

CALL TO ORDER

Vice Chair Petersen-Biorn called the regular meeting of the City of Rockford Planning and Zoning Commission to order on **February 12, 2015** at 7:02 p.m. The meeting was held in the Council Chambers of City Hall, 6031 Main Street, Rockford, MN.

ROLL CALL

Roll call was taken and the following members were present: Fuller, Petersen-Biorn, and Sand. The following members were absent: Werman. Also in attendance was Planner Dan Licht, Council Member Buoy and Deputy Clerk Etzel.

ELECTION OF OFFICERS FOR 2015

MOTION was made by Fuller, seconded by Sand to elect Mike Werman as Chairperson of the Planning and Zoning Commission for 2015.

MOTION CARRIED – VOTING IN FAVOR – PETERSON-BIORN, FULLER, and SAND.

MOTION was made by Sand, seconded by Fuller to elect Wendy Peterson-Biorn as Vice Chairperson of the Planning and Zoning Commission for 2015.

MOTION CARRIED – VOTING IN FAVOR – PETERSON-BIORN, FULLER, and SAND.

PUBLIC HEARING/Variance for Wetland Setback/Ordinance #15-02 Amendment: 4071 Maple Hurst Drive South

The City is in receipt of an application from Kelly and Lisa Perkins, whom reside at the home at 4071 Maple Hurst Drive South. They are proposing to replace an existing deck that extends 12 feet beyond the rear of the single family dwelling with a new deck that extends 10 feet beyond the rear of the home. The property is located in the Hurst Woods development, which is zoned PUD, Planned Unit Development District. The PUD District establishes a minimum rear yard setback of 25 feet and a 40 foot setback from the delineated edge of any wetland.

Planner Licht's report noted the existing house was built at the minimum front setback line of 25 feet and at the 40 foot setback line from the delineated wetland that bisects the rear yard of the property. There is a 20 foot wide buffer overlaid by drainage and utility easement established from the wetland bisecting the property and a 20 foot setback is required from the easement line. The 25 foot front yard setback and 40 foot setback from the wetland are requirements specific to the Hurstwoods PUD District. Lots developed under standard R-1 or R-2 District requirements would be subject to a 30 foot front yard setback and 50 foot setback from wetlands (and 20 feet from the edge of the required wetland buffer). The intent of the lot standards established for Hurstwoods was to allow maximum flexibility for the siting of houses within each lot for the purposes of protecting significant trees, wetlands and topography.

Under Section 1001.09, Subd. 2.A.3 of the Zoning Ordinance, an encroachment of up to six feet into the required setback from the wetland and wetland buffer would be allowed for the purposes of constructing a landing and stairs from the exterior patio door on the rear wall of the house. However, the City issued a building permit to construction of the existing deck and stairs encroaching 12 feet into the required setback from the wetland and wetland buffer. Issuance of the building permit for the deck encroaching into the required setback from the wetland and wetland buffer was an administrative error. The City's error in issuing the building permit for

the existing deck does not grant the property owners an exception to the wetland and wetland buffer setback requirements or convey rights to approval to remove or construct a new deck that does not comply with the Zoning Ordinance.

The property owners are proposing to replace the deck with a new deck and stairs that would extend 10 feet beyond the rear wall of the house encroaching into the required 40 foot setback from the wetland and 20 foot setback required from the edge of the wetland buffer. The property owners are also proposing construction of a patio at grade to the rear of the house but patios are considered to be structures and not subject to the required setbacks from the wetland or wetland buffer. The property owners are requesting approval of a variance for construction of the proposed deck, which is to be considered based upon the criteria outlined in Section 1001.03, Subd. 4.A of the Zoning Ordinance, which states that the Planning Commission, acting as the Board of Adjustment and Appeals, shall not approve any variance request unless they find failure to grant the variance will result in undue hardship on the applicant, and, as may be applicable, all of the following criteria have been met:

1. That because of the particular physical surroundings, shape, or topographical conditions of the specific parcel of land involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
2. That the conditions upon which an application for a variance is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.
3. That the purpose of the variance is not based exclusively upon a financial hardship, or a desire to increase the value or income potential of the parcel of land.
4. That the alleged hardship is caused by the provisions of the Zoning Ordinance and has not been created by any persons having an interest in the parcel of land and is not a self-created hardship.
5. That the granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.
6. That the proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety.
7. That the requested variance is the minimum action required to eliminate the hardship.
8. Does not involve a use which is not allowed within the respective zoning district.

The property owners' request for variance does not satisfy the criteria established by the Zoning Ordinance. The property is not unique from other lots within Hurstwoods and has reasonable use under the setback requirements of the Zoning Ordinance applicable to the lots Hurstwoods as a single family dwelling so no practical difficulties exist with regards to use of the property. That a decision was made at the time the house was constructed to locate a patio door on the rear of the house without consideration of the wetland and wetland buffer setbacks is a man-made difficulty that does not justify a variance after the fact. Finally, the ability to construct a six foot landing and stairs allowed by the Zoning Ordinance as an encroachment into the wetland and wetland buffer setbacks provides the ability to access the rear yard of the property from the existing patio door. The size of proposed deck necessitating the need for a variance is a convenience for the property owners and a desire to increase the value of the property.

While the conditions of the property do not warrant approval of a variance, the Planning Commission should also consider the intent of the Zoning Ordinance provisions from which the variance is sought. The setback from wetlands is a two part regulation established by Section 1001.09, Subd. 20 of the Zoning Ordinance intended to protect wetlands from encroachment and enhance their quality. The first part of the regulation establishes a minimum buffer area requirement measuring 20 to 35 feet from the delineated edge of the wetland, depending on the type and classification of the wetland, intended to a physical barrier with natural grasses to prevent encroachment and that serves as a storm water filter to improve water quality. The second part of the requirements is a structure setback of 50 feet that is intended to ensure that there is usable yard between the house and the wetland buffer for recreational purposes as an additional protection against encroachments.

The Planning Commission may consider exempting open and uncovered decks attached to the principal structure from the wetland setback in that there would still be potential for usable space under the structure, as well as a combination of open yard and protected buffer area to maintain open space within the lot. The Planning Commission would recommend that such an exception maintain at least a 10 foot separation between the deck and wetland buffer so as to allow for access within the lot. Potential language that the Planning Commission may recommend to the City Council for amendment of the Zoning Ordinance in this regard is as follows:

1001.09, Subd 20.D.2: A principal building setback of fifty (50) feet from the delineated edge of all wetlands or twenty (20) feet from the edge of a buffer easement, whichever is greater, shall be provided within parcels preliminary platted, developed, or redeveloped after October 14, 2003. Open and uncovered decks attached to the principal building may encroach within the setback from a buffer easement but shall not be closer than ten (10) feet from the easement line.

Planner Licht does not recommend approval of a variance for construction of a deck on the existing home at 4071 Maple Hurst Drive as the request does not meet the criteria established by the Zoning Ordinance. The Planning Commission would support a recommendation by the Planning Commission to amend the Zoning Ordinance to allow open and uncovered decks to encroach into the wetland and wetland buffer setbacks to within 10 feet of the wetland buffer as a means of increasing usability of the rear yard of properties abutting wetlands while maintaining consistency with the intent of the existing wetland and wetland buffer setbacks. The public hearing noticed for consideration of the applications included both the variance request and possible amendment of Section 1001.09, Subd. 20 of the Zoning Ordinance so as to allow the Planning Commission to consider both options.

Vice Chair Peterson-Biorn opened the hearing to public comments at 7:08 pm.

Kelly Perkins of 4071 Maple Hurst Drive South appreciated the option to be able to amend the ordinance to allow the deck to extend into the wetland setback. The proposed amendment would allow for their deck and patio.

Vice Chair Peterson-Biorn closed the public hearing at 7:10 p.m.

The Planning Commission discussed what the Planner Licht's recommendations. They did question why a builder would place a door in a place where a deck would not be allowed.

According to Planner Licht, the Department of Natural Resources would not have any issues with the proposed amendment to allow an uncovered deck attached to the principal structure to extend into the wetland setback.

The Planning Commission agreed with the Planner's recommendations.

MOTION was made by Fuller, seconded by Sand to approve Resolution #BA15-01 recommending denial of the variance request from Kelly and Lisa Perkins.

MOTION CARRIED – VOTING IN FAVOR – PETERSON-BIORN, FULLER, and SAND.

MOTION was made by Fuller, seconded by Sand to recommend approval of Ordinance #15-02 to amend Zoning Ordinance #1001.09, Subd. 20.D.2 allowing open and uncovered decks attached to the principal building may encroach within the setback from a buffer easement but shall not be closer than ten (10) feet from the easement line.

MOTION CARRIED – VOTING IN FAVOR – PETERSON-BIORN, FULLER, and SAND.

The recommendation from the Planning Commission will be submitted to the City Council at their February 24, 2015 regular meeting for final approval or denial.

PUBLIC HEARING/Ordinance #15-01 Zoning Ordinance Amendments

Planner Licht noted the Planning Commission has been working on reviewing the Zoning Ordinance and most recently considered amendments to the district sections of the document. The Planning Commission initially identified areas in need of updating and considered draft language prepared by City staff at previous meetings. A public hearing has been noticed for February 12, 2015 to formally consider recommendations to the City Council on proposed updates to the district sections of the Zoning Ordinance.

Draft ordinance amendment included:

- **Breweries/Distilleries.** There is growing interest in allowing brewpubs, breweries, micro-distilleries, distilleries and wineries as small scale businesses that drive economic development by communities across the Twin Cities. The proposed Zoning Ordinance creates an opportunity for these businesses to locate in Rockford within the various commercial and industrial zoning districts based on the specific type of use in relation to definitions established by State statute to be incorporated as part of the Zoning Ordinance. Uses that are consumer oriented with small scale production facilities such as brew on premises stores and brew pubs will be allowed as permitted uses in commercial districts. Small breweries and micro distilleries with tasting facilities that have more of an industrial character would be allowed as conditional uses within commercial districts and permitted uses in the industrial district. Full-scale production breweries and distilleries would be allowed as conditional uses in the industrial district, with tasting rooms allowed as a conditional use. Farm wineries are also to be added as a conditional use within the A-R District.
- **Impervious Surface.** The definition of impervious surface is amended to include decks for clarification purposes.

- **Home Occupations.** Previous updates to the Zoning Ordinance have defined home occupations and made them allowed subject to administrative approvals as accessory uses. The various residential zoning districts are to be amended to remove home occupations from the list of interim uses and add them to the list of allowed accessory uses subject to the requirements of Section 1001.09, Subd. 14 of the Zoning Ordinance.
- **Farm Animals.** The Zoning Ordinance currently allows keeping of horses as an interim use within the R-1 and R-2 Districts. Keeping of farm animals within developing residential areas is not considered to be consistent with the intent of these zoning districts and the allowance of keeping horses as an interim use is to be deleted.
- **Senior Housing.** The identification of allowing convalescent and nursing homes within commercial districts is to be revised to be consistent current terminology used by the State in licensing such facilities and to reflect the broader range of potential senior housing options that are being developed. Inclusion of senior housing options within the commercial zoning districts, especially the downtown district, is consistent with the character of this type of land use, provides access to goods and services and provides market support for nearby businesses.
- **C-1, Commercial Service District.** There are currently three commercial zoning districts established by the Zoning Ordinance, C-0, Downtown District, C-1, Commercial Service District and C-2, Highway Commercial District. The Future Land Use Plan within the Comprehensive Plan established two types of commercial land use designations, one for the central business district and one for commercial uses oriented to the traffic, access and visibility of TH 55. In this regard, the C-1 District serves no function within the Zoning Ordinance and is not currently designated on the Zoning Map. The proposed Zoning Ordinance amendment would repeal the C-1 District.
- **PUD District.** The current Zoning Ordinance establishes planned unit developments as an overlay of an underlying zoning district, with a unique set of requirements as to application and application processing. The proposed Zoning Ordinance amendment would simplify the PUD District process by utilizing existing administrative procedures established for amendments and making each PUD a unique, custom zoning district based on a specific development plan.
- **Formatting.** The Planning Commission discussed that with the advent of the internet and on-line access to the Zoning Ordinance, the previous format of listing uses within a given zoning district as being allowed as provided for in another district created a need for additional cross referencing and “clicks”. So as to make the Zoning Ordinance more user friendly, such cross referencing is eliminated with each district including the full list of allowed permitted, accessory, interim and conditional uses.

Planner Licht recommends approval of the proposed amendments of the zoning district sections of the Zoning Ordinance as presented.

Vice Chair Peterson-Biorn opened the hearing to public comments at 7:15 pm.

No one from the public spoke.

Vice Chair Peterson-Biorn closed the public hearing at 7:15 p.m.

The Planning Commission had discussed the proposed amendments at several meetings and agreed with the ordinance prepared by Planner Licht.

MOTION was made by Sand, seconded by Fuller to recommend approval of Ordinance #15-01 Zoning Ordinance Amendments as listed:

- Amend Ordinance #1001.02, Subd. 2 – Include Definitions
- Amend Ordinance #1001.02, Subd. 2 Definition – Impervious Surface
- Amend Ordinance #1001.07, Subd. 4.F. – Detached Accessory Bldg. Height
- Amend Ordinance #1001.11, Subd. 3 – Interim Uses A-R
- Amend Ordinance #1001.11, Subd. 4 – Home Occupations
- Amend Ordinance #1001.12, Subd. 3 – Interim Uses R-1
- Amend Ordinance #1001.12, Subd. 4 – Home Occupations
- Amend Ordinance #1001.13, Subd. 3 – Interim Uses R-2
- Amend Ordinance #1001.13, Subd. 4 – Accessory Uses R-2
- Amend Ordinance #1001.14, Subd. 4 – Accessory Uses R-3
- Amend Ordinance #1001.15, Subd. 4 – Accessory Uses R-6
- Amend Ordinance #1001.16, Subd. 2 – Include Brewpubs and Brew On Premises
- Amend Ordinance #1001.16, Subd. 5.A. - Definition update
- Amend Ordinance #1001.16, Subd. 5 – Include Provisions for Small Breweries and Microdistilleries
- Repeal Ordinance #1001.17 – C-1 District RESERVED
- Amend Ordinance #1001.19, Subd. 2 – Include Brewpubs and Brew On Premises
- Amend Ordinance #1001.19, Subd. 5.A. – Definition update
- Amend Ordinance #1001.19, Subd. 5 – Include Provisions for Small Breweries and Microdistilleries
- Amend Ordinance #1001.19, Subd. 6.B.1 – Front Yard Setback
- Amend Ordinance #1001.20, Subd. 2 – Include Provisions for Small Breweries and Microdistilleries
- Amend Ordinance #1001.20, Subd. 5 – Include Provisions for breweries and distilleries
- Amend Ordinance #1001.20, Subd. 6.B.1 – Front Yard Setback
- Repeal and Amend Ordinance #1001.21 – Planned Unit Development District

MOTION CARRIED – VOTING IN FAVOR – PETERSON-BIORN, FULLER, and SAND.

The recommendation from the Planning Commission will be submitted to the City Council at their February 24, 2015 regular meeting for final approval or denial.

SET AGENDA

MOTION was made by Petersen-Biorn, seconded by Fuller to approve all items on the consent agenda and set the agenda.

MOTION CARRIED – VOTING IN FAVOR – PETERSON-BIORN, FULLER, and SAND.

***Approve Regular Planning and Zoning Minutes/December 11, 2014**

MOTION was made by Petersen-Biorn, seconded by Fuller to approve the minutes of the December 11, 2014 Regular Planning and Zoning Meeting.

MOTION CARRIED – VOTING IN FAVOR – PETERSON-BIORN, FULLER, and SAND.

OPEN FORUM

Vice Chair Peterson-Biorn called for open forum, no one from the public spoke.

Recommend Planning and Zoning Commissioner

MOTION was made by Sand, seconded by Fuller to recommend appointing Craig Cihlar to fill the vacant Planning and Zoning Commission position expiring on December 31, 2016.

MOTION CARRIED – VOTING IN FAVOR – PETERSON-BIORN, FULLER, and SAND.

The recommendation from the Planning Commission will be submitted to the City Council at their February 24, 2015 regular meeting for final approval or denial.

Deputy Clerk's Report

The Deputy Clerk's report included: Commissioner Peterson-Biorn was sworn in for a term to expire 12/31/2017, appointment the Chair and Vice Chair, recommend Craig Cihlar to fill a term expiring on 12/31/2016, Rockford City Center Mall Open House on Friday, February 20, 2015, potential retail recreation vehicle company to locate in the downtown district, and upcoming community events.

ADJOURNMENT

MOTION TO ADJOURN was made Peterson-Biorn, seconded by Fuller.

MOTION CARRIED – VOTING IN FAVOR – PETERSON-BIORN, FULLER, and SAND.

Chair Peterson-Biorn adjourned the meeting at 7:27 p.m.

Submitted by Audra Etzel, Deputy Clerk