

**MINUTES OF MEETING**  
**SOUTH ST. PAUL PLANNING COMMISSION**  
**October 4, 2023**

MEETING CALLED TO ORDER BY CHAIR FELTON AT 7:00 P.M.

Present:       Tim Felton, Chair  
                  Geoff Fournier  
                  Jason Frankot  
                  Ruth Krueger  
                  Brienne Miller  
                  Chad Schlemmer  
                  Michael Healy, Planning Manager  
                  Monika Miller, Associate Planner

Absent:        James Hart

- 1)        APPROVAL OF AGENDA – Motion to approve as presented –Miller/Fournier (6-0)
  - 2)        APPROVAL OF MINUTES – September 6, 2023 –Motion to approve the minutes as presented-  
            Schlemmer/Miller (6-0).
  - 3)        NEW BUSINESS
- None
- 4)        PUBLIC HEARINGS

A. 151 Richmond Street East Home Addition Variance

Ms. Miller provided staff background. The Applicant is Steven Schwarting. He is requesting two setback variances to create a 9 square foot addition onto the west side of his house. The Applicant's home is grandfathered to be approximately 4' 4" from the west side property line and 8' 4" from the foundation of the neighboring house. City code requires a 5-foot side yard setback for all structures and a 10-foot setback between a building and a neighboring dwelling. The Applicant would like to enclose the existing entryway on the west side of his house and use it as a pantry for their kitchen. The addition/enclosure would have the same setback as the existing home. Staff recommend approval of the two setback variances.

Chair Felton asked if the addition would have a door leading into the side yard. Ms. Miller explained that the Applicant would remove the existing door and enclose the old entryway to become a storage space. The addition would not have a door leading into the side yard.

The Applicant, Steven Schwarting, came forward to speak to the application. Mr. Schwarting explained that he and his girlfriend desired to improve their existing space.

Chair Felton asked if the roof would change with the proposed addition. Mr. Schwarting explained that the roof would remain as is and if anything, the roof would get additional support from the project.

Commissioner Frankot asked if the project would result in the property only having one door for ingress and egress. Mr. Schwarting explained that the door that is proposed to be removed is an extra entrance. The home has one door that leads out to Richmond Street and another door with access to the backyard.

Commissioner Frankot asked staff if removing the door for the proposed addition would cause the property to be out of compliance with the Fire Code. Ms. Miller explained that an in-depth analysis of the home's compliance with the Fire code was not done for the project but Staff had run the application by the Fire Marshal who stated he did not have any concerns with the project.

Chair Felton asked Mr. Schwarting if he had any issues with the conditions of approval for the project. Mr. Schwarting stated he did not have any concerns about meeting the requirements.

Chair Felton opened the public hearing.

Ms. Miller shared the email that she received from Allan Schwarting at 149 Richmond Street East who was in favor of the project.

No one was present to provide further comments.

Chair Felton closed the public hearing.

Motion to recommend approval of the setback variances- Frankot/Fournier (6-0).

#### B. 1959 Butler Avenue Home Addition Variance

Mr. Healy shared the staff report. The Applicant is Dustin Hoeger and he is requesting a 9-foot side yard setback variance for a home addition he built without a permit at his property. The addition does not meet the required 9-foot-side yard setback and actually encroaches into the City's road right of way by about a foot. Staff exchanged calls and emails with the Applicant in Spring of 2020 regarding his desire to construct a porch or deck in his side yard. The Applicant was told to find his property line and claimed to have done so before ceasing all contact with Staff. Staff caught the Applicant building a home addition for another property in town without a building permit which led to the discovery that the Applicant had constructed the addition on his home without a building permit. Staff had been working with the homeowner since September 2022 to try to bring this property into compliance. The Applicant has been issued several citations for failing to meet compliance deadlines. The property lines were finally marked by a licensed surveyor in July of 2023 at which time it was determined that the porch addition was built 13 inches over the property line into the right-of-way and the stairs encroach an additional 2.5 feet into the right-of-way. Staff did not provide a formal recommendation on whether to approve the variance.

Chair Felton asked Mr. Healy if he heard him correctly that there were unpaid citations for the property. Mr. Healy confirmed there were. Chair Felton ask staff to confirm that the citations would need to be paid by the end of year otherwise the fines would be added to the Applicant's property taxes. Mr. Healy confirmed this was the case and explained that in October of each year, any unpaid citations are converted into assessments.

Chair Felton asked how the Building Official would check the footing depth on a project that had already been completed. Mr. Healy explained that the Building Official would require the Applicant to submit a full set of plans for the project and may require the Applicant to make the footing visible for review.

Commissioner Frankot asked about the cost of the administrative citations. Mr. Healy explained the process for administrative citations, stating that if the City was made aware of a code violation, they would first send out a warning letter with a compliance deadline. If the deadline is not met, a citation of \$200 would be issued and a

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new deadline would be provided. If the new deadline was not met, the citation fee doubles to \$400. Each time a deadline is not met, the citation fee doubles. The maximum citation fee is \$2000.

Commissioner Frankot asked about the citations that had been incurred for the subject property. Mr. Healy stated that the property had incurred \$600 in total citation fees. Commissioner Frankot asked staff to clarify if the total fee was for an initial citation of \$200 and a second citation of \$400. Mr. Healy confirmed this was the case. Commissioner Frankot asked about the timeframe for the citations. Mr. Healy explained that the citations had incurred over a number of months. Mr. Healy explained that the City's goal is not to issue citations but to work with residents to bring their property into compliance. Mr. Healy explained that if the variance is not approved, the City would set a deadline for the Applicant to remove their porch and if they did not meet the deadlines, they would be issued a new citation.

Commissioner Frankot asked if they could require that the Applicant hire a structural engineer at their expense to confirm that the building was constructed properly. Mr. Healy explained that this could be done but only in certain situations. Mr. Healy shared an example of when a restaurant on Concord Street built a deck into the bluff without a permit and the city required them to hire a structural engineer to review the project due to concerns about the stability of the deck and the bluff. Mr. Healy shared that the penalty under the Building Code for constructing a structure without a building permit is the building permit fee is doubled.

Commissioner Frankot brought up again the idea of requiring the Applicant to hire a structural engineer for the project. Mr. Healy stated that the Building Official did not indicate this was necessary so he would be reluctant to make this a condition of approval for the project.

Commissioner Frankot asked when the next citation would incur if deadlines were not met. Mr. Healy explained that each time a new citation is issued within one calendar year for the same violation, the citation doubles. Commissioner Frankot commented that this had been going on for almost two years. Mr. Healy stated that it had only been about a year since Staff was made aware of the situation. Mr. Healy explained that there is some leniency with compliance deadlines as the actions the Applicant needed to take to bring the property into were not quick actions. Mr. Healy explained that if the Applicant does not move forward with getting a building permit or applying for an encroachment agreement, the continued existence of the porch would be a violation and so the citations would start again at \$200.

Commissioner Frankot asked if the Applicant pulled permits when they remodeled other parts of the property. Mr. Healy stated that he was aware of an approved permit for the detached garage that was constructed at the subject property but that he was not familiar with any other projects and whether they had permits.

Chair Felton called the Applicant to the podium. Chair Felton asked the Applicant if he wanted to add any additional information. Mr. Hoeger stated that he did not have any additional information and that he had made a poor call. Mr. Hoeger shared that he and his wife did not use the door along Butler Avenue and desired to create a covered entrance for the door they use along 20<sup>th</sup> Avenue.

Chair Felton commented that the addition looked great and was an improvement to the property. Chair Felton commented that in hindsight, it would have been a lot cheaper to do the project the right way the first time. Mr. Hoeger echoed the sentiment and reiterated that he made a bad decision. He added that the addition was constructed during COVID and reiterated that it was a poor decision on his part.

Chair Felton asked Mr. Hoeger if he was aware of the conditions and if he had any concerns about them. Mr. Hoeger stated that he had been working with City staff and was aware of the conditions. Mr. Hoeger stated that he was willing to pay the citation, the double fee for the building permit, and the cost of the encroachment agreement.

Chair Felton commented that it was difficult to review an after-the-fact variance. Mr. Hoeger stated that he understood but that he had photos of his work. Chair Felton commented that it sounded like the Applicant knew

he needed his work inspected. Mr. Hoeger countered that he always takes photos of his work in case something comes up. Mr. Hoeger stated again that he made a mistake and apologized.

Chair Felton opened the public hearing.

No one was present at the public hearing and no correspondence had been received prior to the meeting.

Chair Felton noted staff's rare neutral stance on the application and asked Mr. Healy to elaborate on this stance. Mr. Healy explained that he had previously taken a neutral stance on another application where the homeowner constructed a nonconforming garage without a permit and needed a large variance. In both applications, there were extenuating circumstances that may or may not rise to the level of being a practical difficulty and the variances requested were large. Mr. Healy explained that these situations are a judgement call for the Planning Commission and the City Council to make so he generally does not feel it is appropriate for staff to provide a recommendation.

Chair Felton closed the public hearing.

Chair Felton commented that he did not want the City or the Planning Commission to gain a reputation for approving after-the-fact variances. Commissioner Frankot echoed the sentiment. Chair Felton reiterated that the actions of the Applicant create an awkward situation. Commissioner Frankot commented that if the Applicant had requested a variance before constructing the addition, the variance would have easily been approved.

Commissioner Krueger commented that there were several extenuating circumstances, including COVID-19 and the traffic on Butler Avenue during the Concord Street reconstruction.

Chair Felton commented that the Planning Commission was on board with the variance but was weighing how to vote based on the precedent that would be set. Commissioner Krueger commented that they would be upset if the Applicant came back for another after-the-fact variance.

A motion to recommend approval of the setback variance as presented was made by Commissioner Krueger and seconded by Commissioner Schlemmer

Commissioner Miller asked if the motion included all of the conditions listed in the staff report. Commissioner Frankot asked if the motion included all fines being paid, the building permit fees being doubled, the Applicant submitting a full set of plans, and any attorney fees. Mr. Healy explained that the conditions listed in the staff report included all citations being paid, the Applicant submitting a full set of plans, and the Applicant submitting the required fees for the encroachment agreement. The double permit fee for constructing the addition without a permit was in the building code and was not explicitly spelled out in the conditions of approval.

Commissioner Frankot asked about the next deadline the Applicant needed to meet. Mr. Healy explained that the Application would be reviewed by the City Council at their meeting on October 16<sup>th</sup>. If the item was approved, the Applicant has 3 months to get a building permit and an encroachment agreement. If the Applicant fails to meet this deadline, he will be subject to additional citations. Commissioner Frankot asked if the variance could be set to expire after three months. Mr. Healy explained that typically when a variance is approved, an Applicant has one year to begin to make improvements. Mr. Healy stated that because the structure was built, the Applicant has three months to apply for a permit and the encroachment agreement. Commissioner Frankot stated that he wanted to ensure that action is taken within a reasonable amount of time. Mr. Healy explained that the City Council could revoke the variance and if the variance was revoked, the homeowner would have three months to demolish the porch.

Motion to recommend approval of the setback variance as presented- Krueger/ Schlemmer (6-0)

5) OTHER BUSINESS

None.

6) STAFF UPDATES

A. Parks Master Plan Project Update

Mr. Healy shared that several months ago the City had launched an update to its Parks Master Plan. The plan was last updated in 2005 and provides a road map of how the City will update its parks. Mr. Healy shared that there had been active engagement for the plan and that they had received 300 responses to a survey. Mr. Healy invited the Planning Commissioners to attend a joint work session with the Parks and Recreation Advisory Committee on October 10<sup>th</sup> to discuss the results of the survey and the direction for the master plan. Mr. Healy provided a summary of the survey results that were put together by HKGi.

Chair Felton asked staff where the pickleball courts were located. Mr. Healy explained that the tennis courts on Conver Avenue had been striped for pickleball.

Commissioner Krueger commented that she had never seen the bathroom at Simon's Ravine open and queried why. Mr. Healy explained that when the bathrooms were open, the site was a hotbed for crime so the bathrooms had been closed for many years. Mr. Healy explained that the new bathrooms that were being constructed at the Wakota Trailhead had new features such as timer locks and exterior security cameras. Mr. Healy shared that the Parks and Recreation Director had noted a reduced number of users at Simon's Ravine now that the Robert Piram Regional Trail was connected to South St. Paul.

Commissioner Frankot asked about the date of the joint meeting. Mr. Healy stated that the meeting would take place on Tuesday, October 10<sup>th</sup> at 6:00 PM. The meeting would be a deep dive into the results of the survey data.

Commissioner Frankot asked if there had been any feedback received about the questions in the survey. Commissioners Frankot and Miller shared their dissatisfaction with the way some of the survey questions were written, especially for some of the seasonal use park amenities. Mr. Healy explained that HKGi created the survey using a template from other similar projects with staff feedback about specific features to include in the survey. Healy noted that the survey was intended to be sensitive to certain topics such as the pools.

Chair Felton commented that the survey results seemed to show that the vast majority of residents would like to see something done to the pools to keep them open. Mr. Healy echoed that this was a common response. There was general discussion related to aquatics in South St. Paul and in other communities with similar challenges.

Chair Felton shared that it was encouraging that the majority of survey respondents felt that the parks met their needs. Staff and the commissioners discussed the remaining survey results, their experiences with the South St. Paul parks, and other parks in the metro with amenities that would be nice to have.

7) ADJOURNMENT

Motion to adjourn- Miller/Fournier (6-0).