

**DRAFT COPY**  
**PLANNING AND ZONING COMMISSION**  
**MINUTES OF THE REGULAR MEETING**  
**December 6, 2011**  
**7:00 PM**

The meeting was called to order at 7:00 pm by Chair-Marlaine Szurek.

Commission Members present- Thompson, Peterson and Szurek.  
Members absent- Fiorendino and Kinney

Also present were Jeff Sargent (City Planner), and Shelley Hanson (Secretary).

*Motion by Thompson, seconded by Peterson, to approve the minutes from the meeting of October 3, 2011.*  
*All ayes. MOTION PASSED.*

**PUBLIC HEARINGS**

**CASE NUMBER:** 2011-1201  
**APPLICANT:** Jeanne Ramirez  
**LOCATION:** 5075 Johnson St NE  
**REQUEST:** Variance for Shed Setback

Sargent told members that the applicant is requesting a 3-foot side and rear yard setback variance for the placement of a playhouse / shed located at 5075 Johnson Street, per Code Section 9.106 (C)(1)(c). The City's Zoning Code requires that all new accessory structures be no closer than 3 feet from the side and rear property lines. The storage shed / playhouse has already been constructed and is located within the 3-foot setback requirement on the side and rear property lines. For this reason, a 3-foot setback variance is required.

**ZONING ORDINANCE**

The property at 5075 Johnson Street is zoned R-1, Single Family Residential, as are all the properties in the surrounding area. The Zoning Code states that all detached accessory structures must be located no closer than 3 feet from the side and rear property lines.

The property at 5075 Johnson Street is a corner lot, intersecting with Lincoln Terrace. The house is situated towards the northeast corner of the property with the front of the house facing Johnson Street. The applicant has stated that this creates a very small rear yard, with little room for a storage shed. The applicant constructed the shed in the northeast corner of the property within the 3-foot setback requirements of the north and east property lines. Staff noticed the two-story structure and informed the applicant that she would need a building permit and a variance if she wished to retain the shed's location.

Upon inspection of the property records, it was discovered that the applicant has also placed the shed on a 5-foot utility and drainage easement. Usually, the City does not allow for the construction of any type of buildings on an easement. However, as a condition of approval, the applicant will have to agree to remove the shed at her expense should the City ever need to gain access to the utilities in the easement.

## **COMPREHENSIVE PLAN**

The Comprehensive Plan guides this area as residential. A variance to allow the shed to remain in its current location would be consistent with the intent of the Comprehensive Plan guiding of the area.

## **FINDINGS OF FACT (Variance)**

Section 9.104 (G) of the Zoning Ordinance outlines five findings of fact that must be met in order for the City Council to grant a variance. They are as follows:

- a) Because of the particular physical surroundings, or the shape, configuration, topography, or other conditions of the specific parcel of land involved, strict adherence to the provisions of this article would cause practical difficulties in conforming to the zoning ordinance. The applicant, however, is proposing to use the property in a reasonable manner not permitted by the zoning ordinance.

*As stated by the applicant, there is no other reasonable place on the property to place the storage shed than in its current location. By moving the structure into compliance with the ordinance, the structure would block sunlight into either the neighbor's house or the applicant's house. Due to the small backyard and City Codes prohibiting the shed to be located in the front yard, there is no other space on the lot to place the structure.*

*Staff supports the practical difficulties as stated by the applicant. The proposed location of the structure is reasonable given the characteristics of the property and the location of the structures on adjacent properties.*

- b) The conditions upon which the variance is based are unique to the specific parcel of land involved and are generally not applicable to other properties within the same zoning classification.

*The topography and orientation of the house on the corner lot are unique to the specific parcel of land involved.*

- c) The practical difficulties are caused by the provisions of this article and have not been created by any person currently having a legal interest in the property.

*The provisions of the Code would make it difficult for the applicant to use her property in a reasonable manner due to the unique circumstances of her property and the orientation of the house on the lot.*

- d) The granting of the variance is in harmony with the general purpose and intent of the comprehensive plan.

*The Comprehensive Plan guides this area as residential. A variance to allow the shed to remain in its current location would be consistent with the intent of the Comprehensive Plan guiding of the area.*

- e) The granting of the variance will not be materially detrimental to the public welfare or materially injurious to the enjoyment, use, development or value of property or improvements in the vicinity.

*The granting of the variance would not be materially detrimental to the public.*

Staff recommends approval of the 3-foot side and rear yard setback variances for the placement of a storage shed / playhouse because the practical difficulties surrounding the property justify the current placement of the shed.

Questions from members:

Szurek asked how tall the structure was. Sargent said it meets the requirements that it must be under 18 ft. He said Ramirez's measurements show the shed to be 15.5 ft high. Szurek then asked if Ramirez had come in, called, or checked the website would she have been given information on setbacks and easements. Sargent said Ramirez claimed she did call in and was told that a shed with a footprint less than 120 sf does not require a permit. She did not ask questions about it being two stories, and was unaware of the easement issue. After the Ramirez' constructed the shed the Building Official noticed it while in the neighborhood and was concerned over the size and location of the shed. Staff checked further and discovered it didn't meet the setbacks and was placed in a drainage and utility easement area. Ramirez was then notified that she would have to remove the structure and that is when she applied for this variance.

Thompson commented that he would not be in favor of granting this variance because it is located on the utility easement. These situations usually come back years later to cause problems, especially as owners change and are unaware of the history of events. To make someone remove something years from now could be very difficult and costly for staff. He also stated that the neighbors' signatures supporting the present location of the shed doesn't mean much to him as they haven't been verified. He felt that granting this variance is not in the best interest of the City.

Szurek stated her biggest concern was that the minimum 3 ft setback was not met and she agreed with Thompson about not allowing the construction of a building on the utility easement.

Peterson had no questions or comments.

Public Hearing Opened.

Jeanne Ramirez wanted to address the easement issues. She said she was unaware of the utility easement until city staff informed her the shed had been constructed on the easement which isn't allowed. She didn't feel that should be an issue, however, since it was constructed on stilts so the drainage is not blocked. Ramirez stated she was told a permit wasn't needed if the shed would be 120 sf or less in dimension, that it must meet a 3 ft. setback, and that it couldn't be more than 18 ft. in height (or taller than the primary structure). She said her husband put the shed/playhouse too close to the property line, and she was not monitoring the construction. They were trying to locate it in the least conspicuous place possible so neighbors' views wouldn't be blocked.

Public Hearing Closed.

Szurek asked Sargent if the City Council would make the final decision on this matter. He told her that this would go to the City Council on Monday, December 12<sup>th</sup>. She said that she couldn't support this variance request since it is the job of the Commission to uphold the codes and policies in place which were established for a reason. She also felt the Commission was being asked to support a variance "after the fact" since it clearly violates a couple of these codes. She told Ramirez that she will need to plead her case to the City Council as the Planning and Zoning Commission could not support her request.

*Motion by Peterson, seconded by Szurek, that the Planning Commission recommends the City Council approve the 3-foot side and rear yard setback variance for the placement of a playhouse / shed located at 5075 Johnson Street per Code Section 9.106 (C)(1)(c) of the City Code, subject to certain conditions of approval that have been found to be necessary to protect the public interest and ensure compliance with the provisions of the Zoning and Development Ordinance, including:*

- 1. All application materials, maps, drawings, and descriptive information submitted with the application shall become part of the permit.*
- 2. The applicant shall agree to remove the shed at the owner's expense in the event that the City would need to gain access to the 5-foot utility and drainage easement on which the shed is located.*

*Roll Call: Peterson-aye and Thompson and Szurek-nay. MOTION FAILS.*

The matter will be addressed at the City Council meeting December 12, 2011.

**CASE NUMBER: 2011-1202**  
**APPLICANT: O'Reilly Auto Parts Store**  
**LOCATION: 3700 Central Avenue NE**  
**REQUEST: 11-foot Corner Side Yard Setback Variance for Parking**

Sargent explained that the applicant is requesting an 11-foot corner side yard setback variance for parking for the O'Reilly Auto Part Store located at 3700 Central Avenue, per Code Section 9.110 (C). The site plan for the construction of the new store indicates that three parking stalls will be located closer than the required 15-foot setback from Central Avenue. For this reason, an 11-foot setback variance is required.

The construction of a new building also requires a Site Plan Approval by the Planning Commission. The applicant is not ready at this time to submit the proper information for a Site Plan review, but would still like the variance to be considered for approval. The applicant is in the process of gathering the proper information for the Site Plan and will be submitting that information at a later time. An approved Site Plan will be a condition of approval for the variance request.

#### **ZONING ORDINANCE**

The property at 3700 Central Avenue is zoned GB, General Business, as are the properties to the north and east. The properties to the west are zoned R-3, Multiple Family Residential, and the properties to the south are located in the City of Minneapolis. The property is also located within the Design Guidelines Downtown District, and will be subject to those requirements.

For definition purposes in the Zoning Code, a corner lot has both a front yard and a corner side yard. The front yard is portion of the property along the public right-of-way with the least width. For this reason, the front yard is considered the frontage along 37<sup>th</sup> Avenue and the corner side yard is considered the frontage along Central Avenue. The City Code requires that all parking must maintain a minimum 15-foot setback from the public right-of-way along a corner side yard.

As stated previously, this property is also located within the Design Guidelines Downtown District. The Design Guidelines govern many facets of redevelopment, including building and parking placement on the property. For instance, the Design Guidelines require that the building be placed as close to the intersection of Central Avenue and 37<sup>th</sup> Avenue as possible. The Design Guidelines also require that at least 50% of the parking be located behind the front line of the building. The accompanying Site Plan indicates that the building will be placed in the correct location with 100% of the parking located behind the front line of the building. The applicant would like to accommodate as much parking in front of the store as possible, which places two of the proposed parking stalls within the 15-foot setback requirement.

**PARKING.** For retail establishments, the City Code requires 1 parking stall for every 300 square feet of retail space. The proposed building will be approximately 7,450 square feet in area, requiring a minimum of 23 parking stalls. The Site Plan indicates 30 on-site parking spaces, meeting the City's minimum requirements.

### **COMPREHENSIVE PLAN**

The Comprehensive Plan guides this area as commercial. A variance to allow extra on-site parking would be consistent with the intent of the Comprehensive Plan guiding of the area.

### **FINDINGS OF FACT (Variance)**

Section 9.104 (G) of the Zoning Ordinance outlines five findings of fact that must be met in order for the City Council to grant a variance. They are as follows:

- a) Because of the particular physical surroundings, or the shape, configuration, topography, or other conditions of the specific parcel of land involved, strict adherence to the provisions of this article would cause practical difficulties in conforming to the zoning ordinance. The applicant, however, is proposing to use the property in a reasonable manner not permitted by the zoning ordinance.

*The practical difficulties are caused by the orientation of the property in relation to Central Avenue and the fact that the property is a corner lot. City Code requires the building to be placed as close to the corner as possible, and the applicants are using the remainder of the property in a reasonable manner as a result of the building placement.*

- b) The conditions upon which the variance is based are unique to the specific parcel of land involved and are generally not applicable to other properties within the same zoning classification.

*The conditions upon which the variance is based are unique to the corner lots along Central Avenue. Being that no other corner lot property along Central Avenue shares the same lot dimensions, this property is unique compared to other properties in the GB, General Business District.*

- c) The practical difficulties are caused by the provisions of this article and have not been created by any person currently having a legal interest in the property.

*The Design Guidelines mandate where the building must be placed on the property. The applicants are utilizing the remainder of the property in a reasonable manner based on the building location.*

- d) The granting of the variance is in harmony with the general purpose and intent of the comprehensive plan.

*The Comprehensive Plan guides this area as commercial. A variance to allow extra on-site parking would be consistent with the intent of the Comprehensive Plan guiding of the area.*

- e) The granting of the variance will not be materially detrimental to the public welfare or materially injurious to the enjoyment, use, development or value of property or improvements in the vicinity.

*The granting of the variance would not be materially detrimental to the public.*

Staff recommends approval of the 11-foot corner side yard setback for parking because the practical difficulties surrounding the property justify the proposed location of the parking stalls in question.

#### Questions from members:

Szurek asked if the Site Plan had been submitted yet. Sargent told her no, but the placement of the building would be the same as indicated on the preliminary site plan shown here and that it is the #1 condition of approval. She also asked for clarification of why the 37<sup>th</sup> Avenue side of the property is being called the front yard when it is clear that the back of the building will face this way. Sargent explained it is called the front yard side by definition since it is the smallest side of the lot, and that is standard language used throughout the city for most properties.

Sargent explained to everyone in the audience that this is not the approval of the Site Plan. This is simply a preliminary approval that will help them finalize the actual Site Plan to be submitted. Neighbors will again be notified when the Site Plan is considered by the Commission.

Thompson asked if only 23 parking spaces are needed and they plan on having 30, why do we need to accommodate this variance for parking setbacks. Sargent said he can't comment on their reasoning. He said they could be planning for future needs or change of use, which would make it more marketable and customer friendly.

#### Pubic Hearing Opened:

Fred Wadlie, a representative from O'Reilly's-told members this building is a new prototype for them. He said this is larger than most of their stores and they will have an expanded inventory that will supply other stores as needed. Because of this, they plan on having more employees at this location, and therefore, will need more parking spaces.

#### Public Hearing Closed.

*Motion by Thompson, seconded by Peterson, that the Planning Commission recommends the City Council approve the 11-foot corner side yard setback variance for parking for the O'Reilly Auto Parts Store located at 3700 Central Avenue per Code Section 9.110 (C) of the City Code, subject to certain conditions of approval that have been found to be necessary to protect the public interest and ensure compliance with the provisions of the Zoning and Development Ordinance, including:*

1. *All application materials, maps, drawings, and descriptive information submitted with the application shall become part of the permit.*

2. *Approval of the variance request in contingent on the approval of the Site Plan for the O'Reilly Auto Parts Store located at 3700 Central Avenue.*

*Roll Call: All ayes*

The attached Resolution will go to the City Council December 12, 2011.

**RESOLUTION NO. 2011-XXX**  
**RESOLUTION APPROVING A VARIANCE**  
**FROM CERTAIN CONDITIONS**  
**OF THE CITY OF COLUMBIA HEIGHTS ZONING CODE**  
**FOR O'REILLY AUTO PARTS STORE**

**WHEREAS**, a proposal (Case # 2011-1202) has been submitted by O'Reilly Auto Parts Store to the City Council requesting a variance from the City of Columbia Heights Zoning Code at the following site:

ADDRESS: 3700 Central Avenue NE

LEGAL DESCRIPTION: On file at City Hall.

THE APPLICANT SEEKS THE FOLLOWING RELIEF: An 11-foot corner side yard setback variance for parking per Code Section 9.110 (C).

**WHEREAS**, the Planning Commission has held a public hearing as required by the City Zoning Code on December 6, 2011;

**WHEREAS**, the City Council has considered the advice and recommendations of the Planning Commission regarding the effect of the proposed variance upon the health, safety, and welfare of the community and its Comprehensive Plan, as well as any concern related to traffic, property values, light, air, danger of fire, and risk to public safety, in the surrounding area;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Columbia Heights that the City Council accepts and adopts the following findings of the Planning Commission:

1. Because of the particular physical surroundings, or the shape, configuration, topography, or other conditions of the specific parcel of land involved, strict adherence to the provisions of this article would cause practical difficulties in conforming to the zoning ordinance. The applicant, however, is proposing to use the property in a reasonable manner not permitted by the zoning ordinance.
2. The conditions upon which the variance is based are unique to the specific parcel of land involved and are generally not applicable to other properties within the same zoning classification.
3. The practical difficulties are caused by the provisions of this article and have not been created by any person currently having a legal interest in the property.
4. The granting of the variance is in harmony with the general purpose and intent of the Comprehensive Plan.
5. The granting of the variance will not be materially detrimental to the public welfare or materially injurious to the enjoyment, use, development or value of property or improvements in the vicinity.

**FURTHER, BE IT RESOLVED**, that the attached plans, maps, and other information shall become part of this variance and approval; and in granting this variance the city and the applicant agree that this variance shall become null and void if the project has not been completed within one (1) calendar year after the approval date, subject to petition for renewal of the permit.

CONDITIONS ATTACHED:

1. All application materials, maps, drawings, and descriptive information submitted with the application shall become part of the permit.
2. Approval of the variance request in contingent on the approval of the Site Plan for the O'Reilly Auto Parts Store located at 3700 Central Avenue.

**NEW BUSINESS**

Sargent told members that Aldi's is now open. The members thought it is a nice looking store.

Sargent told members that staff is hoping to establish a sub committee to review and update the Design Guidelines, especially for repainting or re-facing existing buildings along our corridors. The present guidelines address the finish and colors of new buildings, or those having major remodeling done, but do not address painting and upkeep of existing structures. He said the present guidelines are 8 years old, so an update is probably in order. The members agreed.

The meeting was adjourned at 7:45 pm.

Respectfully submitted,

Shelley Hanson  
Secretary