a Class II restaurant by conditional use permit, provided it is located at least 1,000 ft. from institutional and residential uses. The petitioner requests a variance to allow it to be located approximately 250 ft. from Grace Lutheran Church and 640 ft. from residential properties west of Hoover Lane. The setback from institutional and residential uses is intended to help protect them from negative impacts created by fast food restaurants, which may include higher traffic levels, noise, and odors. Given the fact that the church and residential neighborhood are both south of County Road 42, impacts on the neighborhood are expected to be minimal. Other Class II restaurants in the immediate area include Taco Bell and Dairy Queen. The City may wish to address potential odors by requiring the regular cleaning and maintenance of the building's air filters.

No comments were received from the public at the April 7, 2010, public hearing. The petitioner addressed most of the issues identified by staff and the Commission at the meeting:

- The number of seats in the restaurant was reduced from 53 down to 51 so that the parking requirement would be met after removing the three head-in parking spaces on the north side of the site.
- Cross-access and cross-parking documents were provided by the petitioner.
- The petitioner has provided preliminary information on the grease interceptor and has agreed to provide a maintenance schedule for both the grease interceptor and the air handling unit.
- Sidewalk links were added between Taco Bell and Panda Express to improve pedestrian circulation.

One outstanding issue is the condition of the private roadway on the north side of the site. Although there is a cross-access/cross-parking agreement in place between the five abutting properties, the owners have never worked together to repair the road. The City will require as a condition of approval of the CUP that Panda Express maintain their portion of the street in a condition consistent with public street maintenance.

Bodmer asked for any comments or questions from the Planning Commission.

Commissioner Scanlan asked about the mechanicals on the roof and the visibility.

Bodmer said that staff will work with the petitioner at the time of the building permit process.

Commissioner Scanlan said that although the petitioner added a sidewalk from the east parking lot of Taco Bell, he is still concerned that patrons may cut through the landscaping.

Bodmer displayed a rendering of the landscaping plan with the sidewalk. She stated that one thing that will help is the landscaping itself which provides a natural barrier and there are the sidewalks present which are a reasonable alternative to deal with the issue. Bodmer said that she doesn't believe the petitioner planned to fence that area, but perhaps that could be an alternative, although that has not been discussed.

Chair Churchill asked the petitioner to approach the Planning Commission.

Steve Belanger, project manager with Panda Restaurant Group, stated that they have no issue with repairing anything within their lot lines in regards to the private drive. They would like to help with the resolution with all the property owners to repair the private drive. He stated that the mechanical equipment will be screened.

Mr. Belanger stated that he's not receptive to fencing the entire area, although he is receptive to fencing the patio area itself. They have used fencing at other locations with a green bamboo railing. He could provide some renderings and specs to staff. That may help deter some people who park at Taco Bell. The only access to the patio would be from the sidewalks or from the inside of the store.

Commissioner Melander thanked Mr. Belanger for trying to come to Apple Valley. He asked if the fencing material would be painted.

Mr. Belanger said it would be a powder coated, laser cut fencing which holds up well in the Midwest.

Chair Churchill hearing no further comments thanked the petitioner. She asked if Bodmer would like to add anything.

Bodmer asked for the Commission to allow staff some flexibility to work with the applicant on the fencing issue.

Commissioner Schindler said that the plantings seem pretty supple and substantial from the rendering. He feels that the greenery will provide natural fencing.

Commissioner Scanlan said that as long as staff and the petitioner feel the density of the plantings is enough to deter people from cutting through, he is fine with no fencing.

Bodmer said that staff can work with Natural Resources staff.

Chair Churchill hearing no further comments called for a motion.

MOTION: Commissioner Melander moved, seconded by Commissioner Schindler, to recommend approval of a conditional use permit (CUP) to operate a Class II restaurant in an "RB" (Retail Business) zoning district.

- a. The petitioner shall maintain its portion of the private street on the north side of the site in a condition consistent with public street maintenance.
- b. The petitioner shall provide a schedule for the regular maintenance of the grease interceptor which shall be reviewed and approved by the Building Official.
- c. The petitioner shall install a fire sprinkler system in accordance with the City Fire and Building Code.

The motion carried 6-0.

MOTION: Commissioner Melander moved, seconded by Commissioner Scanlan, to recommend approval of a variance to locate a Class II (fast food) restaurant closer than 1,000' from institutional or residential uses.

- a. The variance is conditioned upon the approval of a conditional use permit for a Class II restaurant.
- b. The petitioner shall provide a schedule for the regular maintenance of the air handling units which shall be reviewed and approved by the Building Official.

The motion carried 6-0.

MOTION: Commissioner Melander moved, seconded by Commissioner Alwin, to recommend approval of the site plan and give building permit authorization to remodel the former Proex building to create a 51 seat Class II restaurant with a 32 seat outdoor dining area in accordance with the plans received in City offices on April 16, 2010.

- a. All rooftop mechanical units shall be screened in accordance with the City Code requirements.
- b. The petitioner shall work with staff and the Natural Resources Coordinator to find a suitable solution for landscaping and/or fencing.

The motion carried 6-0.

**C. Lindstrom Variance – A consideration of variances to allow for two attached garages and to increase the maximum driveway width from 28 feet to 32 feet.**

Associate City Planner Margaret Dykes stated that the Lindstroms reside at 14537 Elysium Place, located on the southwest corner of 145<sup>th</sup> Street West and Elysium Place. The lot is 69 feet wide and has an area of 8,762 sq. ft. The property is in a planned development zoning district that allows for lots smaller than the standard 11,000 sq. ft. The maximum impervious surface area for this lot is 3,067 sq. ft. The maximum width of a driveway for this lot is 28 feet. The split-level house has a two-car garage that is 7 feet from the south property line.

The applicant is proposing a 450 sq. ft. addition to the home and a 12' x 20' (240 sq. ft.) second attached garage that is to be constructed on the opposite side of the existing front entry. The proposed driveway would flare from its existing location to reach the new garage addition. The Code allows only one (1) attached garage, and the driveway, at 32 feet wide, would exceed the maximum width allowed on the lot.

The state statutes and the City's zoning code require that in order to approve a variance, the City must find that "special conditions applying to the structures or land in question are particular to such property, or immediately adjoining property; do not apply generally to other land or structures in the district; ...and that the variance will not merely serve as a convenience to the applicant, but is necessary to alleviate demonstrable hardship or difficulty."

The applicant's request is a significant departure from City standards. Staff is unaware of other homes in this area, or in other parts of the City, that have two attached garages. It is fairly common for single-family homes to have 3-stall garages, but the stalls are all in one structure. The applicant is unable to add a 3<sup>rd</sup> stall onto the existing garage because of the close distance to the south property line. The restriction on the number and size of attached garages was to ensure that the massing of accessory uses (garages) would not become larger than the primary use (houses for occupancy). Though the applicant's total garage area (690 sq. ft.) would be smaller than the footprint of the primary residence (1,274 sq. ft.), the placement of the garage is not in keeping with the surrounding neighborhood. Additionally, approval of the requested variance for two attached garages would set a precedent that is not based on any hardship.

The applicant could construct a detached garage in the backyard and access it from 145<sup>th</sup> Street West. This is commonly done when homeowners are unable to add onto the existing garage. The construction of a 16' x 22' garage with a 12' x 20' driveway off 145<sup>th</sup> Street would eliminate the need for all variances. The construction of a larger detached garage would require a variance for exceeding the maximum impervious surface coverage, but the City has approved variances for excess impervious surface if the property owner installed an appropriately sized infiltration device that could accommodate the additional stormwater runoff generated by the impervious material.

Staff's analysis is that the requested variance does not meet the hardship test, is not consistent with the Comprehensive Plan, and is not keeping with the spirit and intent of the zoning ordinance. Therefore staff is recommending denial of the request. If the Planning Commission concurs, a motion should be made in the affirmative and fail for lack of votes. However, if the Commission finds that granting the variance would be in keeping with the spirit and intent of the zoning ordinance, it should move to recommend approval of the variance and the motion should include an affirmative reason for the action.

Dykes asked for any comments or questions from the Planning Commission.

Chair Churchill asked how old the homes in the neighborhood are.

Dykes said the home was constructed in 1986, so mid-80's.

Commissioner Diekmann asked if the plan is at or under their maximum impervious surface.

Dykes replied that the applicant is right at impervious. She said they could not add a shed or a sidewalk.

Commissioner Diekmann asked if that is with the portion of the driveway removed on the other side. He said that they have a pervious concrete area.

Dykes said that city code does not allow cars to be parked on pervious pavers at this time. The state may change that at the end of this year, but pervious pavers to be parked on are not allowed by code. She stated this would need to be impervious.

Commissioner Diekmann stated that a pervious surface is not considered a hard surface then.

Dykes said that a pervious surface is not to be parked on. The applicant is okay with the impervious surface as is. That is not the issue; it is the two attached garages and the width of the driveway.

Chair Churchill asked if there were any other creative remodeling additions that have occurred in this neighborhood.

Dykes said that most of the variances on split levels are on the home itself. Examples are front decks or porticos or something to modernize the home. The applicant has an option of adding a detached garage because they have a corner lot.

Chair Churchill clarified that the third stall garages they have approved in the past were for setback variances.

Dykes said yes.

Chair Churchill asked if any of the past variances resulted in expanding a driveway to this extent.

Dykes said no; they've been able to meet the width of the driveway.

Chair Churchill asked if the applicant were to build a detached garage in the open yard area would they be able to meet the setback.

Dykes said that if the applicant constructed a 16 x 22 ft. garage and a 12 x 20 ft. driveway, they wouldn't need any variances and would meet setback requirements. If they decided to go a little bit larger, they would need impervious surface coverage variance. She said those have been granted in the past in other areas because the applicant has installed an infiltration device.

Commissioner Diekmann asked if the detached garage could be placed in the northeast corner of the lot.

Dykes said an accessory building needs to be behind the front plane of the house.

Commissioner Scanlan asked if the applicant has considered any other configurations such as shifting the entry way over and attaching the third stall to the existing garage.

Dykes replied that the petitioner can speak to that. She said there is a staircase there so it would require a substantial structural configuration.

Chair Churchill asked for the petitioner to step forward.

Paul Wagner, custom home builder for the Lindstroms, introduced himself. He said that his designer, Brad Johnson, is also present. Mr. Wagner said they have worked on the project for six months and displayed a rendering of their final proposal. He stated that he has been building custom homes in Apple Valley since 1974.

Angela Lindstrom, 14537 Elysium Place, owner said they have owned the home since 1992. She spoke to the Commission of the process they took in order to come up with the plan before them today. Mrs. Lindstrom displayed a rendering of installation of the third stall in the current foyer. She stated all the areas that would be affected and stated that it would be cost prohibitive and would not have the same curb appeal as their original submitted plan.

Mr. Wagner added that the State of Minnesota is accepting pervious asphalt. He stated if the proper material is used, cars can be parked on it.

Commissioner Scanlan asked if they had any additional renderings of the front and north elevations with the current proposal.

Chad Lindstrom, 14537 Elysium Place, owner, stated they didn't have any with them. He said everything was submitted to the City with the building application.

Mr. Wagner said that nothing will change on the north elevation except a new roof, new siding, and new windows. He stated that he appreciates how hard staff has worked with them to come to some sort of resolution.

Chair Churchill replied that is nice to hear.

Mr. Johnson displayed a rendering of the exterior elevations of the house with the proposed addition of the third stall.

Commissioner Alwin stated that he agrees that the renderings look nice and he appreciates the effort to try and upgrade their home. He stated that the state statute and city code are pretty clear that the Planning Commission is not to grant a variance merely for convenience but for a hardship for the nature of the lot. He said he is struggling to see the hardship for the applicant.

Mr. Wagner said that the lot is almost 5,000 sq. ft. smaller than most lots and it is only 65 ft. wide.

Commissioner Alwin stated that the lot has always been that size.

Mr. Wagner said that when a couple is young and excited to buy a home they don't think of the size of the lot. He said they are trying to work with the small lot size.

Commissioner Alwin said that to him that sounds like a convenience more than a hardship. He said he is concerned about setting a precedent and also being able to grant a variance based on the definition of a hardship.

Commissioner Melander agrees with Commissioner Alwin. The precedence issue is tricky. It is hard to anticipate how far a future applicant will push. He has concerns of the house looking like a garage and the living part being a secondary use. He said even though the rendering looks nice with the rock, it still looks like a lot of garage. He stated he is having a hard time with it, also.

Commissioner Schindler said he agrees with the other Commissioners; it looks nice, but it looks like a garage. He asked what the negativity of a detached garage is.

Mr. Wagner said the homeowner would need to remove the deck to put up the garage.

Chair Churchill commented that the City wants to work with homeowners who are interested in improving their properties. She said they do have aging housing stock in the City. It does no one any good if the City allows the housing stock to deteriorate so the Commission needs to walk a very narrow line when considering variances so that they make sense if they're necessary for the improvement and that they add to it and not deteriorate from the area around it including the neighbor's views and other peoples use and enjoyment of their property. She said she does not like the idea of a detached garage because it is far more disruptive to the neighborhood than what the applicant has come forward with. She said that she is concerned with the extent and plainness of the north elevation more than the width of the driveway.

Commissioner Diekmann said he thinks the applicant can do something on the existing lot with the building that they have and improve the north elevation. He said he is struggling to find a reason to approve this because he thinks there is plenty of room for another design. He said there is a way to make this design work on the north side of the building and improve the curb appeal. He said the east side looks phenomenal. There are other alternatives such as making the north elevation the front of the home.

Chair Churchill stated that another alternative is adding a detached garage although that would probably disrupt the neighborhood.

Mrs. Lindstrom said that she would not like to block her neighbor's view because the neighbor sits outside on her stoop every morning.

Mr. Lindstrom added that they would not be able to have a deck with the detached garage.

Commissioner Scanlan agrees with the Chair in that he doesn't think the detached garage is the best alternative; it is less appealing. He said the bottom line is to improve the home and add value. He agrees with Commissioner Diekmann that the applicant can explore alternatives such as the front of the home facing 145<sup>th</sup> Street West.

Mr. Johnson said there are budget constraints and maintaining the structure of the home.

Mr. Wagner said that their current proposal it is at a cost of over \$200,000. He said they have taken a lot of the Commissioners' time and he thanked the Commission and asked for any final comments.

Chair Churchill thanked Mr. Wagner for his consideration. She asked Dykes if the Commission needs to take action this evening.

Dykes said there is no requirement. Staff can continue to work with the applicant and explore other options.

Chair Churchill said the City wants to encourage people to improve their homes. The City has an aging housing stock that needs upgrading. They do not want to discourage people from doing that. She said she would love to see an entrance to the north and three stalls next to each other if that is possible. She invited the applicants to come back with a new plan.

Mr. Wagner asked if that would mean this variance request is in process or would they have to resubmit.

City Attorney Sharon Hills said the Planning Commission can hold action until the next meeting and act on the new proposal then since it is not subject to a public hearing.

Chair Churchill asked for a motion from the Commission to continue until the next meeting.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Alwin, to continue the item until the next meeting. The motion carried 6-0.

## 8. SKETCH PLAN

### A. **Leach Accessory Building – Sketch plan review of a request for a front size and height variance to allow for the replacement of an existing non-conforming accessory building.**

Associate City Planner Kathy Bodmer stated that the petitioner is requesting a sketch plan review of a height variance for a detached accessory building. The maximum height of accessory buildings is 16 ft. The petitioner would like to construct a 23 ft. tall accessory building to allow storage in the attic area.

Daniel and Michele Leach, residing at 5230 132nd Street West, have an existing accessory building on their property that has fallen into disrepair and needs to be replaced. According to the property owners, the accessory building has structural issues that make it impossible to repair the building as it is today. The petitioners are requesting consideration of a variance which would allow them to tear down and replace the accessory building with a same-sized, though taller, accessory building in the same location as it is today.

The home was constructed in 1975 with an attached garage. The building inspections street file indicates that the detached garage was constructed in 1978 and met the setback requirements at that time. It appears that the right-of-way was expanded when 132nd Street was realigned to intersect with Pilot Knob Road. The taking of additional right-of-way would have resulted in the building no longer meeting the setback requirements. An ordinance governing setbacks was recently adopted to address the issue of a parcel being rendered out of compliance with the zoning code as a result of a

change to the right-of-way line. The new ordinance states that if a building was constructed so that it complied with the setback requirements in place at the time the building permit was issued, the building continues to comply with the setback requirements.

The accessory building is currently 26.5' x 38.5' or 1,020 sq. ft. Because the code currently limits the size of accessory buildings to 750 sq. ft., the existing building appears to be a legal nonconforming use. According to the zoning code, the petitioner may replace the building at its current size, but may not expand or increase the nonconformity.

The zoning code limits the height of accessory buildings to 16 ft. The proposed accessory building would be 23 ft. tall. The petitioner seeks a variance so that the building may be constructed with 12/10 storage trusses.

In order to grant a variance, the City must determine the following:

1. Special conditions applying to the structures or land in question are particular to such property, or immediately adjoining property.
2. The special conditions do not generally apply to other land or structures in the district.
3. The granting of the proposed variance will not be contrary to the intent of this ordinance and comprehensive plan.
4. The granting of the variance will not merely serve as a convenience to the applicant, but is necessary to alleviate demonstrable hardship or difficulty.

The petitioners have a 3-stall garage attached to the home. They are entitled to replace their 1,020 sq. ft. existing detached garage with the same sized building. A 750 sq. ft. detached building would allow for a 3-stall garage. Given the size of the detached garage, staff does not believe that the request meets the hardship test provided for in the zoning code. At the same time, staff is concerned that granting a variance in this case may set precedence for similar requests in the future.

Bodmer asked for questions or comments from the Planning Commission.

Commissioner Diekmann asked what the height of the current building is.

Daniel Leach, 5230 132<sup>nd</sup> Street West, homeowner, stated that it is 18 feet tall. He said that they bought the house in November and he thinks the structure is 18 ft. tall, higher than what is allowed.

Commissioner Diekmann said he has no issue with the extra five feet.

Chair Churchill said she wants to know more about the 12/10 storage trusses.

Mr. Leach said the house has a 12/10 pitch and he wants to match the detached garage to the house. The attached three-stall garage has a dormer on it and he would like to put a dormer on the detached garage. He wants the detached garage to look like the house. The storage trusses would come along with the 12/10 pitch, which would allow for storage of his children's toys.

Commissioner Alwin asked if there is any intention for this building other than storage. He asked if someone could live there.

Mr. Leach replied no. He said it would only be storage above. There will be a 42" industrial hatch that will allow larger items to be stored in the space.

Commissioner Alwin asked Bodmer if there is an ordinance issue if someone comes back in two years and would want an occupancy permit.

Bodmer said yes. The City code does have a provision for accessory dwelling units so they would have to come back for a conditional use permit.

Commissioner Alwin noticed in the documentation that the detached garage would be heated. He said in his mind that seems like the next step.

Mr. Leach said that the building is currently heated. They will be going to a geo-thermal heating for the house and can do the same thing in the garage for \$5 per month. He said it makes sense to do that instead of the gas that is currently being used in it.

Commissioner Scanlan asked if they planned on adding any more windows to the detached garage.

Mr. Leach said that the detached garage would have one big dormer or two smaller dormers to match the house. The north side has rather large pine trees that block passerby from seeing in. There will be hardi shakes to match the house on the south and west sides. Windows would be a good entry point for a thief. He said there will be a 42" side door. Mr. Leach said he could put in a higher smaller awning type window.

Commissioner Scanlan said that may add some appeal.

Commissioner Melander said he agrees with Commissioner Diekmann. He has no problem with the proposal, especially if it matches the design of the home.

Commissioner Schindler asked what the tree situation is on the east side of the garage facing the neighbor.

Mr. Leach replied that there is a row of very large bushes on the neighbor's property.

Commissioner Schindler said the bulk of the change would be height. He doesn't want to see it negatively affect the neighbor.

Mr. Leach said it is a flat pitched roof currently with taller walls. He thinks the neighbor might see a little more roof than straight wall with the pitch change.

Commissioner Schindler asked if he had spoken to the neighbor.

Mr. Leach said yes and they are fine with it.

Commissioner Schindler said he has no problem with it and it is improving what is there already. He is comfortable as long as it doesn't change something significantly for the neighbor to the east.

Chair Churchill agrees. She said the only issue is adding to the height and in doing so to match the architecture of the home makes a lot of sense.

Bodmer reminded the Commission that by granting a variance for this request will be intensifying a non-conformity. The reason the City has the non-conforming rules is that there is an expectation that in time a non-conformity would go away and that it would be replaced with a conforming structure. However, state law does provide special provisions that now protect non-conformities. She stated that the home that was on the property was removed and a whole new home built so that is why the style of the home now is different than the garage. She stated that from a staff perspective the issue is intensifying a non-conformity.

Chair Churchill suggested that if the applicant comes back for formal variance review, the applicant provide a silhouette of the existing building and then superimpose the silhouette of the new proposed building structure so that the Planning Commission can see the difference in the wall height and the roof height.

Mr. Leach said that his main objective is for the building to look more like the home.

Commissioner Diekmann stated that the state code does allow them to put the same size building back on the property.

Bodmer agreed.

Commissioner Diekmann said worst case scenario is that the applicant can get different size storage trusses.

Chair Churchill thanked the applicant.

## **9. OTHER BUSINESS**

### **A. Review of the Upcoming Schedule and other Updates**

Community Development Director Bruce Nordquist mentioned to the Commission that there would be four public hearings in regards to telecommunications towers that will come before the Planning Commission on the May 5<sup>th</sup> agenda. He stated that communications towers are allowed in institutional zoning as a conditional use. The proposals are for Hayes Park, Galaxie Park, Wildwood Park and Christ Church. He said residents may choose to contact Planning Commission members to talk about the proposals. He distributed to the Planning Commission a compilation of public information about each proposal.

Chair Churchill said that she has been contacted already by a concerned citizen. The concerns raised were health and safety based on the threat of microwave radiation. She stated that she will

not be at the meeting on the 5<sup>th</sup>, but based on that call, she asked that staff and/or the petitioner be prepared to answer those issues. Also, the other issue was the effect of cell phone towers on property values. She said that if staff or the applicant has any opportunity to do property value surveys in the areas where the City has permitted cell towers that it may be valuable information. Staff could look at general trends in the surrounding communities.

#### **10. ADJOURNMENT**

Hearing no further comments from the Planning Staff or Planning Commission, Chair Churchill asked for a motion to adjourn.

MOTION: Commissioner Alwin moved, seconded by Commissioner Diekmann, to adjourn the meeting at 9:05 p.m. The motion carried 6-0.