



Established in 1849  
"Where Minnesota History Begins"

## MEMO

**Date:** September 13, 2017  
**Re:** Planning Commission/Board of Adjustment Report  
**From:** Ben Oleson, Zoning Administrator

Dear Mayor and City Council,

The Planning Commission/Board of Adjustment held its regular meeting on September 11, 2017. The Commission held three public hearings - one regarding a proposed road vacation and two regarding variances. Motions to approve all three requests failed and as such, the Planning Commission/Board of Adjustment is essentially recommending denial.

### AGENDA ITEM #1

**Application:** Request to vacate public right of way legally described as that portion of the platted road lying north of Lot 8, Block 40, Searle's Addition to Little Falls, Morrison County, Minnesota, according to the recorded plat of record in the Office of the Morrison County Recorder.

**Applicant:** Michael Kayala

**Proposal:** The applicant is requesting that the City vacate that portion of the 9<sup>th</sup> Street SW public right of way that lies west of 13<sup>th</sup> Street NW. The right of way does not currently have any public utilities or an actual road surface. The land immediately to the west of the right of way are two relatively narrow (approx. 100 ft) parcels of privately owned land that is located within the City boundaries. Just west of that, is a privately owned farm (approx. 64 acres) that is located outside of City boundaries.

**Planning Commission Recommendation:** A motion to approve the requested vacation failed on a 0-5 vote. The failed vote amounts to a recommendation for denial.

**Findings of Fact:** The following findings of fact are presented by Staff for consideration by the City Council based on the discussion at the public hearing:

- J While the right of way may not be used at the current time for a constructed road or utilities, it is prudent to maintain it given that there is undeveloped land to the west that may benefit from that right of way in the future.
- J If the right of way were vacated and later found to be needed, it would be expensive to the City to obtain it back.
- J The landowner immediately to the west of the right of way has been using that right of way to access their property for many years and while they would retain public right of way access on the opposite ends, it would limit their access and ability to make use of their land.

**AGENDA ITEM #2**

**Application:** Variance to construct an approx. 5 x 17.5 ft dwelling addition and 3' x 5' covered entry to north side of existing dwelling approx. 4 ft from property line (min. 30 ft required).

**Applicant:** Aaron and Becky Olson

**Background Information:**

- ◆ **Proposal:** The applicant is proposing to construct an addition to the north side of their existing dwelling that would be located approximately 4 feet from the front property line (min. 30 ft required). The existing dwelling on the property was originally constructed approximately 12 feet from the north property line prior to in 1892 according to Assessor's records and is considered a legal nonconformity.
- ◆ **Location:**
  - Property address: 601 2<sup>nd</sup> St SE, Little Falls
  - Legal Description: Lot 1, Block 25, Original Plat of Little Falls
  - Parcel number(s): 48.0205.000
- ◆ **Zoning:** R1 - One and Two Family District

**Planning Commission Recommendation:** A motion to approve the requested variance failed on a 0-5 vote. The failed vote amounts to a recommendation for denial.

**Findings of Fact:** The following findings of fact are presented by Staff for consideration by the City Council based on the discussion by the Board of Adjustment:

- 1) **Current Zoning:**
  - Subject Property: R-1 One- and Two-Family Residential Zoning District
  - Surrounding Properties: R-1 One- and Two-Family Residential Zoning District
- 2) **Current Land Use:**

- Subject Property: Single-family dwelling
  - Surrounding Properties: Single-family dwellings
- 3) **Lot size:** Approx. 75 ft. x 80 ft. (6,000 sq ft).
- Existing impervious surface: Approx. 1,609 sq. ft. (26.8%)
  - Proposed impervious surface: Approx. 1,700 sq. ft. (28.3%)
  - Maximum allowed impervious surface: 75%
- 4) **Sewer/Water:** The property is served with City sewer/ water.
- 5) **Natural Features:**
- Floodplain: The location of the proposed garage does not appear to be within an identified floodplain.
  - Bluff/Steep Slopes: The property does not contain any bluffs or steep slopes in the location of the proposed garage.
  - Wetlands: There do not appear to be any wetlands on the property that would impact the proposed garage.

6) **Will the granting of the variance be in harmony with the general purposes and intent of the Zoning and/or Subdivision Ordinance?**

**No.** The general intent of a front yard setback for structures is to prevent damage to property and promote public safety should a vehicle drive off the road, to maintain consistent setbacks for homes and other structures along streets and to allow adequate space for parking of vehicles on driveways without endangering public safety.

In this case, the lot is a corner lot, which allows for a min. front yard setback of 30 feet and a min. corner side lot setback of 15 feet. The addition would be in the front yard, by definition, and would not meet either the 30 ft or 15 ft setbacks. Placing even greater amount of structure within the road setback than already exists would be inconsistent with the intent of leaving this space open and create even greater potential for damage should a vehicle leave the road.

7) **Will the granting of the variance be consistent with the City of Little Falls' Comprehensive Plan?**

The Comprehensive Plan does not directly address applications such as these.

8) **Is the proposed use of the property reasonable?**

**No.** The requested variance is reasonable in that the reasoning for the addition is to make the home more livable - particularly for persons having difficulty navigating stairs. However, the applicant has other options (building on the south or west side of the existing dwelling, remodeling of the interior) that could accomplish the same goal without need for infringing further on the front yard setback when it is already significantly infringing on the required setback.

9) **Is the plight of the landowner due to circumstances unique to the property not created by the landowner?**

No. While the need for the variance would appear to be related partly to the existing layout of the home on the lot and the lot size (which the applicant had no control over), they do have options for eliminating the requested variance by other means, as noted in #8) above.

10) **Will the variance, if granted, alter the essential character of the locality?**

Yes. While the neighboring property has a small entryway structure located about as close to the front lot line as the applicant's proposed addition, the majority of homes in the immediate area are located significantly further back on the property.

11) **Are economic considerations the only reason the applicant cannot meet the strict requirements of the ordinance?**

Yes. While the existing lot size and location of the house on the lot definitely play into the applicant's request, ultimately the applicant has other options (as noted in #8 above) to achieve the goal of a main level bathroom, laundry area and living space that would be feasible, but would have a higher cost.

12) **Could the practical difficulty be alleviated by a feasible method other than a variance (taking into account economic considerations)?**

Yes. To avoid the need for a variance, the applicant would have the option of remodeling the interior of their home and/or construction a dwelling addition on the south or west sides of the existing dwelling.

**AGENDA ITEM #3**

**Application:** After-the-fact variance to allow for a 4-6 ft tall fence in a front yard (max. 4 ft allowed) and within restricted distance of intersecting street right-of-way lines (max. 2.5 ft allowed).

**Applicant:** Aaron and Becky Olson

---

**Background Information:**

◆ **Proposal:** The applicant constructed a fence in the Spring of 2016 to enclose their front and corner side yards. They applied for a fence that was to be 6 ft along the side (west) property line and 4 ft tall along the front (north) property line. These height limits were as allowed by ordinance, except that the area of the yard near where the two streets meet was - by ordinance - not to be taller than 2.5 feet (30 inches) so as not to impede vision for approaching vehicles. The permit was incorrectly issued by the Zoning Administrator in that it was not compliant with this requirement. The applicants are now asking for an after-the-fact variance to allow the fence height to exceed 2.5 ft (30") in the "site triangle" area.

**Note:** At the time of the fence construction, the requirement was that the fence height be limited to 30" 25 feet from the street intersecting right of way lines. This would require that it be no more than 30 inches approximately back to their sidewalk on the west side. Since that time, the City has finalized proposed amendments to that section of the City Code and adopted new, less restrictive regulations that would require the 30" maximum height only for a distance of 10 feet back from the street intersecting right of way lines. The existing fence would not meet either of these setbacks.

◆ **Location:**

- Property address: 601 2<sup>nd</sup> St SE, Little Falls
- Legal Description: Lot 1, Block 25, Original Plat of Little Falls
- Parcel number(s): 48.0205.000

◆ **Zoning:** R1 - One and Two Family District

---

**Planning Commission Recommendation:** A motion to approve the requested variance failed on a 0-5 vote. The failed vote amounts to a recommendation for denial.

---

**Findings of Fact:** The following findings of fact are presented by Staff for consideration by the Planning Commission:

1) **Current Zoning:**

- Subject Property: R-1 One- and Two-Family Residential Zoning District
- Surrounding Properties: R-1 One- and Two-Family Residential Zoning District

2) **Current Land Use:**

- Subject Property: Single-family dwelling
- Surrounding Properties: Single-family dwellings

3) **Lot size:** Approx. 75 ft. x 80 ft. (6,000 sq ft).

4) **Will the granting of the variance be in harmony with the general purposes and intent of the Zoning and/or Subdivision Ordinance?**

**No.** The general intent of the height limit in close proximity to intersecting streets is to ensure that sight-lines are not obstructed as cars approach an intersection. This is intended to prevent accidents between vehicles or between vehicles and pedestrians. The intersection is a controlled intersection with a four-way stop required by vehicles, bicyclists and pedestrians. However, because the fence is located right at the intersecting street right of way lines, it does present an obstruction inconsistent with the ordinance requirements.

5) **Will the granting of the variance be consistent with the City of Little Falls' Comprehensive Plan?**

The Comprehensive Plan does not directly address applications such as these.

6) **Is the proposed use of the property reasonable?**

**Yes.** The requested variance is reasonable in that the fence was erected in good faith after the applicants applied for, and were approved for a permit. The applicants have indicated that they are seeking privacy on their busy corner lot and that a 30" tall fence in that location would reduce their privacy and that moving the taller fence further back would eliminate a significant amount of their yard area that they would otherwise use.

7) **Is the plight of the landowner due to circumstances unique to the property not created by the landowner?**

**No.** The need for the variance would appear to primarily be related to the existing layout of the home on the lot, the lot size, and the desire to have privacy in their yard while at the

same time maximizing the area that can be used inside the fence. While a permit to construct the fence was incorrectly issued, that circumstance does not have anything to do with the property itself.

**8) Will the variance, if granted, alter the essential character of the locality?**

**Yes.** Other corner lots in the immediate area do not have fences or obstructions in the required "sight triangle".

**9) Are economic considerations the only reason the applicant cannot meet the strict requirements of the ordinance?**

**Yes.** The cost in labor and potentially materials is the primary reason why the applicant could not meet the requirements. There is adequate space on the property to place a privacy fence that would allow them privacy while still meeting the requirements of the City Code.

**10) Could the practical difficulty be alleviated by a feasible method other than a variance (taking into account economic considerations)?**

**Yes.** To avoid the need for a variance, the applicant has at least two options: 1) reduce the height of the fence in the required area to no more than 30" in height; or 2) reconfigure the fence so that any fence exceeding 30" in height is outside of the required "sight triangle" area.

---

**Additional Considerations for 'After-the-Fact' Variance Requests:**

**1. The applicant acted in good faith;**

**Yes.** The applicant applied for a permit to construct the fence and that application included a site plan that clearly identified the proposed height and distance from the street intersecting right of way line. That fence permit was clearly issued with no mention of the need to limit the height to 30" in the site triangle area.

**2. The applicant attempted to comply with the law by obtaining a building permit;**

**Yes.** The applicant did apply for a building permit and said permit was approved.

**3. The applicant obtained a permit from another entity that violated the law;**

**No.** The applicant did not appear to try and obtain a permit from any other entity as none would be required.

**4. The applicant made a substantial investment in the property;**

**No.** The applicant has clearly made an investment in the property in erecting the fence (as well as installing a garden in the area that would be lost if the fence were to be removed). While not an insignificant investment, the cost to comply with the ordinance is not overly unusual or burdensome.

**5. The applicant completed the repairs/construction before the applicant was informed of the impropriety;**

**Yes.** The fence was completed by the time they were informed that it was not in compliance with the City Code.

**6. The nature of property is residential/recreational and not commercial;**

Yes. The use of the property is residential.

**7. There are other similar structures in the area;**

No. While there are other intersections throughout the city where buildings, fences or trees/shrubs block the view at intersections, there are none on the intersection where the applicant's property is located.

**8. The minimum benefits to the City appear to be far outweighed by the detriment appellant would suffer forced to remove the structure.**

No. The costs to the landowner would be in removing all or a portion of the constructed fence so that it meets the required setback or height. The City's concern would primarily have to do with public safety and possibly setting a precedent of allowing for such obstructions that may expose the city to lawsuit in the event a person were injured or killed at an intersection due to inadequate sight lines as vehicles approach the intersection.

\*\*\*\*\*

If you have any questions, please feel free to contact me. I can be reached by phone at (888) 439-9793 or by email at [oleson@hometownplanning.com](mailto:oleson@hometownplanning.com).