

PLANNING COMMISSION AGENDA  
August 26, 1997  
7 p.m.

ROLL CALL: Tom Brace \_\_\_\_\_ Wayne Groff \_\_\_\_\_ Alex Hanschen \_\_\_\_\_  
Irene Struck \_\_\_\_\_ Wendy Treadwell \_\_\_\_\_  
Betty Wilcox \_\_\_\_\_ Sue Gehrz \_\_\_\_\_

1. CALL TO ORDER
2. APPROVAL OF MINUTES  
June 16, 1997
3. CITY COUNCIL MINUTES  
July 9, 1997
4. REQUEST FOR A VARIANCE
  1. Request for variance of 3 feet from the required five foot rear yard setback for the construction of a garage at 1341 W. Iowa Avenue, Chapter 9-2.04 subd. 1 (c)
  2. Proposed ordinance amending Chapter 9 of the city code concerning amendments to the city's zoning ordinance
  3. A proposed ordinance amending Chapter 9 of the city code concerning telecommunications towers and antennas
5. STAFF UPDATES
6. ADJOURN

City of Falcon Heights  
Planning Commission Minutes  
16 June 1997

Commissioners Present:

Tom Brace  
Irene Struck  
Wendy Treadwell  
Wayne Groff  
Paul Kuettel

Commissioners Absent:

Alex Hanschen  
Betty Wilcox

Also Present:

Carla Asleson, Planner  
Susan Hoyt, Administrator

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The meeting was called to order at 7:02 p.m.

***Approval of planning commission minutes***

Commissioner Groff moved approval of the minutes from the May 19, 1997 meeting, Commissioner Struck seconded the motion. The motion passed unanimously.

***Request for a variance of three feet from the required five foot rear yard setback for the construction of an addition to an existing garage at 1456 W. Idaho Avenue***

Planner Asleson reported that Darlene McMinn is requesting a variance to add on to her existing garage at a rear yard setback of 2 feet rather than the required rear setback of five feet. The addition would add depth rather than width to the garage. With the addition, the garage's area would be 560 square feet, which would meet code for this property. 1456 W. Idaho is a corner lot which uses Pascal Street for access rather than the abutting alley.

Asleson recommended approval of this variance for the following reasons:

- The property is unique in that it has alley access, but uses the street for garage entry rather than the alley. Had the original builder of the garage used alley access, this garage could have been built at a two foot rear yard setback without a variance.
- Building the garage at the two foot rear setback is consistent with the setbacks and sizes of other garages on the alley.
- The variance will not cause a safety problem, as the five foot rear yard setback was written to allow for alley access to garages and the proposed garage has street access.

Following discussion, Commissioner Struck made a motion to approve Planning Commission Resolution 97-01, recommending approval of the variance for 1456 W. Idaho Avenue. Commissioner Kuettel seconded the motion. The motion passed unanimously.

***Public Hearing and proposed amendment to Chapter 9-10.01 of the zoning code related to pool halls as a conditional use in a B-3 zone.***

Administrator Hoyt reported that the city council had discussed licensing requirements for pool halls and billiard parlors, which are a conditional use in a B-3 zone. After discussion, the council determined that pool halls may not be an appropriate use to permit, even as a conditional use, due to the fact that all B-3 property in the city directly abuts residential property with setbacks of as little as 50 feet from the building the abutting residential lot. A moratorium on this use has been enacted until a decision on the proposed amendment has been completed.

Chair Brace opened the public hearing on the amendment at 7:26 p.m. As there was no one in the audience wishing to comment, the hearing was closed.

After discussion, Commissioner Kuettel moved to support the removal of pool halls and billiard parlors as a conditional use in a B-3 zone. Commissioner Groff seconded the motion. The motion passed unanimously.

**Adjournment**

Commissioner Kuettel moved to adjourn the meeting. Seconded by Commissioner Treadwell. The meeting was adjourned at 7:57 p.m.

Respectfully submitted,

Carla Asleson  
Planner

PLANNING COMMISSION

Date: 8/26/97

Item: 1

ITEM: Request for variance of 3 feet from the required five foot rear yard setback for the construction of a garage at 1341 W. Iowa Avenue, Chapter 9-2.04 subd. 1 (c)

SUBMITTED BY: Parnell Kingsley, Property Owner

REVIEWED BY: Carla Asleson, Administrative Assistant/Planner

EXPLANATION/DESCRIPTION:

A. REQUEST FOR VARIANCE

Ms. Parnell Kingsley, owner of 1341 W. Iowa Avenue, is requesting a variance to build a double car garage (20' x 20') at a rear yard setback of 2 feet rather than the five feet required in the zoning code. Her existing single car garage (which would be demolished) already has the two and three foot rear and side setbacks. The existing driveway, which accesses Hamline Avenue, would be used for the new garage along with additional concrete to accommodate the new garage width. The garage's size meets code and does not require a variance.

See attachment 1 for a site plan of the proposed garage and setbacks.

B. CHARACTERISTICS OF THE PROPERTY

The subject property is a corner lot located on an alley in the Nothome neighborhood. Because of the corner location, the garage is accessed from Hamline Avenue rather than from the alley.

C. ZONING CODE REQUIREMENTS

The zoning code requires that garages on alleys have interior side and rear setbacks of five feet, *unless* all of the following criteria are met, in which case the minimum setback is one foot:

- Garage is accessed from an alley, not a public street; and
- Entire garage is located within the rear 28 feet of the lot; and
- Garage is oriented such that the vehicle access door is perpendicular to the alley.

See attachment 2 for sample sketches of these situations.

The zoning code also allows for a lesser side yard setback under some circumstances when the garage is accessed off of the street and is replacing a garage located less than five feet from a side lot line. This section of the zoning code was amended in 1994 to make it easier for owners to replace garages while using their existing driveways.

This is the section of the zoning code that allows the garage to be built at a three foot side yard setback without a variance. However, this section of the code does not allow a lesser rear yard setback, as it was written for interior lot garages accessing neighborhood streets, not corner lot garages abutting alleys.

#### D. ANALYSIS

##### Public Safety Issues

The reason that a five foot rear yard setback off of alley is sometimes required is to allow vehicles sufficient room to make the turn into the garage off of the alley. Because this property uses the street for access, having a 2 foot setback at this location is not a public safety concern.

##### Uniqueness of the Property

This property is unique in that has access to both the alley a public street. The zoning code regulations were written with the assumption that persons with garages on alleys would use the alley for access. *This garage could be built at the proposed setbacks if alley access were used.* Property owners have the choice of alley access or street access when they have corner lot property.

##### Compatibility with neighborhood design

Many of the garages in the Northome neighborhood have rear yard setbacks of less than five feet because they were able to meet the zoning code requirements for size, location of the door, and alley access. If this variance is granted and the proposed garage built, it will not be out of character with the rest of the garages on the alley.

#### E. COMMENTS FROM NEIGHBORS

Letters regarding the proposed garage addition were sent to the two abutting property owners. As of this writing, no comments have been received on the proposed project.

#### F. STAFF RECOMMENDATION

Staff is recommending approval of this variance for the following reasons:

1. The property is unique in that it has alley access, but uses the street for garage entry rather than the alley. The property owner has an existing driveway to Hamline Avenue and the opportunity to use street access.
2. Building the garage at a two foot rear yard setback is consistent with the setbacks and sizes of other garages on the alley.
3. The variance will not cause a safety problem, as the five foot rear yard setback was written to allow for alley access to garages and this property has street access.

G. ATTACHMENTS

1. Site plan of property showing proposed garage
2. Setback requirements for garages on alleys (sketch)
3. Standards for granting a variance
4. Proposed Resolution

H. ACTION REQUESTED

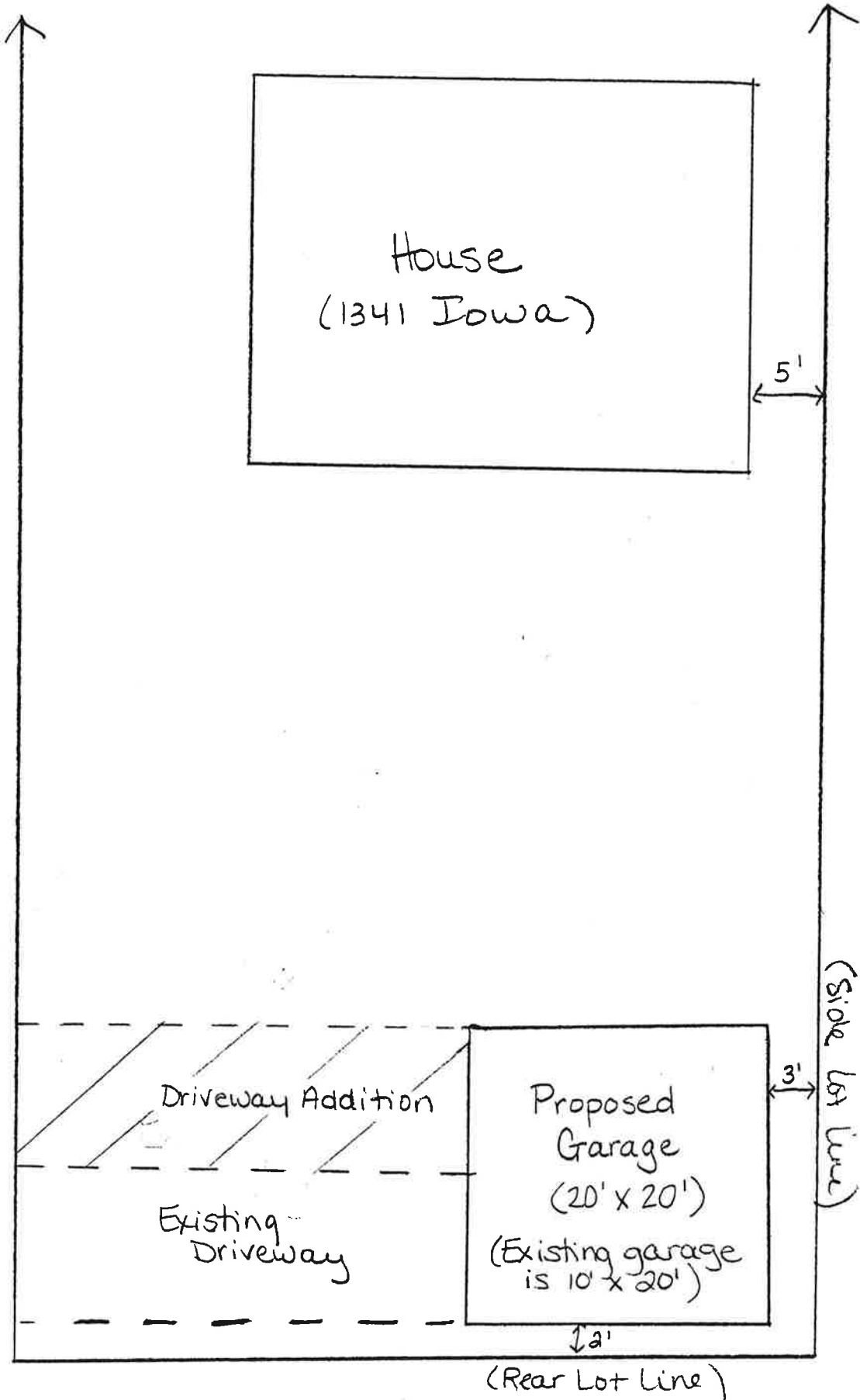
- Hear staff report
- Discussion and questions
- Approve the requested variance of 3 feet from the required rear yard setback in chapter 9-2.04 subd. 1(c) of the zoning code by adopting a resolution that states that this property meets the standards for granting a variance, specifically 9-15.03 subd 4 (g), that the property is unique and that a hardship would result if the strict letter of the chapter were carried out.

Iowa Avenue

1

Hamline Avenue

1349 Iowa

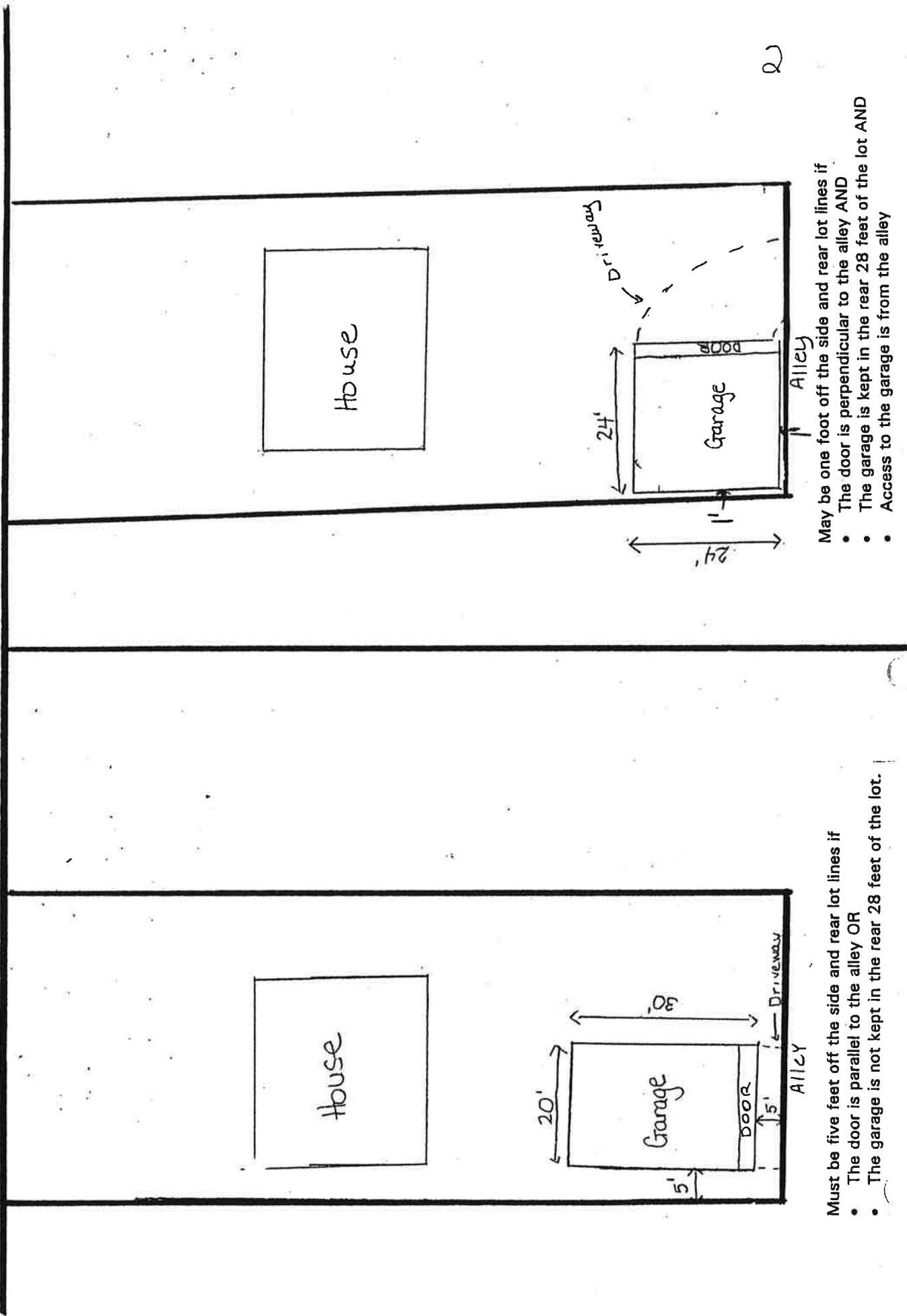


Alley

(Rear Lot Line)

(Side Lot Line)

# SETBACK REQUIREMENTS FOR GARAGES ON ALLEYS



- May be one foot off the side and rear lot lines if
- The door is perpendicular to the alley AND
  - The garage is kept in the rear 28 feet of the lot AND
  - Access to the garage is from the alley

- Must be five feet off the side and rear lot lines if
- The door is parallel to the alley OR
  - The garage is not kept in the rear 28 feet of the lot.



9-15.03. Variances

**Subdivision 4. Standards for Granting of Variance.** No variance shall be granted unless the City Council shall make without qualification on the basis of evidence presented at the meeting the following findings:

- a. That the granting of the variance will not be detrimental to the public welfare;
- b. That the granting of the variance will not substantially diminish or impair property values or improvements in the area;
- c. That the granting of the variance is necessary for the preservation and enjoyment of substantial property rights;
- d. That the variance will not impair an adequate supply of light and air to adjacent property;
- e. That the variance will not impair the orderly use of the public streets;
- f. That the variance will not increase the danger of fire or endanger the public safety;
- g. Whether the shape, topographical condition or other similar characteristic of the tract is such as to distinguish it substantially from all of the other properties in the zoning district of which it is a part, or whether a particular hardship, as distinguished from mere inconvenience to the owner, would result if the strict letter of the Chapter were carried out;
- h. Whether the variance is sought principally to increase financial gain to the owner of the property, and to determine whether a substantial hardship to the owner would result from a denial of the variance;

No. 97-02

Date: 8/26/97

CITY OF FALCON HEIGHTS

**PLANNING COMMISSION RESOLUTION**

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**RESOLUTION RECOMMENDING APPROVAL OF A VARIANCE FOR 1341 W. IOWA AVENUE**

On August 26, 1997, the Falcon Heights planning commission recommended granting the following variance request for 1341 W. Iowa Avenue:

Chapter 9-2.04 subd. 1 (c) requiring a five foot rear yard setback in an R-1 zoning district.

A variance of three feet to allow the construction of a new garage at a rear yard setback of two feet where a minimum of five feet is required in the zoning code.

The planning commission adopted the following findings for recommending the granting of the variance at 1341 W. Iowa Avenue:

- a. That the granting of the variance will not be detrimental to the public welfare;
- b. That the granting of the variance will not substantially diminish or impair property values or improvements in the area;
- c. That the granting of the variance is necessary for the preservation and enjoyment of substantial property rights;
- d. That the variance will not impair an adequate supply of light and air to adjacent property.
- e. That the amended variance will not impair the orderly use of the public streets;
- f. That the variance will not increase the danger of fire or endanger the public safety;

Planning Commission  
Date: 8/26/97  
Item: 2

ITEM: Proposed ordinance amending chapter 9 of the city code concerning amendments to the city's zoning ordinance

SUBMITTED BY: Susan Hoyt, City Administrator

PREPARED BY: Roger Knutson, Attorney

EXPLANATION/DESCRIPTION:

In response to a request from the representative of a property owner, the staff recently reviewed the city's zoning amendment process to amend the zoning code. It was apparent that this section of the city ordinance is vague and, in some places, inconsistent with state statute. The staff requested Roger Knutson, a municipal attorney who specializes in land use law, to draft an ordinance amending this section of the code. The proposed ordinance states that

- the city council, planning commission or a petition from a property owner can request an amendment to the zoning code;
- if a property owner petitions for a change in zoning district boundaries, notice to all property owners within 350 feet must be given. (Additional notice beyond the 350 feet can be given if the city desires);
- the planning commission shall conduct the hearing on the proposed amendment and make a recommendation to the city council;
- the city council shall not act upon the proposed amendment until the planning commission recommendation is made or until 60 days has elapsed from the first scheduled planning commission at which the proposed amendment was considered.

The proposed ordinance eliminates some potential legal issues in the current ordinance. These include:

- requiring that a petition for a zoning amendment come before the city council before going to the planning commission for a public hearing and recommendation;
- permitting abutting property owners to petition to request that a neighboring property, that they don't own, be rezoned;

- corrects the notification requirements to a minimum of 350 feet from a minimum of 300 feet

**ATTACHMENTS:**

- 1 Proposed ordinance mending chapter 9 of the city code concerning amendments to the city's zoning ordinance
- 2 Current city code language on zoning code amendments

**ACTION REQUESTED:**

- Attorney's report on the proposed ordinance
- Questions and discussion
- Schedule a public hearing on the proposed ordinance

Proposed

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CITY OF FALCON HEIGHTS  
RAMSEY COUNTY, MINNESOTA

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 9 OF THE  
FALCON HEIGHTS CITY CODE CONCERNING  
AMENDMENTS TO THE CITY'S ZONING ORDINANCE**

THE CITY COUNCIL OF FALCON HEIGHTS ORDAINS:

**SECTION 1.** Chapter 9, Section 9-15.05 of the Falcon Heights City Code is amended in its entirety to read:

**9-15.05 Amendments**

**Subdivision 1. Initiation of Amendments.** An amendment to the zoning ordinance may be initiated by the City Council, the Planning Commission, or by petition of a property owner whose property would be affected by the proposed amendment.

**Subdivision 2. Application for Amendment.** All applications for amendments initiated by a property owner shall be filed with the Zoning Administrator on an official application form. The application shall be accompanied by a fee established by City Council resolution and a cash escrow, in an amount determined by the Zoning Administrator, to reimburse the City for all out-of-pocket costs the City may incur in reviewing the application. When the amendment involves the changing of zoning district boundaries, the application shall be accompanied by an abstractor's certified property certificate listing the property owners within 350 feet of the boundaries of the property to which the amendment relates.

**Subdivision 3. Public Hearing.** When a proposed amendment to the zoning ordinance has been properly initiated, the City Clerk shall call a public hearing before the Planning Commission. A notice of the time, place, and purpose of the hearing shall be published in the City's official newspaper at least ten (10) days prior to the hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice shall be mailed at least ten (10) days before the date of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates. The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceeding,

provided a bona fide attempt to comply has been made. The Planning Commission shall conduct the hearing and make a recommendation to the City Council.

**Subdivision 4. Action by City Council.** The City Council shall not act upon a proposed amendment until it has received the recommendation of the Planning Commission or until sixty (60) days after the first regular Planning Commission meeting at which the proposed amendment was considered. Approval of an amendment shall require a favorable vote of two-thirds of the entire City Council.

**Subdivision 5. Consistency with Comprehensive Plan.** No amendment to the zoning ordinance shall be adopted which is in conflict with the City's Comprehensive Plan.

**Subdivision 6. Time Deadline.** Pursuant to Minn. Stat. § 15.99, an application for an amendment must be approved or denied within sixty (60) days from the date a properly completed application is received by the City unless the time period is waived by the applicant or extended as provided by statute.

**SECTION 2.** This ordinance shall be effective immediately upon its passage and publication.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 1997, by the City Council of the City of Falcon Heights.

**CITY OF FALCON HEIGHTS**

**BY:** \_\_\_\_\_  
Its Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

9-15.05

9-15.05 Amendments

**Subdivision 1. Amendments.** The Council may, by an affirmative vote of four fifths (4/5) of all members thereof, adopt amendments to this Chapter.

**Subdivision 2. Initiation of Amendment.** Proceedings for amendment of this Chapter shall be initiated by (1) a petition of the owner or owners of the actual property, the zoning of which is proposed to be changed; (2) a recommendation of the Planning Commission; or (3) by action of the Council. Such notice shall also contain the description of the land and the proposed change in zoning. At least ten (10) days before the hearing the Planning Commission shall mail an identical notice to the owner and to each of the property owners within three hundred (300) feet to the outside boundaries of the land proposed to be rezoned. Failure of the Planning Commission to mail the notice shall not invalidate the proceeds. Within sixty (60) days after the date of referral by the Council, the Planning Commission shall make a written report to the Council stating its findings and recommendation.

**Subdivision 3. Application for Amendment.** All applications for amendments which are initiated by the petition of the owner or owners of property shall be filed with the Zoning Administrator when application involves the changing of zoning districts and boundary thereof, the application shall be accompanied by an abstractor's certified property certificate showing the property owners within three hundred (300) feet of the outer boundaries of the property in question. The application shall be forwarded to the Council.

**Subdivision 4. Referral to Planning Commission.** If the application is in the form of a petition and contains the signature of fifty percent (50%) of the property owners abutting the land affected, the Council shall refer the application to the Planning Commission. Any other application may be referred by the Council to the Planning Commission or returned to the applicant. The Council may of its own motion initiate the request for amendment and refer same to the Planning Commission.

**Subdivision 5. Planning Commission Notice and Hearing on Application.** The Planning Commission shall hold a public hearing affording an opportunity for all parties interested to be heard and shall give not less than ten (10) days nor more than thirty (30) days notice of time and place of such

hearing, published in the designated legal newspaper for the City.

**Subdivision 6. Council Notice and Hearing on Application.**  
The Council shall hold a public hearing within thirty (30) days after the receipt of the report and recommendations from the Planning Commission. If the Planning Commission fails to make a report to the Council within sixty (60) days after the referral of the application, then the Council shall hold a public hearing within thirty (30) days after the expiration of said sixty (60) day period. Failure to receive a report from the Planning Commission as herein provided shall not invalidate the proceedings or actions of the Council. The Council shall give not less than ten (10) days nor more than thirty (30) days notice of time and place of such hearing published in the designated legal newspaper for the City, and such notice shall contain a description of the land and the proposed change in zoning. At least ten (10) days before the hearing the Council shall mail an identical notice to the owner and to each of the property owners within three hundred (300) feet of the outside boundaries of the land proposed to be rezoned. Failure of the Council to mail the notice or failure of the property owners to receive the notice shall not invalidate the proceedings. At the time of hearing the Council may take final action upon the application or it may continue the hearing from time to time for further investigation and hearing. The Council may also request further information and report from the Planning Commission. The Council shall not rezone any land or area in any zoning district without having first referred it to the Planning Commission. Any other proposed amendment to this chapter may be referred to the Planning Commission for consideration and recommendations.



ITEM: A proposed ordinance amending chapter 9 of the city code concerning telecommunications towers and antennas

SUBMITTED BY: Susan Hoyt, City Administrator

PREPARED/REVIEWED BY: Roger Knutson, Attorney

**EXPLANATION/DESCRIPTION:**

In November, 1996 the city council approved an amendment to the city's zoning code regarding telecommunications towers and antennas. After further researching the telecommunications' industries needs and the federal communications commission regulations, it was determined that the city's ordinance required some revisions. Mr. Roger Knutson, a municipal attorney specializing in land use law, was hired to prepare amendments to the existing ordinance.

In sum, the proposed amendment:

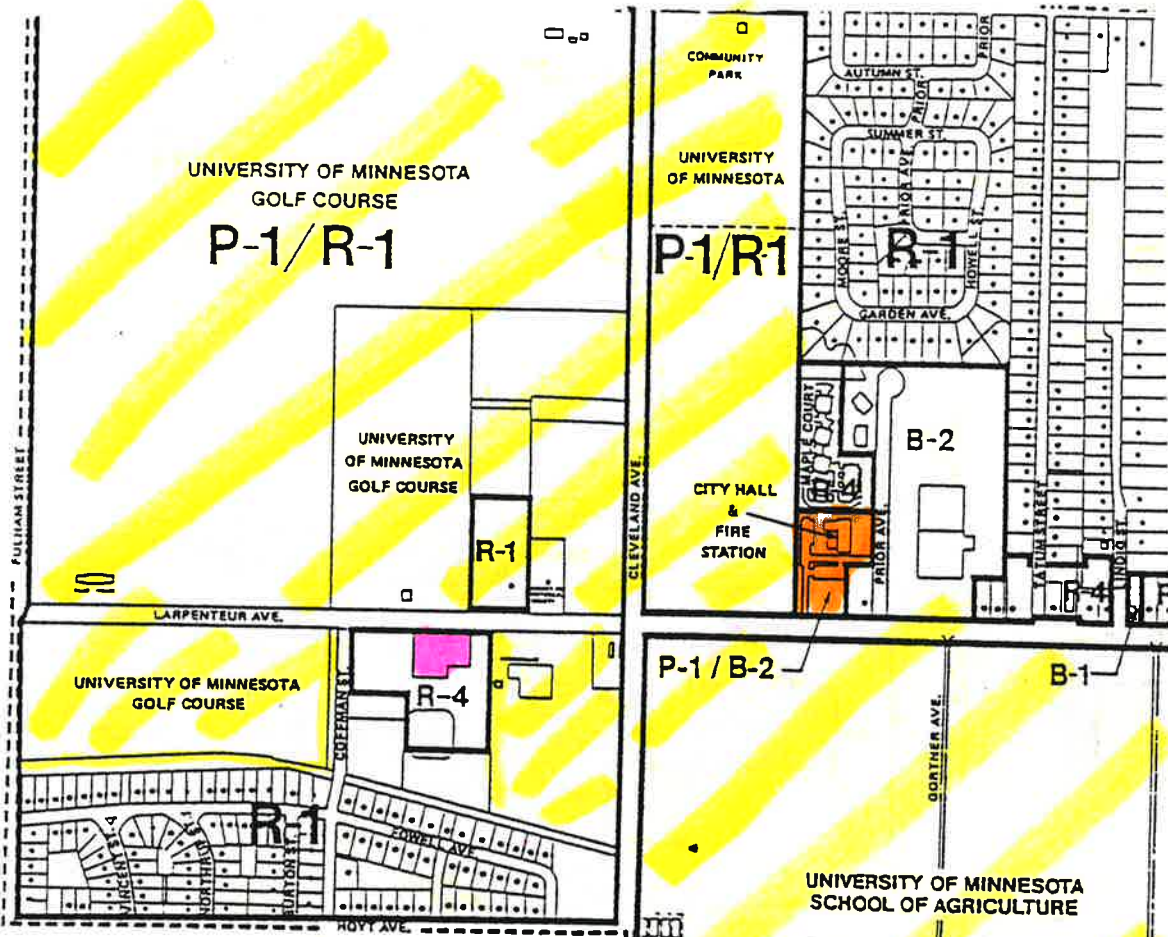
- permits rooftop antennas under 10 feet in all zoning districts, but does not permit commercial antennas in an R -1 zone .
- effectively permits monopoles 110 feet tall (or less) on the University of Minnesota and State Fair properties as well as the elementary school, city hall and in the rear yard of Hermes with a required setback of one foot for every one foot in height of antenna or tower.
- permits towers and antennas over 10 feet in height and up to 25 feet in height on buildings over 45 feet tall (Harvest States and 1666 Coffman condominiums.)
- includes additional application, permit, construction, co-location and design criteria.

**ATTACHMENTS:**

- 1 Proposed amendment to the zoning code
- 2 Current code regarding telecommunications antennas/towers
- 3 Map of possible locations under the proposed amendment
- 4 Summary of Federal Communications Commission regulations related to telecommunications providers

**ACTION REQUESTED:**

- Staff / Attorney report
- Questions and discussion on the proposed amendment
- Recommend revisions
- Schedule a public hearing on the proposed amendment



**ZONING DISTRICTS**

**RESIDENTIAL**

- R-1 ONE FAMILY
- R-2 ONE AND TWO FAMILY
- R-3 LOW DENSITY MULTIPLE FAMILY TOWNHOUSES
- R-4 MEDIUM DENSITY MULTIPLE FAMILY & APARTMENT BUILDINGS

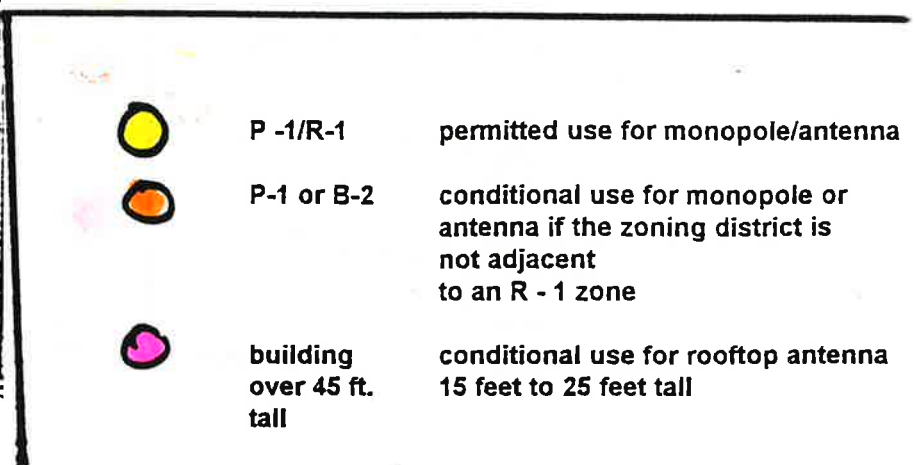
**BUSINESS**

- B-1 NEIGHBORHOOD CONVENIENCE
- B-2 LIMITED BUSINESS
- B-3 SNELLING/LARPENTEUR BUSINESS DISTRICT

**SPECIAL PURPOSE**

- P-1 PUBLIC LAND
- P-1 / R-1 PRESENT PUBLIC IF REUSED R-1
- 1 / B-2 PRESENT PUBLIC IF REUSED B-2

ZONING MAP AS ADOPTED JULY 11, 1984  
REVISED JULY 28, 1993





# LOCAL ZONING AUTHORITY OVER CELLULAR ANTENNAS AND TOWERS

Local governments exercise zoning authority to protect the health and safety of residents and to ensure orderly land use development. Local officials also use zoning to preserve the aesthetic character of the community and guard against new land uses that clutter up neighborhoods with unsightly facilities.

To a great extent, the 1996 Telecommunications Act specifically protects local zoning authority over the placement of cellular towers. At the same time, however, the law places some new federal restrictions on that authority.

The Act addresses the issue of local zoning authority over wireless telecommunications facilities in three ways. First, it establishes a general principle that local zoning authority is preserved, subject to certain conditions. Second, it lists the conditions that local zoning requirements must satisfy. Third, it identifies which disputes will be handled by the courts and which will be handled by the FCC.

## Five Conditions Affecting Local Zoning Authority

If local zoning requirements satisfy certain conditions, nothing in the 1996 Telecommunications Act limits or affects the zoning authority of local governments over the placement, construction, and modification of wireless telecommunications facilities. In order to maintain their zoning authority over wireless telecommunications facilities, local governments must satisfy five conditions.

**1. Local zoning requirements may not unreasonably discriminate among wireless telecommunications providers that compete against one another.**

This requirement does not mean that local governments must treat competitive providers in exactly the same way if their

proposed facilities present different zoning concerns. Congress intended to give local governments flexibility in this area. The law recognizes, for example, that a proposed 50-foot tower in a residential district presents different concerns than a 50-foot tower in a commercial district, even if the two towers are going to offer services that compete with one another. As a result, applications to site these facilities may be treated differently. Another defensible difference in treatment of providers interested in siting facilities might be the order or timing of a particular request if it is for use on a limited capacity tower site.

As a general rule, however, local governments should avoid making zoning decisions that give one provider of wireless service a competitive advantage over another. Under the law, if a local government has no rational basis for making a distinction between providers whose facilities have identical characteristics, differential treatment of those providers is prohibited. For example, a zoning ordinance that permits one provider of wireless services to construct a tower in a commercial district, but prohibits the construction of a similarly sized tower by another provider in that same commercial district with no other distinguishable differences in impact, is probably inviting a challenge based upon unreasonable discrimination.

**2. Local zoning requirements may not prohibit or have the effect of prohibiting the provision of wireless telecommunications service.**

This requirement is designed to prevent local governments from imposing outright bans on wireless telecommunications services. However, local ordinances may limit the number and placement of facilities so long as those limits do not prohibit or have the effect of prohibiting a wireless telecommunications

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## Siting Cellular Towers: What You Need to Know, What You Need to Do

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provider's ability to offer service. An ordinance might include such severe restrictions on the placement and number of towers in a community that they interfere with the reception of a signal and make it impossible to deliver service. In such a case, the fact that a local government ordinance permits the siting of cellular towers is insufficient to meet the requirements of the Act if the community remains unable to receive satisfactory service.

There is no requirement that every local community have a cellular tower. The Act says that there should be no prohibition on the service; it says nothing about the specific facilities. Therefore, a community of small geographic size might be able to limit the number of towers, or avoid a cellular tower completely, if it can demonstrate that subscribers can receive adequate service from towers located outside the jurisdiction's corporate boundaries.

Some local governments have instituted temporary freezes or moratoria on the granting of facility siting permits in order to review the requirements of the 1996 Act, develop relevant ordinances, and make long-term land use assessments. The Cellular Telecommunications Industry Association has challenged such moratoria before the FCC, claiming that they are a barrier to market entry and violate the Act. At least one court has determined that a short moratorium is not a "prohibition on wireless facilities, nor does it have a prohibitory effect. It is, rather, a short term suspension of permit issuing while the city gathers information and processes applications." *Sprint Spectrum, L.P. v. City of Medina, Washington*.

Instituting moratoria on the processing of applications and the granting of tower siting permits should not become a regular practice by local governments. If a locality determines that a brief moratorium is necessary in order to develop a procedure for the effective handling of siting requests, the FCC (in its Fact Sheet on National Wireless Facilities Siting policies) recommends that the locality communicate with wireless service providers about the intended duration of the moratorium, the tasks the locality wishes to accomplish during the moratorium, and the ways – such as by providing additional information about facilities and services – in which the providers can assist the locality in ending the moratorium.

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***There is no requirement that every local community have a cellular tower.***

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***3. A local government must act within a reasonable period of time on requests for permission to place or construct wireless telecommunications facilities.***

The time taken to act on an application will be considered reasonable if it is no longer than the time the local government usually takes to act on other requests – such as zoning variances – of comparable magnitude that have nothing to do with telecommunications facilities. The Act does not require local governments to give preferential treatment to zoning requests involving telecommunications facilities – such requests can wait their turn. The request should not be moved down the list, but it does not have to be moved up the list.

***4. Any city or county council or zoning board decision denying a request for permission to install or construct wireless telecommunications facilities must be in writing and must be based on evidence in a written record before the council or board.***

This requirement may necessitate a considerable change in practice for some local governments, since it means that written proceedings on a zoning application must be produced. This can be done by having the proceedings transcribed and by requiring the applicant, the city or county staff, and any interested members of the public to submit their comments and arguments in writing to the council or board. Local government staff must ensure that any facts or arguments on which the council or board may rely in denying a request are included in the transcribed hearing or written filings submitted to the council or board before its decision is made. The decision itself also must be in writing and contain reasons that are consistent with the Act's requirements. Localities should consult extensively with city or county attorneys to implement this requirement.

***5. If a wireless telecommunications facility meets technical emissions standards set by the FCC, it is presumed safe. A local government may not deny a request to construct a facility on grounds that its radiofrequency emissions would be harmful to the environment or the health of residents if those emissions meet FCC standards.***

The Act gives the FCC, not local governments, the sole authority to determine what standards wireless facilities must meet to ensure that their radiofrequency emissions do not harm humans or the environment. While local governments can require facilities to comply with the FCC emissions standards, they may not adopt their own standards. If the facilities meet FCC emissions standards, concern about the effects of

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## **LOCAL ZONING AUTHORITY OVER CELLULAR ANTENNAS AND TOWERS**

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emissions from cellular towers on the health of nearby residents is not a permissible reason for making zoning decisions about the placement of wireless telecommunications facilities.

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***The Act does not require local governments to give preferential treatment to zoning requests involving telecommunications facilities.***

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On August 6, 1996, the FCC adopted revised guidelines (Report and Order, FCC 96-326) for evaluating the environmental effects of radiofrequency emissions. Copies of the FCC's Report and Order adopting these guidelines can be obtained from the FCC's duplication contractor, International Transcription Service, 2100 M Street, NW, Suite 140, Washington, DC 20037, 202-857-3800.

Localities can require providers to comply with other federal regulations prior to issuing a tower construction or modification permit. For example, towers taller than 200 feet and located within a certain distance of airport runways must be registered with the FCC. The FCC works with the Federal Aviation Administration (FAA) to ensure that such towers are appropriately constructed, marked, painted, and lighted so that they do not create a hazard to air navigation.

Towers also must comply with the requirements of the National Environmental Policy Act (NEPA) and the requirements of those regulations implementing NEPA affecting wilderness areas, wildlife preserves, endangered species, historical sites, Indian religious sites, floodplains, wetlands, high intensity white lights in residential neighborhoods, and radiofrequency emissions in excess of the FCC's guidelines.

### **Dispute Resolution**

If a wireless provider claims that a local government has violated any of the first four conditions above, that provider must seek relief in a state or federal court, not from the FCC. This provision in the Telecommunications Act was a victory for local governments. State and federal courts provide a more neutral and much less costly arena for parties to resolve disputes than the FCC, where industry attorneys have a decided financial and practical advantage over city and county attorneys.

A disappointed applicant may go to the FCC only if it claims that the locality improperly based its adverse siting decision on the harmful effects of radiofrequency emissions from the proposed facility.

### **Things To Think About**

- Does your current ordinance directly prohibit wireless facilities and services or unintentionally discriminate against any category of provider?
- Is the volume of applications for site permits such that you need time to review and revise your ordinance? Have you discussed moratoria with your city or county attorney? Have you organized a process of research and citizen involvement to minimize the length necessary for a moratorium? Have you informed both industry and the public about its purpose, procedures, and duration?
- Have you considered how you will develop a written record to justify your zoning actions concerning towers and antennas under the new Act?
- What steps can you take with local media, wireless providers, and others to educate the public about the new technologies and ways to accommodate them in your community?
- Is it feasible to create an advisory committee with industry and civic representation to develop a comprehensive wireless strategy for your community and a set of guidelines for the preferred placement and design treatment of necessary facilities?
- Does your ordinance encourage placement of antennas on buildings and other existing structures? Have you identified the full range of such places in your community where facilities can reasonably be located without adversely affecting public health and safety or community appearance?
- Does your ordinance encourage co-location of wireless facilities on the same tower? Are providers in your area cooperating with one another to reduce the proliferation of towers and other facilities?
- Have you identified sites appropriate for new towers and monopoles, if needed?
- Is your community prepared to lease publicly-owned property to wireless service providers?



**CITY OF FALCON HEIGHTS  
RAMSEY COUNTY, MINNESOTA**

**ORDINANCE NO. \_\_**

**AN ORDINANCE AMENDING CHAPTER 9 OF THE  
FALCON HEIGHTS CITY CODE CONCERNING  
TELECOMMUNICATION TOWERS AND ANTENNAS.**

**THE CITY COUNCIL OF THE CITY OF FALCON  
HEIGHTS ORDAINS:**

**Section 1.** Chapter 9, Section 9-1.02, Subdivision 2, paragraph 13 is amended to read as follows:

13. **Antenna.** Equipment used for transmitting or receiving telecommunication, television, or radio signals, or other electromagnetic waves, including but not limited to directional antennas, such as panels, microwave dishes, and satellite dishes and omnidirectional antennas, such as whip antennas.

**Section 2.** Chapter 9, Section 9-1.02, Subdivision 2 is amended by adding the following definitions:

**Personal Wireless Services.** Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange services.

**Tower.** Any ground or roof mounted pole, spire, structure, or combination thereof including supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna, meteorological device, or similar apparatus above grade.

**Tower, Multi-User.** A tower which is designed to accommodate the antennas of more than one telecommunications provider, personal wireless service provider or governmental entity.



**Public Utility.** Persons, corporations, or governments supplying gas, electric, transportation, water, sewer, or land line telephone service to the general public. For the purpose of this ordinance, personal wireless services shall not be considered public utility uses, and are defined separately.

**Section 3.** Chapter 9, Section 9-2.07, Subdivision 2 of the Falcon Heights Zoning Ordinance is amended in its entirety to read as follows:

**Subdivision 2. Telecommunication Towers and Antennas**

- a. **Purpose:** In order to accommodate the communication needs of residents and businesses while protecting the public health, safety, and general welfare of the community, the Council finds that these regulations are necessary to:
- (1) Maximize the use of existing and approved towers and buildings to accommodate new personal wireless service antennas in order to reduce the number of new towers necessary to serve the community;
  - (2) Ensure antennas and towers are designed, located, and constructed in accordance with all applicable code requirements to avoid potential damage to adjacent properties from failure of the antenna and tower through structural standards and setback requirements;
  - (3) Require antennas and tower sites to be secured in order to discourage trespassing and vandalism; and
  - (4) Require tower equipment to be screened from the view of persons located on properties contiguous to the site and/or to be camouflaged in a manner to compliment existing structures to minimize adverse visual effects of antennas and towers.
- b. **Permits:**
- (1) It shall be unlawful for any person, firm, or corporation to erect, construct, place or re-erect, replace, or make structural repairs to any tower without first making application for and securing a building permit as provided in this Code, except as provided in paragraph (3) below.
  - (2) The applicant shall provide a report from a qualified and licensed professional engineer which demonstrates the tower's compliance with all applicable structural and electrical standards, including but not

limited to the Minnesota State Building Code, and includes the engineer's certification.

- (3) Permits are not required for:
- (3a) Adjustment, repair, or replacement of existing antennas or the elements of an antenna array affixed to a tower or antenna, provided that adjustment or replacement does not reduce the safety factor.
  - (3b) Routine maintenance (e.g. painting) and other nonstructural related repairs of towers.
  - (3c) Antennas and/or towers erected temporarily for test purposes, for emergency communication, or for broadcast remote pick-up operations, provided that all requirements of Paragraph (5) are met, with the exception of subparagraph (5h) (regarding corrosive material) which is waived. Temporary antennas shall be removed within seventy-two (72) hours following installation, unless additional time is approved by the Building Official. Temporary towers erected for emergency purposes may be exempt from setback requirements of this subdivision as determined by the Building Official.
- (4) The fee to be paid is that prescribed under Building Permit Fees.
- (5) Construction Requirements. All antennas and towers erected, constructed, or located within the City, including all necessary wiring, shall comply with the following requirements:
- (5a) All applicable provisions of this Code.
  - (5b) Towers and their antennas shall be certified by a qualified and licensed professional engineer to conform with the latest structural standards and wind loading requirements of the Uniform Building Code and the Electronics Industry Association and all other applicable reviewing agencies.
  - (5c) With the exception of necessary electric and telephone service and connection lines approved by the City, no part of any antenna or tower nor any lines, cable, equipment, or wires or braces in connection with either shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk, or property line.

- (5d) Towers and their antennas shall be designed to conform with accepted electrical engineering methods and practices and to comply with the provisions of the National Electrical Code.
  - (5e) All towers shall be constructed to conform with the requirements of the Occupational Safety and Health Administration.
  - (5f) All towers shall be reasonably protected against unauthorized climbing.
  - (5g) Antennas and towers may only be erected in accordance with applicable zoning restrictions.
  - (5h) Towers shall be constructed of corrosive resistant metal material.
  - (5i) Persons responsible for all communication towers and their antennas shall maintain a general liability insurance policy that provides coverage from any damage to property or injuries to persons caused by collapse of the tower. Said insurance policy shall provide coverage on an occurrence basis in an amount no less than one million dollars (\$1,000,000.00).
- c. **Inspections:** All towers may be inspected at least once each year by an official of the City to determine compliance with original construction standards. Deviations from original design for which a permit is obtained constitutes a violation of this Section.

Notice of violations shall be sent by registered mail to the owner of the property and the owner shall have thirty (30) days from the date the notification is issued to make repairs. The owner shall notify the City that the repairs have been made, and as soon as possible thereafter, another inspection shall be made and the owner notified of the results.

d. **Height and Zoning District Restrictions:**

- (1) **Tower Height Determination.** The height of towers shall be determined by measuring the vertical distance from the tower's point of contact with the ground to the highest point of the tower, including all antennas or other attachments. When towers are mounted upon other structures, the combined height of the structure, the tower, the antenna, and all attachments must meet the height restrictions of this Section.

- (2) **Antenna Height Determination.** Antenna height includes the height of the antenna from the base of the antenna to the peak and all other attachments.
- (3) **Zoning district restrictions and maximum heights for towers and antennas are as follows:**
- (3a) **Rooftop Antennas** 10 feet or less in height are a permitted use in all zoning districts except that commercial antennas are not permitted in an R-1 zone.
- (3b) **Towers or antennas no more than 110 feet in height** are a permitted use in a P-1/R1 zone.
- (3c) **Towers or antennas over 10 feet in height but no more than 110 feet in height** are a conditional use in P-1 and B-2 zones if the property does not abut R-1 zoned property.
- (3d) **Non-freestanding towers and non-freestanding antennas over ten feet in height, which are attached to a structure** over forty-five (45) feet in height are a conditional use in all zoning districts under the following conditions:
- (3di) the tower and antennas are located upon structures allowed as principal or conditional uses in the underlying zoning district or upon public structures.
- (3dii) the tower and antennas are limited to a height of fifteen (15) feet projecting above the structure. The city may permit antenna heights of up to twenty-five (25) feet above the structure if the applicant can demonstrate that, by a combination of tower or antenna design, positioning of the structure or by screening erected or already in place on the structure, off-site views of the antenna are minimized.
- (3e) **Amateur Radio Antennas.** In accordance with the preemption ruling PRB1 of the Federal Communications Commission, towers supporting amateur radio antennas that comply with all other requirements of this Section are exempted from the height limitations of this Section, provided that such height is

technically necessary to receive and broadcast amateur radio signals.

e. **Site Location and Setbacks.** In residential and business districts towers and antennas must be located in the rear yard. In all districts, towers and antennas shall conform with each of the minimum setback requirements:

- (1) Towers shall meet the principal structure setbacks of the underlying zoning district except that towers and antennas must be set back one foot from all property lines for each foot of tower and/or antenna.
- (2) Towers shall not be located between a principal structure and a public street.
- (3) A tower or antenna setback may be reduced through a conditional use permit, at the sole discretion of the City Council, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light pole, public communications tower, power line support device, or similar structure. The term "integration" may include replacement of an existing structure to include a personal wireless service provider, but does not include replication of a structure.
- (4) Only one tower shall exist at any one (1) time on any one (1) parcel, unless additional towers or antennas could be incorporated into existing structures such as a church steeple, light pole, power line support device, public communications building or other similar structure.

f. **Lighting.** Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a particular tower. When incorporated into the approved design of the tower for camouflage purposes, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.

g. **Signs and Advertising.** No signage, advertising, or identification of any kind intended to be visible from the ground or other structures is permitted, except applicable warning and equipment information signage required by the manufacturer or by Federal, State, or local authorities.

h. **Accessory Utility Buildings.** All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements for accessory structures of the underlying zoning district. Ground mounted equipment shall be screened from view by suitable

vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.

i. **Design Standards.** Proposed or modified towers and antennas shall meet the following requirements:

- (1) Towers and antennas (including antenna cables) shall be designed to blend into the surrounding environment to the maximum extent possible as determined by the City through the use of building materials, colors, texture, screening, landscaping, and other camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration;
- (2) Personal wireless service towers shall be of a monopole design unless the City Council determines that an alternative design would better blend in to the surrounding environment.

j. **Co-Location Requirement.** All personal wireless service towers erected, constructed, or located within the City shall comply with the following requirements:

- (1) A proposal for a new personal wireless service tower shall not be approved unless the City Council finds that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building, that is greater than 60 feet in height, within a one-quarter (1/4) mile search radius for towers less than one hundred ten (110) feet in height or a one-half (1/2) mile search radius for towers equal to or greater than one hundred ten (110) feet in height of the proposed tower due to one or more of the following reasons:
  - (a) The planned equipment would exceed the structural capacity of the existing or approved tower or building as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
  - (b) Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified radio frequency engineer.
  - (c) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.

- (2) The applicant must demonstrate that a good faith effort to co-locate on existing towers and structures was made, but an agreement could not be reached.
- (3) Any proposed personal wireless service tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two (2) additional users if the tower is over ninety (90) feet in height or for at least one (1) additional user if the tower is over sixty (60) feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

**k. Antennas Mounted on Roofs, Walls, and Existing Towers.** The placement of commercial antennas on roofs, walls, and existing towers may be approved by the City, with a conditional use permit, provided the antennas meet the requirements of this Code. In addition to the submittal requirements required elsewhere in this Code, and an application for a building permit for antennas to be mounted on an existing structure shall be accompanied by the following information:

- (1) A site plan showing the location of the proposed antennas on the structure and documenting that the request meets the requirements of this Code;
- (2) A building plan showing the construction of the antennas and the proposed method of attaching them to the existing structure, and documenting that the request meets the requirements of this Code;
- (3) Certification by a qualified and licensed professional engineer indicating the existing structure or tower's ability to support the antennas.

**l. Existing Antennas and Towers.** Antennas and towers in residential districts and in existence as of the effective date of this Ordinance which do not conform or comply with this Section are subject to the following provisions:

- (1) Towers may continue in use for the purpose used and existing as of the effective date of this Ordinance, but may not be replaced or structurally altered without complying in all respects with this Section.
- (2) If such towers are subsequently damaged or destroyed due to any reason or cause whatsoever, the tower may be repaired and restored to its former use, location, and physical dimensions upon obtaining a building permit for the repair or restoration, but without otherwise complying with this Chapter, provided, however, that if the cost of

repairing the tower to the former use, physical dimensions, and location would be fifty percent or more of the cost of a new tower of like kind and quality, then the tower may not be repaired or restored except in full compliance with this Chapter.

**m. Abandoned or Unused Towers or Portions of Towers.** All abandoned or unused towers and associated facilities shall be removed within twelve (12) months of the cessation of operations at the site unless a time extension is approved by the City. In the event that a tower is not removed within twelve (12) months of the cessation of operations at a site, the tower and associated facilities may be removed by the City and the costs of removal assessed against the property. After the facilities are removed, the site shall be restored to its original or an improved state.

**n. Interference with Public Safety Telecommunications.** No new or existing telecommunications service shall interfere with public safety telecommunications.

**o. Additional Submittal Requirements.**

(1) In addition to the information required elsewhere in this Title for an application for a Building Permit for towers and their antennas, applications for conditional use permits for such towers shall include the following supplemental information:

(1a) A report from a qualified and licensed professional engineer which does the following:

(1a1) describes the tower height and design including a cross section and elevation;

(1a2) documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;

(1a3) describes the tower's capacity, including the number and type of antennas that it can accommodate; and

(1b) For all personal wireless service towers, a letter of intent committing the tower owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use, so long as there is no negative structural impact upon the tower and there is no disruption to the service provided.



- (2) Before the issuance of a building permit, the following supplemental information shall be submitted:
  - (2a) Confirmation that the proposed tower complies with the requirements of the Federal Aviation Administration, Federal Communications Commission, and any appropriate state review authority or that the tower is exempt from those regulations; and
  - (2b) A report from a qualified and licensed professional engineer which demonstrates the tower's compliance with the applicable structural and electrical, but not radio frequency, standards as required under Section 4-7-2(B) and (E) of the Falcon Heights City Code.

**p. Exemptions.** The following antennas are exempt from the requirements under this Section except as otherwise provided in this paragraph:

- (1) Satellite earth station antennas no more than 10 feet in height that are two (2) meters or less in diameter and located or proposed to be located in a Business District;
- (2) Antennas designed to receive signals as follows:
  - (2a) Antennas that are one (1) meter or less in diameter and that are designed to receive direct broadcast satellite service, including direct-to-home satellite services;
  - (2b) Antennas that are one (1) meter or less in diameter and that are designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services; or
  - (2c) Antennas designed to receive television broadcast signals.
  - (2d) Antennas exempted under this section are subject to the following requirements:
    - (2d1) Antennas (including antenna cables) shall be designed to blend into the surrounding environment through the use of appropriate colors, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration;

- (2d2) No lighting, signage, advertising, or identification of any kind intended to be visible from the ground or other structures is permitted, except applicable warning and equipment information signage required by the manufacturer or by Federal, State, or local authorities;
  - (2d3) Antennas and any guy wires or guy wire anchors shall not be erected within a public or private utility and drainage easements, and shall be set back a minimum of five (5) feet from all lot lines;
  - (2d4) Antennas shall meet the setback requirements specified under this chapter and, to the extent feasible, placed in a position that is not visible from the street, unless placement in accordance with these requirements would impair reception of an acceptable signal;
  - (2d5) Ground mounted antennas shall not exceed 10 feet in height and all other antennas must meet the height limitations in this chapter, unless the applicable height limitation would impair reception of an acceptable signal; in which case, antennas shall be limited to the maximum height necessary to obtain an acceptable signal;
  - (2d6) Antennas shall not be constructed, installed, or maintained so as to create a safety hazard or cause damage to the property of other persons;
  - (2d7) With the exception of necessary electric and telephone service and connection lines approved by the City, no part of any antenna nor any lines, cable, equipment, or wires or braces in connection with the antenna shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk, or property line;
  - (2d8) Antennas, masts, and supporting cables shall conform with the latest structural standards and wind loading requirements of the Uniform Building Code and the Electronics Industry Association and any other applicable reviewing agencies.
- (3) Residential District Standards. Satellite earth station antennas no more than 10 feet in height, and satellite earth station antennas in excess of one (1) meter in diameter and antennas designed to receive direct

broadcast services or multichannel multipoint distribution services in excess of one (1) meter in diameter may be allowed as a conditional use within the residential zoning districts of the City and, in addition to the requirements of this Section, shall comply with the following standards:

- (3a) The lot on which the antenna is located shall be of sufficient size to assure that an obstruction-free receive window can be maintained within the limits of the property ownership;
  - (3b) Except where the antenna is screened by a structure exceeding the antenna height, landscape buffering and screening shall be maintained on all sides of the antenna in a manner in which growth of the landscape elements will not interfere with the receive window;
  - (3c) The antenna is not greater than three (3) meters in diameter; and
  - (3d) The conditional use permit provisions of this Chapter are considered and determined to be satisfied.
- (4) **Business and Special Purpose District Standards.** Satellite earth station antennas in excess of two (2) meters in diameter and antennas designed to receive direct broadcast services or multichannel multipoint distribution services in excess of one (1) meter in diameter are allowed as a conditional use within the B-1, B-2, B-3, P-1, P-1/R-1, and P-1/B2 districts of the City and, in addition to the requirements of this Section, shall comply with the following standards:
- (4a) The lot on which the antenna is located shall be of sufficient size to assure that an obstruction free transmit-receive window or windows can be maintained within the limits of the property ownership;
  - (4b) Except where the antenna is screened by a structure exceeding the antenna height, landscape buffering and screening shall be maintained on all sides of the antenna in a manner in which growth of the landscape elements will not interfere with the transmit-receive window; and
  - (4c) The conditional use permit provisions of this Title are considered and determined to be satisfied.

q. **Violations.** Any person who shall violate any of the provisions of this Section shall be guilty of a misdemeanor.

**Section 4. Effective Date.** This ordinance shall be effective immediately upon its passage and publication.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 1997, by the City Council of the City of Falcon Heights.

CITY OF FALCON HEIGHTS

BY: \_\_\_\_\_  
Suc Gehrz, Mayor

ATTEST:

\_\_\_\_\_  
Susan Hoyt, City Administrator/Clerk

## The current city ordinance related to telecommunications antennas.

9-2.07

### 9-2.07 Height Limitations

#### Subdivision 1. Height Limitations

Any structural height that exceeds the zoning code must have a conditional use permit.

##### a. Exempt:

1. Height limitations shall not apply to belfries, cupolas and domes, monuments, public and public utility facilities, silos, barns, church spires, chimneys, smokestacks, flag poles, and parapet walls extending not more than four feet above the limiting height of the building.

2. Height limitations shall not apply to roof top structures such as mechanical equipment, elevator shaft and equipment enclosures and similar structures, provided said exceptions do not exceed ten (10) feet in height above the roof line and the area does not exceed fifteen percent (15%) of the roof area.

##### b. Airport:

In all cases, however, no structure shall violate the limits and provisions of the Airport Plan of the Metropolitan Development Guide.

#### Subdivision 2. Telecommunication Antennas

a. Tower height. Tower heights includes the height of the tower from grade to peak including all antennas and other attachments. If the tower is located on a structure, the tower height is from base to peak including all antennas and other attachments.

b. Antenna height. Antenna height includes the height of the antenna from the base of the antenna to the peak and all other attachments.

##### c. Private antennas.

1. Private antennas 10 feet or less are a permitted use.

2. Private antennas over 10 feet but no more than 20 feet in height above a man-made structure, where the man-made structure exists as a principal or a permitted

accessory use on the property, shall be a conditional use in all districts.

- a. The setback for the antenna must be one foot/per foot of antenna from all property lines.
3. In accordance with the Federal Communications Commission preemptive ruling PRB1,
- a. A private antenna may exceed 20 feet in height above a man-made structure for the purpose of supporting amateur radio provided that a determination is made by the city council as part of the conditional use permit that the additional antenna height is technically necessary to successfully engage in amateur radio communications;
  - b. a free-standing tower or a free-standing antenna not to exceed 50 feet from grade to peak may be constructed for the purpose of supporting amateur radio provided that a determination is made by the city council as part of its conditional use permit that a freestanding tower and/or antenna is technically necessary to successfully engage in amateur radio communications.
    - 1) A free-standing tower or antenna must be located in the rear yard and be set back one foot from the side and rear property lines for each foot of tower and/or antenna.
  - d. Commercial antennas. Commercial receiving or transmitting antennas shall be prohibited in properties zoned residential, commercial or public except:
    - 1) when located on existing water towers and public structures within the city limits, but outside the city's land use jurisdiction, as approved by the public institutional property owners controlling these water towers and public structures;
    - 2) when located on city hall with a maximum antenna height of 20 feet under a negotiated lease whenever such placement is technically feasible pending the following minimal conditions;

- a) The antennas will not interfere with the purpose for which the city owned property is intended;
  - b) The antennas or tower have no adverse impact on surrounding private property;
  - c) The applicant is willing to obtain adequate liability insurance and commit to a lease agreement which includes equitable compensation for the use of public facilities and other necessary provisions and safeguards. The fees shall be established by the city council;
  - d) The applicant will submit a letter of credit, performance bond, or other security acceptable to the city to cover the antennas' or towers' removal.
  - e) The antennas or tower will not interfere with other users of a higher priority including law enforcement, fire, ambulance, and other governmental agencies.
  - f) Upon reasonable notice, the antennas or towers may be required to be removed at the owner's expense.
  - g) The applicant must reimburse the city for any costs which it occurs because of the presence of the applicant's antennas or towers.
- e. Antennas-Aesthetics. All antennas and towers upon which antennas are placed shall be designed and situated so as to be as visually unobtrusive as possible, screened when appropriate, utilizing a city approved color and containing no signs, logos or lighting, except as may be required by any state or federal regulation. Free standing antennas and towers (built upon the ground as opposed to placement on the roof of an existing building) are found to be an aesthetic blight and are prohibited.
- f. License required. The applicant shall present documentation of the possession of any required license by local, state or federal agencies.
- g. Nonconforming Uses. Existing transmitting and receiving facilities at the time of adoption of this section may remain in service. However, at

such time as any material change is made in the facilities, full compliance with this section shall be required. No transmitting or receiving antennas or towers may be added to existing nonconforming facilities.

- h. Building Permit. A building permit shall be required for the construction of new antennas and towers upon which antennas will be placed and shall include wind loading and strength and footing calculations prepared by a Minnesota registered engineer, whenever deemed necessary by the city engineer.
- i. Private satellite dish antennas. Private satellite dish antennas are not subject to this subdivision.
- j. Hand-held telephone, two-way radio or similar devices. Hand-held telephone, two way radio or similar devices not requiring an exterior receptiond or receiving antennae are permitted if operated so as not to be visible from outside a principal builidng nor producing any electrical or other affect upon adjacent or nearby properties.