

ARLINGTON PLANNING & ZONING BOARD  
MEETING MINUTES  
NOVEMBER 5, 2009

The meeting was called to order at 7:00 p.m. by Chairperson Nagel.

Members Present: Grabitske, Haggenmiller, Kreft, Chairman Nagel, Pinske, Councilmember Reetz

Members Absent: Mielke

Also Present: PZ Adm. Smith-Strack

Motion by Haggenmiller, seconded by Grabitske, and passed by unanimous vote to approve the agenda with the following addition:

6B) Neisen Property along Hwy 5.

Motion by Kreft, seconded by Reetz, and passed by unanimous vote to approve the minutes from the October 1, 2009 meeting as presented.

Chairman Nagel recessed the regular meeting to hold a public hearing.

**Variance – 402 West Adams Street:**

Chairman Nagel called to order the public hearing regarding the variance request from Laurie Mueller of 402 West Adams Street, for the placement of a temporary handicap access ramp. Smith-Strack explained that corner lots require 2 front yard setbacks and that the proposed ramp does not meet such setbacks. She handed out a memo that talked about the statutory undue hardship standard that must be met, which consists of the following:

- 1) The property cannot be put to a reasonable use without the variance;
- 2) The landowner's situation is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property and economic considerations alone cannot create an undue hardship;
- 3) That the variance, if granted, will not alter the essential character of the locality. This factor generally contemplates whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

It was noted that this property only meets one of the above requirements, not all three. However, the Fair Housing Act prohibits cities from making zoning or land use decisions or implementing policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities. The Act requires cities to make "reasonable accommodations" to persons with disabilities, which a handicap ramp qualifies.

Smith-Strack recommended approval of the variance request provided that the ramp is removed from the property when an occupant no longer has mobility impairment or when an occupant with mobility impairment no longer resides on the premises. Her recommendation is supported by the following findings:

- The request fails to pass two of three variance test requirements for 'undue hardship' and under normal circumstances the variance would be denied due to non-qualification under same standards.
- The Fair Housing Act allows for 'reasonable accommodations', which a handicap access ramp qualifies.

It was noted that there was no one present either for or against said variance.

Chairman Nagel adjourned the public hearing and reconvened the regular meeting.

Discussion continued on the proposed handicap ramp for 402 West Adams Street. Smith-Strack commented on the (prefabricated) materials being used. She added that the Building Official has reviewed and approved the proposed ramp. Various contingencies (for variance approval) were discussed at length and included the following:

1. The handicap access ramp shall be removed from the property within thirty (30) days of when an occupant no longer has mobility impairment or when an occupant with mobility impairment no longer resides at the premises.
2. The Property Owner shall notify the City in writing within thirty (30) days of when an occupant no longer has mobility impairment or when an occupant with mobility impairment no longer resides on the premises.
3. This Variance is in effect for the placement of a temporary handicap access ramp. This Variance shall be in effect, therefore, for a temporary period not to exceed six (6) months from the time of approval by the City Council. At that time the request will be reviewed to determine the 'temporary' nature of the structure. If the 'temporary need' is determined to be an 'extended', 'semi-permanent', or 'consistent' need a more permanent solution may be required including, but not limited to, the placement of a more conventional (i.e. wooden, pre-fabricated materials typically used for construction purposes, etc) structure with footings or a foundation.
4. The Property Owner shall control grass, weeds, and maintain lawn under the ramp at all times. Seasonal items shall be removed from the yard and the premises shall be kept in a neat and orderly fashion.

Reetz introduced the following resolution and moved for its adoption:

**RESOLUTION NO. 10-2009**

**A RESOLUTION RECOMMENDING APPROVAL OF A VARIANCE FROM CORNER LOT SETBACK REQUIREMENTS FOR 402 WEST ADAMS STREET, PARCEL # 310315000**

**WHEREAS**, Laurie Mueller as applied for a variance to Section 5, Subd. 4(2)(a) of the Arlington Zoning Ordinance relating to encroachment into the front yard setback on a corner lot for the purposes of installing a handicap access ramp; and

**WHEREAS**, the property is located at 402 West Adams Street in the R-1 Residential District; and

**WHEREAS**, the purpose of the variance is to provide for construction of a handicap access ramp for a mobility impaired person on Lot 1 of Block 24, Streissguth's Subd., City of Arlington, Sibley County MN; and

**WHEREAS**, notice of a public hearing to accept input on the variance request was published in the official newspaper on October 22, 2009 and sent to property owners within 350 feet of the property; and

**WHEREAS**, the Planning and Zoning Committee acting as the Board of Zoning Adjustment conducted a public hearing on the variance request on November 5, 2009 and accepted input on the variance request; and

**WHEREAS**, the Planning Committee has reviewed the variance request and has made the following findings:

- The request fails to pass two of three statutory potential findings for approval as an 'undue hardship' as discussed in the MDG memo to the Planning Commission dated October 29, 2009.
- Under normal circumstances the variance would be denied due to non-qualification under the 'undue hardship' standard.
- The federal Fair Housing Act (FHA) makes it unlawful for local governments to refuse to make 'reasonable accommodations' in land use and zoning policies and procedures where such an accommodation may be necessary to afford persons an equal opportunity to use and enjoy housing.
- 'Reasonable Accommodation' is defined in a joint statement of the U.S. Department of Justice and the U.S. Department of Housing and Urban Development as a request which does not impose an undue financial or administrative burden on a local government and/or which does not create a fundamental alteration in a local government's land use and zoning scheme. The proposed accommodation is reasonable under this definition.
- The location of the handicap access ramp as proposed is the only means of access afforded to mobility impaired persons.

**NOW, THEREFORE, BE IT RESOLVED BY THE ARLINGTON PLANNING AND ZONING COMMITTEE THAT:** The Planning Commission acting as the Board of Zoning Adjustment does hereby recommend the City Council

of the City of Arlington approve a request for a variance to the corner lot front and street side setback requirement for the property at 402 West Adams Street (Parcel #310315000), contingent on the following:

1. The handicap access ramp shall be removed from the property within thirty (30) days of when an occupant no longer has mobility impairment or when an occupant with mobility impairment no longer resides at the premises.
2. The Property Owner shall notify the City in writing within thirty (30) days of when an occupant no longer has mobility impairment or when an occupant with mobility impairment no longer resides on the premises.
3. This Variance is in effect for the placement of a temporary handicap access ramp. This Variance shall be in effect, therefore, for a temporary period not to exceed six (6) months from the time of approval by the City Council. At that time the request will be reviewed to determine the 'temporary' nature of the structure. If the 'temporary need' is determined to be an 'extended', 'semi-permanent', or 'consistent' need a more permanent solution may be required including, but not limited to, the placement of a more conventional (i.e. wooden, pre-fabricated materials typically used for construction purposes, etc) structure with footings or a foundation.
4. The Property Owner shall control grass, weeds, and maintain lawn under the ramp at all times. Seasonal items shall be removed from the yard and the premises shall be kept in a neat and orderly fashion.

The motion for the adoption of the foregoing resolution was duly seconded by Haggemiller and upon poll being taken thereon the following voted in favor thereof: Grabitske, Haggemiller, Kreft, Nagel, Pinske, Councilmember Reetz; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: Mielke.

Adopted by the Planning & Zoning Committee of the City of Arlington this 5<sup>th</sup> day of November, 2009.

Signed: /s/ Lowell Nagel  
Chairperson Lowell Nagel

Attested: /s/ Cynthia Smith-Strack  
Planning & Zoning Administrator

Discussion was held on the Urban Reserve District (encompassing the Orderly Annexation Area) and the administration thereof. Smith-Strack explained that the County had approved their Comprehensive Plan Update and within said Plan, the City of Arlington was given land use authority in the portion of the OAA within Arlington Township. Smith-Strack commented on the number of properties that would be affected by this new zoning classification. She explained that everything currently in place (taxes, township rates, etc.) would stay the same, except the zoning classification would now be URD and the property owners would now have to obtain building permits as the City of Arlington has jurisdiction over them. Smith-Strack suggested that an open house be held for the purpose of informing the property owners within the OAA of the URD changes. It was suggested to hold a public hearing in January regarding an amendment to the zoning ordinance related to an Urban Reserve District.

Smith-Strack gave an update on the Neisen property located along Hwy 5. She stated that the County Court had fined him for being in violation of the Conditional Use Permit (CUP) and gave him until November 1<sup>st</sup> to get into compliance, otherwise the City could revoke the CUP. She stated that at the time of the meeting, the property had been somewhat cleaned up, but was still not compliant. Smith-Strack advised the Committee of their options: either revoke the CUP or give her the authority to continue to charge out ongoing violations. Some discussion was held on whether or not to allow Neisen some more time, due to time of year, to get into compliance, which included planting trees/shrubs along highway, fencing the area around the buildings, etc. Smith-Strack commented that if he is permitted more time, that he should have to escrow money with the City to ensure performance.

Discussion was held on various concerns/issues with other properties that Neisen owns within city limits.

It was the consensus of the Committee that PZ Adm. Smith-Strack is authorized to continue to charge out ongoing CUP violations to Mike Neisen.

Motion by Haggemiller, seconded by Grabitske, and passed by unanimous vote to recommend to the City Council to require that Mike Neisen either escrow \$500 to the City and certify that the trees, shrubs and fence will be done by May 1<sup>st</sup> or get the property in compliance by November 16<sup>th</sup>, otherwise the CUP will be revoked.

Smith-Strack commented that a Contractor for a downtown property owner had contacted her about possibly converting the rear portion of a commercial structure in the downtown area into a residential use. She explained that in the B-2 Central Business District residential units are not allowable uses, even though they already exist (essentially grandfathered in, not allowed to expand). They are somewhat restricted and classified as 'non-conforming' uses, new apartments are not allowed. Smith-Strack advised the Contractor that the property owner would have to apply for an amendment to the B-2 District if they wanted to proceed with their plans. She talked about the pros/cons with having residential units within a business district. Considerable discussion was held and several concerns were expressed regarding fire hazards, off-street parking, safety issues of doors/windows opening over sidewalks, etc. It was the consensus to leave things as they are (existing non-conforming uses), but nothing new is permitted.

The October Building Permit Report from Building Official Haslip was reviewed.

Nagel polled the Committee to see if they knew how many new single-family units had been constructed during the period of 2000 through 2009. He stated that 85 units had been built.

Kreft expressed concern about the "No Parking" signs on Main Street and liability issues if there is an accident or someone gets hurt. Reetz stated that the Council has discussed them many times and has consulted the League of MN Cities about them as well. The City was told they are not liable since the City did not authorize nor enforce them. Grabitske questioned if the property/business owners have been notified of their liability with having the unauthorized signage.

It was noted that unless the need for a public hearing arose, there would not be a December meeting.

Motion by Grabitske, seconded by Pinske, and passed by unanimous vote to adjourn the meeting.

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PZ Adm. Cynthia Smith-Strack

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Chairman Lowell Nagel