



PLANNING AND ZONING COMMITTEE
Meeting Agenda
June 2nd, 2022 at 7:00 PM
Arlington Community Center — Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Approve Agenda
4. Approve the Minutes
 - a. May 5th, 2022
5. Discussion on the finalization of the Arlington Zoning Code/addressing Nonconformities
6. Discussion on moving forward with the updates to the fence code
7. New Business
 - a. Final Draft of Tiny Homes Policy
8. Other/Updates
 - a. Planning Commission Fact/Information of the Public Hearing Process
9. Adjournment



PLANNING AND ZONING COMMITTEE

Meeting Agenda

May 5th, 2022 at 7:00 PM

Arlington Community Center — Council Chambers

1. Call to Order at 7:00pm

Members Present

Jeanne Bearson
Joe Prasad
Michelle Battcher
Brandon Brinkman
Dave Meyer

Member Absent

Tom Hatlestad

Staff Present

Amy Newsom
Phil Mangis

Staff Absent

None

Guest Present

Jim Soeffker
Mark Wentzlaff
Grant Bing
Curt Reef
Mary Kistern
Lisa Otto
Matt Otto
Brandon Bacht
Bob Pautiel
Jim Ekenstedt
Krisha Ekenstedt
Kayla Ekenstedt
Brian Menlhof
Lisa Menlhof
Lorlie Frech
Paul Soeffker

2. Pledge of Allegiance

3. Approve Agenda- Motion by Brinkman to approve agenda seconded by Battcher, Motion carried.
4. Approve the Minutes- Motion by Meyer to approve the minutes for April 7th and 19th, seconded by Battcher, Motion carried.

- a. April 7th and 19th, 2022

5. Discussion on Resolutions for the Rezoning of Frenzel and Pondview Dr area

A representative from High Island Creek Development spoke concerning their concerns about the property that was going to be rezoned. They did not understand why the property in question was rezoned to R-1. The Committee explained the zoning history that was created by the Planning and Zoning Administrator. The representative stated that they would like to have this rezoned to R-3 to allow them more options to residential structures. Some residents believe the developers are being misleading based on the development projections created in 2004. A resident express concern that the front width of the road going into parcel 31.0719.580 would be too narrow and does not meet code. They also stated that the City informed them that apartments would not be going into this area. A few residents are concerned by rezoning the area R-3 the developers can do whatever they want and believe this will create harm and drainage issues in the area. Also a few residents did not believe it is right for the Committee to rezone the whole Frenzel and Pondview Dr area without residential approval. They also want engineering drawings of the area and do believe it makes sense to rezone the whole area.

After the Residential input a motion was made by Brinkman to start over on the Resolution of the Rezoning of the Frenzel and Pondview Dr area, seconded by Battcher, Motion carried.

Battcher made a motion to table the remaining items on the agenda until next meeting, seconded by Brinkman, Motion was carried.

6. Discussion on the finalization of the Arlington Zoning Code
7. New Business
 - a. Final Draft of Tiny Homes Policy
8. Other/Updates
 - a. None
9. Adjournment- Motion by Brinkman to adjourn the meeting at 8:35pm, seconded by Battcher, Motion carried.

P&Z Administrator

P&Z Chair

Subd. 1e. Nonconformities.

(a) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

(1) the nonconformity or occupancy is discontinued for a period of more than one year;
or

(2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case, a municipality may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

(b) Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. This subdivision does not prohibit a municipality from enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

(c) Notwithstanding paragraph (a), a municipality shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.

(d) Paragraphs (d) to (j) apply to shoreland lots of record in the office of the county recorder on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width. A municipality shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to paragraphs (d) to (j).

(e) A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

(1) all structure and septic system setback distance requirements can be met;

(2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and

(3) the impervious surface coverage does not exceed 25 percent of the lot.

(f) In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

(1) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

(2) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;

(3) impervious surface coverage must not exceed 25 percent of each lot; and

(4) development of the lot must be consistent with an adopted comprehensive plan.

(g) A lot subject to paragraph (f) not meeting the requirements of paragraph (f) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

(h) Notwithstanding paragraph (f), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

(i) In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

(j) A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

CHAPTER 17: FENCES

17.00	Definitions
17.01	Purpose
17.02	Mixed Zone Fence
17.03	Residential Zone Fence
17.04	Commercial / Industrial Zone Fence
17.05	Temporary Fencing
17.06	Violation Notice
17.07	Penalty

17.00 Definitions

Abut. To physically touch or border upon.

Fence. A barrier intended to prevent escape, intrusion or to mark a boundary.

Ornamental Fence. Any open fence, other than those comprised of barbed wire or chain link, used to frame, accent, or decorate a landscape or architectural feature.

Open Fence. A fence that is constructed so that a majority of the total area of the fence permits visibility.

Portable Security Barriers. A set of barricades that help direct pedestrian traffic and block access to hazardous areas such as worksites or events. Portable sets can be set up and moved to other locations as needed.

Snow Fence. A temporary type of porous fencing that forces windblown, drifting snow to accumulate in a desired place rather than accumulating on roads, private drives, and other property areas where accumulation and drifts of snow are not desirable. A snow fence must be a perforated plastic sheeting that can be attached to metal "T" posts or "U" posts at regular intervals. The term "snow fence" includes not only the fencing material but also all posts to which the fencing material is attached.

Temporary Fence. A fence that is installed for a certain period of time.

Screening. A type of buffer that is designed to block or obscure a particular element or use from view.

17.01 Purpose

This Ordinance shall regulate the placement of fences within the City of Arlington. No fence shall be erected without first obtaining a land use permit from the City of Arlington. Land use permits shall be issued for fences only if all provisions of this Ordinance are complied with. If the fence does not comply with this Ordinance, the applicant will be required to file for a variance.

17.02 Mixed Zone Fence

Any fence that is proposed to be placed in an area that would abut both a residential and commercial or residential and industrial zone must first be reviewed at a public hearing to determine the type of fence and fence material that would be acceptable to the property owners, but with the city having final discretionary authority to determine this issue.

17.03 Residential Zone Fence

Fences proposed in a residential zone shall be subject to the following rules:

- A. ~~No fences shall be erected in the front yard of any property in a residential zone.~~ Fences in the front yard of any property in a residential zone that extend closer to a street than the primary structure, shall be no taller than four (4) feet in height and must be an open or ornamental fence. The front yard for purpose of this Ordinance is defined as all that portion of the yard between the front wall of the dwelling structure and the public street fronting the dwelling.
- B. Any fence shall be considered a structure for the purpose of the setback requirement from the rear lot line of any lot.
- C. For corner lots in a residential zone, a fence shall be allowed in the yard facing the public street and portion of the yard facing the side street of the property extending closer to the street than the primary structure, as long as the fence is no taller than 30 inches in height and must be an open or ornamental fence. Any fence higher than 30 inches is permitted as long as the fence is in line with the extension of the side wall of the home facing said side street. ~~no fence shall be erected in the yard facing the public street fronting the property. No fence shall be erected on the portion of the yard facing the side street of the property any closer to the side street than a line which is the extension of the side wall of the home facing said side street.~~
- D. The City encourages, but does not require, fence lines to be built jointly by neighboring property owners along the boundary line between the separate properties. However, if one property owner wishes to erect a boundary fence without participation by the other property owner, said fence shall be built with a minimum setback of two (2) feet, to allow the owner of the fence sufficient access to maintain both sides of the fence, to include the control of grass and weeds along the fence line. Depending on the nature of the fence and the property, the City may require a wider setback in its discretion.
- E. Fences shall be no more than six (6) feet in height and shall use construction material and methods approved by the City as part of the land use permit, to create a fence which will be sturdy, attractive, in keeping with the general design character of the neighborhood, which will not present an unreasonable danger to children or animals and will tend to maintain the property values of the surrounding properties. Fence construction material must be approved by the city, but a minimum requirement shall be that the construction material shall be treated or coated or of such material as to be resistant to rot and rust. Supporting posts must be buried at least 30 inches deep in concrete and must be substantial enough to stabilize the fence to keep it in a straight and erect position.
- F. All fences already in existence at the date of enactment of this Ordinance, and all fences erected within the City hereafter, shall be kept free of weeds and refuse, shall be maintained so as to avoid

sagging, and shall be kept properly painted, stained, or rust proofed, as appropriate for the material of which the fence is constructed.

- G. Any replacement, repair, or relocation of any fences already in existence at the date of enactment of this Ordinance shall comply with this Ordinance in all respects.

17.04 Commercial / Industrial Zone Fence

Fences proposed in a commercial or industrial zone shall be subject to the following rules:

- A. No fences shall be erected in the front yard of any property in a commercial or industrial zone unless the fencing is being used as some form of screening. The front yard for the purpose of this Ordinance is defined as all the portion of the yard between the front wall of the commercial or industrial structure and the public street fronting the property.
- B. Any fence shall be considered a structure for the purpose of the setback requirement from the rear lot line of any lot.
- C. For corner lots in a commercial or industrial zone, no fence shall be erected in the yard facing the public street fronting the property. A fifteen (15) foot setback is required on the portion of the yard facing the side street of the property. If the fencing is being used as some form of screening, then the fencing is exempt of this requirement, however the fencing can not impair the line of sight on the corner lots.
- D. The City encourages, but does not require, fence lines to be built jointly by neighboring property owners along the boundary line between the separate properties. However, if one property owner wishes to erect a boundary fence without participation by the other property owner, said fence shall be built with a minimum setback of two (2) feet from the bottom line of said fence, to allow the owner of the fence sufficient access to maintain both sides of the fence, to include the control of grass and weeds along the fence line. Depending on the nature of the fence and the property, the City may require a wider setback in its discretion.
- E. Fences shall be no more than six (6) feet in height with an additional eighteen (18) inch allowance for barbed wire. The barbed wire addition, if any, shall be restricted to straight wire lines, held by bracket extensions from the main fence and slanted inward toward the property of the owner constructing the fence. The fence shall be of construction material and methods approved by the City as part of the building permit, to create a fence which will be sturdy, attractive, in keeping with the general design character of the neighborhood, which will not present an unreasonable danger to children or animals and will tend to maintain the property values of the surrounding properties. Fence construction material must be approved by the City, but a minimum requirement shall be that the construction material shall be treated or coated or of such material as to be resistant to rot and rust. Supporting posts must be buried at least 30 inches deep and must be substantial enough to stabilize the fence to keep it in a straight and erect position.
- F. All fences already in existence at the date of enactment of this Ordinance, and all fences erected within the City hereafter, shall be kept free of weeds and refuse, shall be maintained so as to avoid sagging, and shall be kept properly painted, stained, or rust proofed, as appropriate for the material of which the fence is constructed.

- G. Any replacement, repair, or relocation of any fences already in existence at the date of enactment of this Ordinance shall comply with this Ordinance in all respects.

17.05 Temporary Fencing

A. Temporary fencing includes, but is not limited to snow fences, and portable security barriers.

1. Snow fences may be installed and maintained from mid fall to early spring, weather pending. Snow fences require proper maintenance and must be properly anchored to avoid any part of the fence from being blown over and onto adjacent roads and properties. They also shall not be erected in such a manner to cause snow to accumulate on neighboring properties or on any roads or highways. Snow fences, including posts, that are erected prior to mid fall, weather pending or that are not removed by early spring, weather pending, will be in violation of this ordinance. Snow fencing shall be erected on private property in the City of Arlington without a permit but will be subjected to a zoning review based on the digression of the Planning and Zoning Administrator.
2. Portable security barriers will need to be a reviewed by City Council and based on the Council decision might require a permit. If a permit is required, then the applicant will need to file for a land use permit with the terms determined by the City. At minimum, the permit will address the intended purposes and function of the fencing, its location, and the period of time the fencing will be allowed to exist on the designated site.

B. All other temporary fencing needs to clearly specify the time frame the fence will be erected. If the fence is erected longer than the time specified, the applicant will need to re-apply for a new land use permit. Any Temporary fencing that is erected longer than 90 days will be required to submit for an interim use permit.

17.06 Violation Notice

If any fence is found to be in violation of this Ordinance, the City shall notify the property owner by written notice served on the property owner personally or by U.S. Mail to the property owner's last known address, stating that the property owner has 30 days to bring the fence in compliance with this Ordinance. If the property owner fails to bring the fence in compliance with this Ordinance within said 30-day notice term, then the fence permit shall be considered void and said fence must be immediately removed by the property owner.

17.07 Penalty

Any violation of this ordinance by the property owner or any other person or entity shall be considered a misdemeanor, punishable by the fines and other penalties established under state law for misdemeanors in effect on the date the violation occurs. Each day that a violation is allowed to exist shall be considered a separate misdemeanor violation, to be punishable by a separate fine and other penalties for each such day.

Tiny Home's Policy

Purpose

The City of Arlington seeks to take steps to pursue innovative housing types and creative housing programs to help meet existing and future housing needs.

Definitions

Tiny Home- A dwelling that is 400 square feet or less.

Fixed in Place- Permanent structures built on a foundation, either as site-built or as prefabricated modular.

Tiny Houses on Wheels- Structure that may be assembled on a chassis with wheels and lack permanent foundations.

Regulations

The following are tiny home regulations in accordance with the standards of this section:

- (a) must be between 120 sq ft to 400 sq ft to qualify as a tiny home;
- (b) minimum width of 8ft;
- (c) minimum height of 13ft;
- (d) tiny homes must be at minimum 10ft apart from each other;
- (e) Fixed in Place shall be placed on a permanent foundation which is defined as a floating slab with a rodent inhibiting barrier extending to a depth of at least one (1) foot below the average grade.

Standards

The applicant shall establish, by submittal of a plot plan, photograph(s), and other pertinent data that:

- (a) The establishment, maintenance, location, and operation of the proposed use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
- (c) The proposed tiny homes will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes permitted, nor substantially diminish or impair property values within the neighborhood.
- (d) The establishment of the proposed homes will not impede the normal and orderly development and improvement of surrounding property for uses permitted in that district.
- (e) Any illumination or drainage shall be contained on site and directed away from abutting properties.
- (f) Tiny Homes used as dwelling units must comply with the Minnesota Building Code.
- (g) No home shall encroach or be built into an easement.
- (h) Tiny Houses on Wheels that are self-propelled vehicles or trailers equipped as temporary human living quarters need a license and title issued by the Department of Transportation.
- (i) Tiny Homes that are fixed in place and on wheels, are permitted in R-1 One Family Residential, R-2 One & Two Family Residential District, R-3 Multiple Family Residential and R-MH Manufactured Home Residential Zoning Districts and are required to meet the setback and parking regulations of each Zoning District.

Administrator Action

Before approving an application, the City of Arlington shall recommend reasonable adjustments including, but not limited to, items concerning utilities, drainage, noise, landscaping, and maintenance thereof, lighting, access, egress, screening of accessways to ensure that authorization of the proposed exception is consistent with the standards found.

PLANNING COMMISSION

FACT SHEET

ARLINGTON MN

OVERVIEW

The Arlington Planning is the City's designated "Planning Agency" authorized by Minn. Stats. 462.354. The City has assigned the Arlington Planning Commission powers and duties given municipal planning agencies generally by law. The Planning Commission operates in an advisory capacity to the City Council. Therefore, it may hold hearings, prepare ordinances, hear application requests, and hear appeals, but its role is to make recommendations to the Council. The Commission consists of seven members, six members who are non-elected citizens of the City and the seventh who is a member of the City Council. Officers of the Commission are elected by members on annual basis. Meetings must follow Robert's Rules of Order.

FUNCTION

The Planning Commission operates in three distinct capacities:

- **Planning:** In its planning capacity the Planning Commission administers the Arlington Comprehensive Plan and proposes updates to the Plan. The Comprehensive Plan guides the overall growth, development, and redevelopment of the City. The Plan establishes a vision and policy framework for achieving the vision.
- **Legislative:** In its legislative capacity the Planning Commission reviews existing sections of the City Code relating to land use (zoning), platting of property (subdivision), and other Code sections if requested by the City Council. The Commission, with the assistance of staff, prepares Code amendments as warranted.
- **Regulatory:** In its regulatory capacity the Planning Commission reviews requests for conditional use permits, variances, rezoning (an amendment of the official zoning map), text amendment (an amendment to text of the Code), site plan approval, and appeals relating to interpretation of the Code language.

DISCRETION

The Planning Commission and the City in general have varying levels of discretion when making decisions:

- The Planning Commission and City may exercise broad discretion when operating in a planning capacity and establishing/updating the Comprehensive Plan and associated documents such as park plans, capital improvement plans, housing plans, etc.
- The Planning Commission and City may exercise discretion when creating ordinances and policies. In certain situations, federal or state law supersedes local discretionary authority.

- The Planning Commission and City have less discretion when administering and implementing local laws (ordinances) they have previously approved. As such it is important to follow the process prescribed in the City Code.
- The Planning Commission and City have no discretion to vary from building codes (where adopted).

TOOLS OF THE TRADE

Each Planning Commissioner should be familiar with the following resources:

- The Arlington Comprehensive Plan, as may be amended. In every issue, a Commissioner's first thought should be: "Is this action consistent with the Comprehensive Plan"? If not the first action is to remedy the inconsistency.
- The Arlington Zoning Ordinance (Chapter 31) establishes standards relating to land use (zoning), including the official zoning map.
- The Arlington Subdivision Ordinance (Chapter 27) establishes standards relating to platting (subdivision) of property.

A CLOSER LOOK

COMMON TOPICS

As a Planning Commissioner you will most likely become very familiar with the following items:

- **Conditional Use Permits:** Under the zoning code the City is divided into various zoning districts (residential, commercial, industrial) and within each zoning district certain uses are 'permitted' and certain uses are 'conditional uses'. Conditional uses require a public hearing and approval by the City Council before the use is allowed. The public hearing allows for comment from adjacent property owners and the general public who could be impacted by the proposed use. Occasionally you may encounter an 'interim use permit'. The difference between conditional and interim use permits is that conditional use permits run with the property (not the owner), but interim use permits can have a specific ending date established in the permit.
- **Variances:** A variance from existing established standards may be requested by owners of property. A variance to a use of property is not lawful. The Planning Commission and City Council must carefully review variance requests and consider state law relating thereto. The City must establish facts that illustrate a 'practical difficulty' as defined by Minn. stat. 462.357.
- **Non-Conformance:** When the code changes, occasionally properties become out-of-compliance due to the code/law adoption. Oftentimes such properties are said to be 'grand-fathered' which points to legal non-conforming status. An undeveloped lot, a structure on a lot, or a use of property may have legal non-conforming rights.
- **Spot Zoning:** Rezoning of a lot or parcel of land to benefit an owner for a use incompatible with surrounding land uses and that does not further the comprehensive zoning plan. Spot zoning per se may not be illegal; it may only

be descriptive of a certain set of facts and consequently neutral with respect to whether it is valid or invalid. Spot zoning should be considered invalid only when all the following factors are present

- A small parcel of land is singled out for special and privileged treatment
 - The singling out is not in the public interest but only for the benefit of the landowner
 - The action is not in accord with the comprehensive plan
- The 60-Day Rule: Under Minn. Stat. cities have 60 days to process requests following an application being accepted as complete. The City of Arlington requires applications be submitted on specific forms and accompanied by a fee. Specific process items apply, and extensions are possible.

HELPFUL TIPS

A few tips:

- Every request the Commission reviews is unique — carefully review what is being proposed and how it relates to relevant standards including the Comprehensive Plan, zoning code, and other codes.
- While there is not a singular approach to preparing findings of fact on which decisions are based, in general, findings should be specific and relate to the related application and current code standards.
- Build a record for each request. The record should include application materials, citations to relevant standards, staff memos, any/all correspondence relating to the request, written comments relating to the request, minutes of the hearing (including references to oral testimony provided during the hearing), records of mailed and published hearing notices, resolutions or orders stating specific action and findings. If an issue is litigated the litigation is based on the record — did you follow the prescribed process is key to favorable outcomes.
- Ask questions —to staff, to the applicant, to other members —just ASK.
- Listen — physically and mentally.
- Public hearings are for presenting facts. Public hearings are not debates.
- Remember reasonable people can disagree separate people from the problem, get to the facts, use a fair process, remain open to being persuaded, recognize the 'good' along with the 'bad', and avoid 'us vs. them' mentality.
- Dealing with irate citizens or packed hearings: The Chair should inform all present of the process. You may limit comment period for each person to a reasonable time period (five minutes). Also, remember the purpose of the hearing is not to debate but adjudicate based on facts. PC members should listen to public comment and wait to discuss the issue until the public has been heard.
- Diffuse conflict by active listening (ask questions to clarify the issue), avoid being defensive, restate the issue to show understanding, don't make promises you can't honor or that rely on actions of others, and, if you agree to take action do so in a timely manner. Remember, you don't need to tolerate threats or improper behavior, call it what it is and leave the room.

PUBLIC HEARING PROCESS/PROTOCOL

1. Recess regular meeting (Chairperson)
2. Open the public hearing regarding the proposed scope of work (Chairperson)
3. Invite staff to present information on the proposed scope of work (Chairperson)
4. Accept statements from the public (minimum of five minutes per statement) (Chairperson)
5. If received, acknowledge receipt of written comments received (Chairperson or other member of Commission)
6. Close public hearing (Chairperson)
7. Reconvene the regular meeting (Chairperson)
8. Planning Commission discusses the draft proposed scope of work (Chairperson presides, all invited to participate)
9. Following discussion, the attached resolution is available for consideration.