

**City of Falcon Heights  
Planning Commission Minutes  
July 23, 2013**

**PRESENT:** Commissioners Black, Brown, Fite, Gustafson, Wartick, Council Member Harris, Staff Liaison Jones, City Attorney Tom Scott.

**ABSENT:** Commissioner Minns and Council Member Harris (with notice)

The meeting was called to order at 7:00 p.m. by the Chair, Commissioner Black, who noted that a quorum was present. The minutes of the May 28 meeting of the Planning Commission were approved as submitted.

**Public Hearing on a Fence Height Variance for 1918 Autumn Street.**

Zoning and Planning Director Deb Jones the staff report on the case. The applicants are requesting a variance to extend a back yard privacy fence along their north property line into the front yard at the 72 inch back yard height. The city code limits fences in a front yard to a height of 36 inches from grade. The applicants want to extend their privacy fence to match the extent of a privacy fence on the lot to the north, which ends nearly 8 feet forward of the front of their house. The reason the neighboring property at 1906 Prior can have a 72 inch fence adjoining the front yard of 1918 Autumn is because it lines up with the front of their house at 1906 Prior. Due to the curve of the street, the two houses are set at an angle such that the front wall line of 1918 Autumn meets the shared side property line more than seven feet behind the front wall line of 1906 Prior. This configuration is rare in Falcon Heights. Even on the few curved streets, house fronts tend to be in line. There may be one or two other instances where the discrepancy is as much as 7 to 8 feet, but this situation very rare, if not unique. Jones read the staff findings, in reference to Section 113-62. In summary, staff found that the variance applied for does qualify under all provisions of Section 113-62. The only recommendation made by staff is that any variance granted not exceed the length by which the adjacent fence borders the yard of 1918 Autumn.

This is the first variance to come before the Planning Commission since State law and the City ordinance changes of 2011. Jones expressed appreciation to Mr. Scott for being present to assist the Commission with questions they might have under the new laws.

The Chair opened the public hearing. The only person to speak was the applicant, Judy McCleery of 1918 Autumn. She showed pictures of the two fences, which are very different in appearance and stated that she and her husband want to extend their fence no further than the front of the next-door fence.

The only other input received from the public was a letter from Stephen and Joanne Sunderland of 1906 Prior Avenue, the adjacent property to the north. They are opposed to the granting of the variance. At their request, the letter is attached to these minutes.

In anticipation of general questions about variances in Falcon Heights, staff had prepared a history of variances approved and denied since 1988 in the City. Copies were distributed. In general there have been few variances over the last 10 years and none since 2009.

There being no other persons wishing to speak, the hearing was closed.

### **Planning Commission Discussion and Action**

Mr. Scott read the statutory definition of “practical difficulty” addressed in the third of the staff findings, as this is the most substantial change to the law since the last variance considered in Falcon Heights. (Staff found that practical difficulties do exist in this case.)

In order to meet the “practical difficulties” standard, the variance must meet three criteria:

- The use proposed by the applicant must be a reasonable use of the property that is not permitted by the ordinance.
- The plight of the landowner must be due to circumstances unique to the property not self-created by the landowner.
- The variance, if granted, will not alter the essential character of the locality

Mr. Scott pointed out where the neighbor’s letter might relate to the “reasonable use” and “uniqueness” parts of the definition.

Commissioner Gustafson asked if there were any other cases where fences on adjacent properties are six inches apart or less. Jones said there probably dozens. More commonly, owners of adjacent properties agree on a common fence. In response to a question from Commissioner Fite, Jones cited two other fence height variances since 2001, both at homes adjacent to commercial properties. There has not been another case like this during her time with the City.

Commissioner Black asked if the fence at 1906 Prior was built according to code. Jones said yes, as far as she knew, but it was a “grey area” with respect to the finish of the fence. A fence is required to have the “finished” side facing outward. Although the supports are on the owner’s side, there is no stain or finish on the “outward” facing side of the existing neighbor’s fence. Black pointed out that staining the outside of the fence would require going onto the neighboring property.

Commissioner Gustafson asked about the length of the extension. Jones said that a standard module of a manufactured fence would go past the adjacent fence. Staff recommends strongly that the height variance should not go past the end of the adjacent fence, even if it means inconvenience and expense in customizing the pre-manufactured module. The Planning Commission may set very specific limits on its recommendation – and usually does, in most variance cases she has been involved with. It would not be an “anything goes” situation, with the applicants able to extend their six foot fence all the way out to the front property line. Commissioner Black asked for and received confirmation that the height variance would in no way impact the right of either property owner to build a 3 foot fence in the front yard, as allowed by ordinance.

Commissioners continued to discuss the details of the case, mostly relating to language of both the variance ordinance and the fence ordinance. In response to a concern raised by Commissioner Black, Jones said that the houses on the block are set back a generous distance from the street, and extending the applicant’s fence would not make a significant impact on

the visual character of the neighborhood – especially because there is a fence there already. In response to Commissioner discussion on how to limit the extent of the variance, Jones reminded Commissioners that the limit does not have to be a numerical distance but can be a reference to an existing structure, namely, the neighboring fence, and staff strongly recommends making that the limit of any variance recommended. That is the “minimum action required to eliminate the practical difficulties;” 8 feet would be too far.

Brown moved, Gustafson seconded, that the Commission recommend approval of the variance in fence height limited to extent of the neighboring 72 inch fence. There is some discrepancy in the application. The applicant confirmed that the 8 feet applied for is intended to be an approximation, that the variance is asked to the end of the adjacent fence only. With that limit clarified, the motion passed on a unanimous vote.

The Council will take action on this application in August.

**Information and Announcements:**

Thursday, July 25 is the annual Ice Cream Social, 6 to 8 p.m. in Community Park.

Jones provided an update on the Hermes site. The Metropolitan Council has approved the text amendment to the Comprehensive Plan which means the urban farm can operate on the site. The sale on the property closed recently. The replatting approvals are still in process. The next step would be permits.

The Council has not yet considered the chicken ordinance, due to a heavy schedule of other agenda times, but it is on the agenda for July 24.

Commissioner Gustafson reminded everyone that the Night to Unite is coming up August 6. Many block parties are planned around town.

**ADJOURNMENT:** The meeting was adjourned at 8:04 p.m. to a brief workshop introducing the Commission to a draft ordinance which is expected come up for consideration later this year regarding zoning rules for private generation of solar energy.

Respectfully submitted,



Deborah Jones, Staff Liaison

JUL 09 2013

From:

Stephen and Joanne Sunderland  
Residents at:  
1906 Prior Ave N  
Falcon Heights, MN 55113

To:

Falcon Heights Planning Commission  
2077 Larpenteur Avenue West  
Falcon Heights, MN 55113

Re:

Request for Variance to extend fence beyond allowable limits established by Falcon Heights City code at 1918 Autumn Street Falcon Heights, MN 55113

Dear Planning Commission:

We request your acceptance of this letter as testimony to be entered into consideration concerning the above referenced variance request. We request that this letter be read into the minutes of the meeting for all to reference and to be given fair and equal consideration by the planning commission. We will be traveling out of state and cannot be present at the hearing.

We are the neighbor along whose property the McCleery's have recently built a fence within six inches of the existing fence which was built one year ago by Joanne and I, on the property line in accordance with Falcon Heights City ordinance. The city is aware of the disputes surrounding the history of the first fence which was built of necessity to prevent future encroachment and to remedy existing encroachments by the McCleerys. It is not important to restate the details of this dispute. The McCleerys were opposed to our fence being built and complained to the city who sent the city manager, the city inspector and the zoning and planning director to our home to inspect. They have clearly changed their mind about fences and now have built a second fence directly alongside the first. The second fence is ill conceived and presents problems for both property owners. To extend this fence beyond allowable limits would only exaggerate the problems.

**We strongly oppose the request for variance for the following reasons:**

We have read the ordinance and find no criteria specified in the ordinance upon which to base a decision to extend a fence in the front yard of the property in question, which is the most visible elevation on the building site. The ordinance has been established and has worked well for a reason. We are not experts in Falcon Heights City code nor in hearings of this kind however we can suggest that our concerns derive from this absence of clear criteria. We object to this request for variance because a decision to grant this variance to one party in absence of clear criteria would of necessity discriminate against all parties who have complied with the ordinance. Granting a variance to one party would suggest that for the sake of fairness you would necessarily have to grant a similar variance to all parties who make application.

The second consideration is that in the granting of a variance the Planning Commission would want to weigh the positives of this request against the negatives in order to promote the goals and directives of the city for the benefit of all residents. We find no positives and many negatives. There are no financial

benefits to the home owner to extend the fence; fences do not carry value in appraising residential property. There are no benefits to the neighborhood, in fact the opposite will be argued. There is no benefit to the city, in fact granting this request would open the door to significantly more tedious and time consuming issues. The city manager has already suggested that the city does not have the expertise to decide on more complex issues. I cannot think of one single benefit obtained by granting this request.

The negatives are great. The presence of the second fence within six inches of the existing fence without consideration of the issues has been ill advised. When the first fence was built we took into consideration the level of the fence under the windows of the neighbor's house in order to be more pleasing to the eye. We dug into the fence line a trench of permeable rock and installed drain tiles in order that standing water would drain to lower elevations. This was done at additional expense in consideration of the neighbors. By contrast, while digging the post holes for the new fence the McCleerys threw the clay laden soil against the side of our wooden fence blocking the drainage effect of the permeable rock and drainage tiles and also damning up the terrain at that elevation. Heaving their dirt against the base of our fenced has also created a soil on wood issue that will in all likelihood cause the fence to rot prematurely. I have been told by the city that this is a civil issue and cannot be addressed by the city. However, if this request for variance is granted the city would be entering a judgment concerning this issue. The city would be extending the scope of the already untenable problem.

No positives would accrue to the city if this variance is granted and as you can see many negatives presently and in the future would be created by setting this precedent. The decision to grant a variance to extend the fence beyond the limits established by city code could be construed to be prejudicial and hence open to legal remedy by all parties harmed by this precedent. We would respectfully request that if the Planning Commission has a history of granting variances of this kind that these be identified in writing and represented in the hearing and that these variance requests that have been granted be distributed to interested parties prior to entering into a final decision. This would necessitate a future hearing.

Lastly we object to this request for practical and architectural aesthetic reasons. First as mentioned earlier the presence of the second fence is already problematic. The McCleerys have created a six inch no man's land which prevents the maintenance of either fence within that sandwich. It also creates a potential vector problem in that it will soon become the rodent highway. It is just enough land to grow a mountain of weeds, which cannot be weeded but also an irresistible tunnel for dogs and cats just big enough to get into and get wedged. This is the second non-homesteaded property for the McCleerys spending most of their time on their lake home. They will not then be the party that has to manage most of these potential problems. They have already delegated those problems to their neighbors. They have thoughtlessly built this second fence for reasons not based on sound reasoning but on criteria we can only guess at.

We thank the Planning Commission for reading our testimony into the record and request that the planning commission deny the request for variance.

Thank you,

Handwritten signatures of Stephen and Joanne Sunderland in black ink. The signature for Stephen is on the left and for Joanne is on the right, both written in a cursive style.

Stephen and Joanne Sunderland