

**Meeting Minutes**  
**New Prague Planning Commission**  
**Wednesday, August 28, 2019**

**1. Call Meeting to Order**

The meeting was called to order at 6:36 p.m. by Chair Bob Gilman with the following members present: Paul Tupy, Dan Meyer and Michael Uttenhove. Absent was Shawn Ryan (arrived at 7:04PM).

City Staff Present: Ken Ondich – Planning / Community Development Director

**2. Approval July 26, 2019 Regular Meeting Minutes**

It was moved by Tupy, seconded by Uttenhove, to approve the July 24, 2019 regular meeting minutes as submitted. Motion carried (4-0, Ryan had not yet arrived).

**3. Old Business**

**A. None.**

**4. New Business**

**A. Request for Variance #V5-2019 – Reduce Setback to Wetland for New Home Construction at 602 Eastland Ave. SE  
KA Witt Construction, applicant**

Planning Director Ondich presented the staff report. He stated that the subject vacant lot is located at 602 Eastland Ave. SE and was platted in 2007 as part of Eastland First Addition and that since the property was platted, Section 734 of the Zoning Ordinance was adopted which provides more specific buffer requirements for wetlands rather than a blanket 40' buffer and 50' setback from when the lot was originally platted. He stated that over 41% of the lot is covered by wetland or buffer area which impacts the use of the lot and would prevent a home of the same size and appearance as others in the area from being constructed. He stated that the home would not encroach into the 40' buffer area and that it is being constructed for Jason and Melissa Draeger. He stated that the lot is zoned RL-90 Single Family Residential and is located in a typical single family plat and other lots in the development, except the lot directly to the north, are not subject to wetland buffers or setbacks which prevents a home from a similar size and appearance to others on the block from being constructed. He stated that Jason Witt provided a statement of practical difficulty stating that they want to keep a similar type and size of home to others in the development and that he believes the 50' setback to the wetland edge unduly restricts

the use of the lot on the northwest corner. He stated that there have been multiple variances issued for the wetland setback since it was initially adopted in 2002, with the most recent allowing a new home to be constructed at 24' from a wetland edge in 2016 and to allow an above ground pool to be located 14' from a wetland edge in 2018. He stated that staff recommends approval of Variance #V5-2019 from the required 50' wetland setback to 40' to allow for the construction of a new home located at 602 Eastland Ave. SE with the findings and condition listed in the staff report.

Jeremy Laine, 604 Eastland Ave. SE, asked how far back the home is from the south lot line and how that compares to other homes in the neighborhood.

Planning Director Ondich stated it was 8' from the lot line, but that the minimum was 7'.

Jason Witt, applicant, stated that homes vary up to about 10' from side lot lines in the development.

Mr. Laine asked if any stormwater improvements would be made to the drainage with the new home and stated that he believes the wetland and pond located in the development have an impact on the drainage in this part of the development. He stated that a lot of water flows in the rear yard of his home and others in the development. He shared photos of water flows in his backyard from recent rains and snow melts. He stated that his lot has been wet this year and that he could barely mow his rear lawn until about 3 weeks ago. He stated he wants to make sure drainage is not an issue as it relates to a home being constructed on the lot next door and that his neighbors are also concerned.

Planning Director Ondich stated that earlier in the day he and City Engineer Chris Cavett reviewed Mr. Laine's photos, the grading plan, as-built grading and the pond/wetland area to the northeast and determined that the grading and drainage is functioning as it should and that a drain tile could be added in the rear yard of the homes, but that the city considered a drain tile to be a luxury and not a necessity as it only helps the drainage area dry up faster.

Mr. Witt stated that they had looked at putting in drain tile to help the water drain quicker, but that it would take multiple property owners to agree and to have a drain tile agreement in place. He stated that he is working towards this. He stated that they had flipped the house design to make it fit only needing the 10' variance and to avoid any impact to the wetland buffer. He stated that the wetland and pond issue that Mr. Laine was referring to would not have a direct impact on the grading of this area as the wetland that backyard water flows into is much higher in elevation than the pond/wetland that is being re-reviewed by the City Engineer and their engineer.

Mr. Laine suggested that the home not be flipped in order to maintain a more consistent look and asked how much closer it would be if flipped on the lot.

Mr. Witt stated that it would probably be up to 35' from the wetland.

Chair Gilman stated that the grading would change and likely have more impact on the buffer area as well.

A motion was made by Tupy, seconded by Uttenhove to recommend approval of Variance #V5-2019 from the required 50' wetland setback to 40' to allow for the construction of a new home located at 602 Eastland Ave. SE with the following findings:

- A. The requested variance to allow for the construction of a new home at up to 40' from the delineated wetland edge is in harmony with the general purposes and intent of this Ordinance because residential structures are a permitted use in the RL-90 Single Family Residential Zoning District.
- B. The requested variance to allow for the construction of a new home at up to 40' from the delineated wetland edge is consistent with the comprehensive plan because the subject property can have a single family home as a permitted use in the RL-90 Single Family Residential Zoning District and the variance would provide for a buildable area to construct a single family home on the lot that is consistent with the type and size of home that exists in the neighborhood that does not exist with the full wetland setback in place.
- C. The applicants propose to construct the new home at the request of the lot owner seeking to construct a single family home which is a reasonable use and would match the existing neighborhood area in terms of its type and size.
- D. Unique circumstances apply to this property over which the property owners had no control and which do not generally apply to other properties in the vicinity because the lot was platted in 2007 and the 50' wetland setback that has been in effect since 2002 prevents a home from being built on the lot that will match the type and size which is found in the neighborhood because over 41% of the lot is covered by wetland or wetland buffer area.
- E. The variance does not alter the essential character of the neighborhood because the variance would allow a home to be constructed on the lot that would match the type and size commonly found in the neighborhood even with over 41% of the being covered by wetland or wetland buffer area.
- F. The variance requested is the minimum variance which would alleviate the practical difficulty because it would allow for the construction of a home that would match the type and size found in the neighborhood while maintaining the full 40' wetland buffer area to the wetland.

And the following condition:

1. Wetland buffer signs must be purchased from the city and installed at the 40' wetland buffer line that crosses the north and west property lines to delineate the wetland buffer area on the lot.

Motion carried (4-0, Ryan had not yet arrived).

**B. Request for Variance #V6-2019 – Fence Height Variance at 1211 Grant Ave. NW  
Cody Boelter, applicant**

Planning Director Ondich presented the staff report. He stated that property owner Cody Boelter has applied for a variance to allow a 6' tall privacy fence which does not meet the ordinance requirements as it would exceed 4' within 30' of a road right of way. He stated that she would like the fence installed along her rear lot line to be able to fence in all of his backyard area for his German Sheppard dog which can jump shorter fences. He stated that the fence type is proposed to be a 6' tall wooden privacy fence and that he also seeks to have the fence extend beyond the rear corner of the house to line up with the front edge of the house, but the ordinance doesn't allow 6' tall fencing in that area. He stated that the neighborhood is zoned RM Medium Density Residential and that the ordinance would allow only a 25' deep area north of the home to be within the fenced in area which would cut the backyard area more than in half which affects the practical use of the yard and that it would look awkward to the home next door which was issued a fence variance in 2018. He stated that staff does not recommend a variance from the ordinance that does not allow fencing in front of the rear corner of the home as it could change the look of the neighborhood. He stated that 6<sup>th</sup> Street NW is a major collector road and will have 1,100 vehicles per day in 2035. He stated that the aesthetic appearance of the 6' tall fence would be lessened with no trail or sidewalk in the boulevard area which is 14' deep. He stated that there have been various fence variances issued in the recent past with the most recent being for the lot next door to have a fence along 6<sup>th</sup> Street NW at 6' tall. He stated that staff recommended approval of the variance with the six findings in the staff report.

(Shawn Ryan arrived at 7:04PM.)

Cody Boelter, applicant, stated that the issue he has with the staff recommendation is he wants the 6' tall fence to go to the top of the hill which is in line with the front edge of his home. He stated that if the area is not fenced in that he will need to landscape the area and it will be worthless as far as having any use to him. He stated that both neighbors on each side of his home as well as the owner of the vacant lot across the street are in favor of allowing the 6' tall fence in line with the front edge of his home. He stated that Midwest Fence would professionally install the fence.

The Planning Commission discussed the merits of the fence extending to the front edge of the home and determined that the slope on the east side of the home was unique to this lot and that it would be better to fence in the area than to leave it as an unusable sloped area.

Peggy Boelter, 1211 Grant Ave. NW, stated that she owns the vacant lot across the street and would be building in 2 to 3 years and did not have any objection to the 6' tall fence on the east side of the home.

Planning Director Ondich suggested that findings C and D needed amending as listed in the staff report if the Planning Commission wanted to proceed with a recommendation to allow fencing forward of the rear line of the home but not exceeding the front edge of the home. He specifically noted that it be noted that the Planning Commission finds the lot to be unique due to the slope on the east side of the home and to remove the line

from finding C that noted that fencing at 6' tall was not allowed on the east side of the home.

A motion was made by Meyer, seconded by Uttenhove to recommend approval of Variance #V6-2019 from the fence regulations in the RM Medium Density Residential Zoning District to allow a 6' tall fence to be located up to the rear property line along 6<sup>th</sup> Street NW and to allow a 6' tall fence to be located in an area forward of the rear line of the home, but not exceeding the front line of the home, at 1211 Grant Ave. NW, for the following reasons:

- A. The proposed variance is in harmony with the general purposes and intent of the Ordinance because the RM Medium Density Residential Zoning District allows fences to be constructed as a permitted use.
- B. The proposed variance is consistent with the comprehensive plan because fences are allowed as a permitted use in the RM Medium Density Residential Zoning District.
- C. The applicant will continue to use the property in a reasonable manner not permitted by the ordinance in that only the height of the fence within 30' of the right of way and the fence height located forward of the rear line of the home to the front line of the home exceeds the ordinance permitted 4' height.
- D. Unique circumstances apply to the property in that it is a through lot abutting a road on two sides (front and rear) with the roadway along the rear yard being a 6<sup>th</sup> Street NW which is a major collector road with future traffic counts above normal residential levels and which does not have a trail in place or planned between the rear lot line and curb of 6<sup>th</sup> Street NW. It is also noted that the steep grade on the east side of the home is unique and allowed to be included in the 6' tall fenced in area rather than remain underutilized.
- E. The variance does not alter the essential character of the neighborhood because the proposed 6' tall fence would be located on the rear lot line and will line up with the existing 6' tall fence directly to the west, leaving a common 14' boulevard area.
- F. The variance requested is the minimum variance which would alleviate the practical difficulties because the variance would allow the applicant the privacy and security for their dog they are seeking while not reducing the usable area of their backyard and while not changing the essential character of the neighborhood.

Motion carried (5-0).

## **5. Miscellaneous**

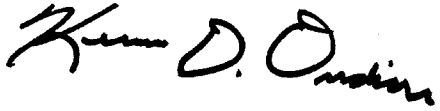
The following miscellaneous items were reviewed as information only:

- A. Monthly Business Update – Planning Director Ondich provided the Monthly Business update to the Planning Commission that had been provided to the EDA earlier in the month.

## 6. Adjournment

A motion was made by Uttenhove, seconded by Ryan, to adjourn the meeting at 7:38PM.  
Motion carried (5-0).

Respectfully submitted,

A handwritten signature in black ink that reads "Kenneth D. Ondich". The signature is written in a cursive style with a large, stylized 'K' and 'O'.

Kenneth D. Ondich  
Planning / Community Development Director