



**City of Newport
Planning Commission Minutes
September 12, 2013**

1. CALL TO ORDER

Chairperson Lund called the meeting to order at 6:00 P.M.

2. ROLL CALL -

Commissioners present – Dan Lund, Matt Prestegaard, Janice Anderson, Susan Lindoo, Anthony Mahmood

Commissioners absent –

Also present – Deb Hill, City Administrator; Renee Helm, Executive Analyst; Tom Ingemann, Council Liaison; Sherri Buss, TKDA Planner, John Stewart, City Engineer

3. APPROVAL OF PLANNING COMMISSION MINUTES

Planning Commission Minutes of August 8, 2013

Motion by Mahmood, seconded by Lindoo, to approve the August 8, 2013 minutes as presented. With 5 Ayes, 0 Nays, the motion carried.

4. APPOINTMENTS WITH COMMISSION

A. Public Hearing – To consider an application from J & J Temperature Control LLC for Approval of a Conditional Use Permit for Property Located at 100 7th Avenue

Sherri Buss, TKDA Planner, presented on this item as outlined in the September 12, 2013 Planning Commission Packet.

Vice-Chair Prestegaard – Does the zoning change between his old and new office? Why does he need a Conditional Use Permit?

Ms. Buss – No, it's in the same zone but he needs a Conditional Use Permit to park the trucks and vehicles.

Vice-Chair Prestegaard – Is the existing site grandfathered in?

Ms. Buss – I'm not sure if there is an existing Conditional Use on there or if it's grandfathered in, there have been vehicles stored there for a while.

Susan Lindoo – There was something about the zoning ordinance requiring that off-street parking areas be improved with a durable and dustless surface, is that already there?

Ms. Buss – Yes, it's all pretty much paved.

The public hearing opened at 6:07 p.m.

The public hearing closed at 6:08 p.m.

Motion by Lindoo, seconded by Prestegaard, to approve Resolution No. P.C. 2013-8 as presented recommending the City Council approve a Conditional Use Permit requested by J & J Temperature Control for property located at 100 7th Avenue. With 5 Ayes, 0 Nays, the motion carried.

B. Public Hearing – To consider an application from Brian Domeier for Approval of a Variance for Property Located at 615 8th Street

Sherri Buss, TKDA Planner, presented on this item as outlined in the September 12, 2013 Planning Commission Packet. Staff is recommending that the Planning Commission recommend approval of a 24 foot side yard setback variance and a 30% lot coverage variance instead of the requested 10 foot side yard setback variance.

Vice-Chair Prestegaard – Do you want to say anything about the pictures?

Ms. Buss – You're looking at his property from 6th Avenue and can see the existing house.

Engineer Stewart – One thing that might be worth mentioning is that the pictures were taken from the school driveway.

Anthony Mahmood – So where is the driveway that he needs to take out?

Ms. Buss – It's right behind the house. He can put the garage there; the plan that he sent has the garage further north on the lot.

Janice Anderson – When I drove past there, I thought there was a garage on the east side of the house, is that on different property?

Ms. Buss – Yes.

The public hearing opened at 6:18 p.m.

Brian Domeier, 1040 10th Avenue – There is only one driveway in the rear.

Ms. Buss – There's one existing driveway and the plans that were submitted the garage was further back on the property, not on the same location as the driveway so that's why there were comments regarding the two driveways.

Mr. Domeier – I think my photos will show a better view. I think this is a classic use of a variance. There has never been a garage on the site, people parked on the City right-of-way for years and nobody said anything. The reason it doesn't have a garage is because the current setbacks would place it in the middle of the yard. That's the reason I'm asking for the variance. It doesn't affect the neighbors in any way. One thing I think people are confused about is that the ten feet would be from the tar but that's not the case, it would be from the property line. I have some photos of examples of what's going on around Newport year round. One of the arguments against the ten feet is that it may allow for people to park in the City right-of-way but people all over are doing it already. Without the variance, the garage would start in the middle of the yard and you end up with 24 feet of grassy area for a backyard, which is nothing. The front of the garage would come to the tree that's located in my yard. I parked a small car from that area and there's still plenty of space in the right-of-way. It's much better than what's going on all over. I think its very common sense and I read some notes about school safety. I stopped at the school today and talked with the janitor about whether or not mothers park in front of the driveway to drop off their kids and he said never. I've never seen anyone park there, they drive in the front and drop off their kids so that's a non-issue. It's not going to cause any safety issues. I think it'd be a great use of a variance.

Vice-Chair Prestegaard – Could someone answer how a car would overhang into the road?

Ms. Buss – It's the right-of-way. If you look at an aerial, part of the issue is that there is about 20 feet between the road and property line and that's City right-of-way. Part of the question is should he be able to park there.

Engineer Stewart – I understand that a lot of things go on in the City that are not permitted by Code. For instance, the property next to his has trucks parked in the right-of-way on their driveway. Why I got so concerned about this one here is that it's in the school zone. I did talk with the transportation for the school and asked them their opinion. They were concerned that there are trucks trying to turn out of the school parking lot and 6th Avenue gets so backed up that they can't get out of the parking lot. As we go to Mr. Domeier's property, you can see that there's not a lot of room for snow storage on the west side of 6th Avenue and that all of it needs to go on his side of the Avenue. When we put together the snow storage requirement it gets pretty tight for buses to come out. I just feel that this is not a good example of what we should be perpetrating in that people are parking there and making it more congest.

Chairperson Lund – The driveway is going to be there no matter what so you can't put snow there and if the driveway is there there might be a car in it no matter what so I don't quite follow.

Susan Lindoo – Is it that the car would be parked on City property?

Engineer Stewart – Yes.

Chairperson Lund – So what's to stop them from having two cars in the driveway without the variance?

Mr. Domeier – This photo is with the ten foot variance and there's plenty of room.

Chairperson Lund – So if we move the garage back with no variance then there would be room for two cars between the City right-of-way and garage.

Engineer Stewart – Yes and the Police could ticket that car if it got to be troublesome.

Chairperson Lund – How is that different if there's one car in the right-of-way?

Engineer Stewart – The one car with the variance is just has you see it in the photo, two cars without the variance is the same situation and the Police could write a ticket for that too. We also have to think of when and if the street is improved. In most cities, they do not grant variances which allow for a situation to become worse.

Chairperson Lund – Do we know how far the house is from the property line?

Ms. Buss – It's probably the minimum of 5 feet. The 30 feet setback is probably newer than most of the houses in the neighborhood and that is probably why cars park closer.

Chairperson Lund – So is there any argument for forcing the garage to be further from the street than the house?

Ms. Buss – It's the parking issue.

Chairperson Lund – But the Police can enforce the code no matter where the garage is.

Ms. Buss – Having the Police out there all the time is probably not a useful thing to do.

Mr. Domeier – This photo is with the variance and other ones that I showed are year round where they parked right next to the tar year round. It's either do the variance and do a good thing for Newport and save a backyard or not do the variance and go back to people parking around the edge because I won't build a garage. I talked with the janitor and he doesn't see any issue.

Engineer Stewart – When we did 7th Avenue the State required us to pass a resolution that states that cars cannot park in the City right-of-way and that was a condition of the grant funding.

Mr. Domeier – I would be fine with people parking in the driveway during the winter for school to pick up their kids. I don't want people parking in the driveway anyways, they'll be parking in the garage.

Engineer Stewart – That’s not the experience though, you build a garage and people tend to fill it with other stuff and park outside.

Anthony Mahmood – Is there room to have the garage next to the house and have the driveway turn?

Mr. Domeier – No. Again, if you’re going to deny this the whole City would have to change because there are a ton of people who are parking in the right-of-way.

Wade Glasgow, 821 7th Avenue – If you’re using the right-of-way as a reason to deny him then you need to drive around Newport and look around. I can’t get any closer to my house and I’m still illegal. I know the people before him tried doing the same thing and I didn’t have an issue with it but they were denied.

Chairperson Lund – If we denied the variance the garage would cast a shadow on your yard?

Mr. Glasgow – Yes and we all know what happens when you have 4 feet between a fence and garage, it becomes all weeds. As far as that thing goes with buses, that driveway sits in between two entrances and I don’t see why that would have an effect on the buses.

The public hearing closed at 6:37 p.m.

Vice-Chair Prestegaard – I do have questions. The school bus complication seemed like it talked about people parking in the street but also the City possibly needing to expand the street over time and there were a lot of things which I can’t imagine will happen at once. Can you help me separate those issues?

Engineer Stewart – That car in the photo is probably 16 feet long, if you have full truck that’ll add an extra 8 feet so it’ll be parked in the driveway, not the street. We’ll have an issue where there won’t be a clear site path down the boulevard all the way. It’s not a good policy to plan for people building new buildings that causes that situation to be continued. The building can be located so that the second car is not parking on the right-of-way.

Vice-Chair Prestegaard – So some of the assumptions we make are that a, people will park in the driveway and b, they will have long vehicles but I’m still not getting the buses turning.

Engineer Stewart – It gets to the point where it messes up the site line.

Vice-Chair Prestegaard – So it’s a visual problem?

Engineer Stewart – Yes.

Chairperson Lund – I have a hard time justifying that he needs to put it further than the house. Doing some math, if we deny the variance entirely, that’ll leave a maximum of 16 feet of yard but it’ll be less most likely. It would also be 10 feet further from the road than the house.

Ms. Buss – One thing about the house that’s different is that there’s nothing about the house that occupies the City’s right-of-way. I wouldn’t know a city engineer that would recommend a situation where private vehicles are making the right-of-way part of their space.

Chairperson Lund – It’s a driveway.

Ms. Buss – But it’s on City right-of-way.

Chairperson Lund – Every driveway is on right-of-way.

Ms. Buss – Yes but they typically leave enough room to not have to park on the right-of-way. In regards to the house, it's different because nothing about it occupies the right-of-way. I think you would get the same argument from any other city engineer to not create a situation where someone's personal property is going to occupy the city property.

Susan Lindoo – I have some problems with not following City Ordinances. Granted there are lots of lousy parking and that probably speaks to the fact that we are tolerant of error in the City and are not precise about that. I keep thinking about building our fence and thinking that we could build it more than six feet and my husband being really concerned about it. It feels to me that it's one thing to say that we have some legal non-conforming uses because the houses were built prior to the ordinances and we have to figure out how best to do it. I'm uncomfortable when we ask for the City Engineer's opinion and he goes by the City Ordinances and says this is what it is and we say "Yes but let's not do that." I'm personally uncomfortable doing that. I would love to come to some sort of compromise and say that you're suggesting 24 and he wants 10, let's do 18 feet. I see a lot of trucks and SUVs in the City and I do have concerns about someone sitting out there. We leave our cars out in the summer and lots of people do. And you do have the issue of buses. I really like the idea of leaving more green space so I'm torn that way but I'm also torn about not following the Engineer's opinion.

Janice Anderson – Was any consideration given towards an attached garage? Is that allowed? They would probably be able to come in from the north side.

Ms. Buss – It's hard to add that to a house later.

Chairperson Lund – Do you recall how wide your house is?

Ms. Buss – I tried to measure it and it was something like 24' x 40'.

Chairperson Lund – So by my best guess, if the house is 40' wide, it's about 20' from the property line.

Anthony Mahmood – Are there "No Parking" signs on that street?

Vice-Chair Prestegaard – No.

Anthony Mahmood – So people can park there and screw up the sight line all year round? So if he has a 24' garage, I don't see him getting a 25' truck because it won't fit in there and if there are two cars in the driveway, the cops could come by and give him a ticket and I doubt he's going to get tickets all the time so he's probably going to park on the street for one of the cars if there's two, which is perfectly legal. I'm not seeing a problem here.

Mr. Domeier – There's actually room for four vehicles, two of them would be in the garage.

Admin. Hill – If the street is improved, how much more

Engineer Stewart – The street is actually all the way up against the school right-of-way. The edge of the street right now is coincident with the property line for the school.

Chairperson Lund – It'll never look like 7th Avenue though.

Ms. Buss – How much wider would it be?

Engineer Stewart – Maybe four feet.

Chairperson Lund – One thing that's troubling for me is that we don't have a clear picture of what 10 feet or 24 feet means other than the picture with Google Satellite. For me, the more significant thing is where it relates to the road rather than the property line. John is telling us that the road might get four feet wider which I don't think will happen soon but we should keep it in mind. If we do grant a variance, I propose we grant it from the road so we can add some more precision. That might be easier for the applicant.

Engineer Stewart – I would suggest that you also think about the issue of four feet for widening and an extra six to eight feet for snow storage on the rest of the lot.

Janice Anderson – But the snow storage shouldn't affect the driveway.

Engineer Stewart – Right.

Susan Lindoo – Is the green between the road and red line the City right-of-way? Is it about 10 feet?

Engineer Stewart – It's actually about 15 to 18 feet.

Susan Lindoo – How much of that is City property?

Engineer Stewart – All of it so he'll use up more than 50% with his vehicles. If you were in a situation where you were looking at a new lot with new construction, you would not think about allowing that.

Anthony Mahmood – But this isn't new. The resident lives there and needs a garage and we have to consider that.

Chairperson Lund – So I see it where we either allow the variance and maintain the backyard or deny the variance and have no garage or no backyard. We'd all like it to have an extra 30 feet on that lot. It looks small on the plat map but it doesn't look small when you go out there. My suggestion would be that we allow the variance. From my best estimate, giving him an extra six feet would still force the garage to be further back from the street than the house and I don't see any reason where we can justify that. I think if it was something like 30 feet from the asphalt, it would be in line with the ten feet.

Janice Anderson – I think most of this is caused by change in zoning.

Vice-Chair Prestegaard – Can you describe that additional six feet in further terms? He asked for 10 feet, the suggestion is 24 feet.

Chairperson Lund – He asked for 10 feet, which is a 20 foot variance from the Code and City staff is recommending 24 feet, which is a six foot variance from the Code. My point is that we don't have any idea of what any of that means because we don't have a survey and don't know where the house is so I think the more significant thing is where is it compared to the street. The City right-of-way is as wide as 7th Avenue right?

Engineer Stewart - It's a 50 foot right-of-way, including the street.

Vice-Chair Prestegaard – So are you proposing full acceptance?

Chairperson Lund – I'm proposing 30 feet from the street or 10 feet from the property line, whichever is greater.

Ms. Buss – The north-south property line is 100 feet if that helps you scale. So your thought is requiring the garage be set back 30 feet from the existing pavement?

Chairperson Lund – And at least 10 feet from the property line. It's kind of a unique situation in that we have that much right-of-way and that they can't fit the garage without eliminating the backyard.

Vice-Chair Prestegaard – I would add that the car seems like a movable obstruction than the hedge.

Ms. Buss – I would add that the first day I went out there, there was a truck-trailer parked on the existing driveway that belonged to the renter. So maybe there's a need for a condition about the length of vehicles.

Chairperson Lund – That wouldn't fit if we put the garage in.

Ms. Buss – I just want you to think about the fact that there are all sorts of vehicles in the world. We can leave it to the Police or make a statement.

Janice Anderson – What’s the side yard setback?

Chairperson Lund – Five feet.

Janice Anderson – I would be willing to move Dan’s motion, the 30 feet from asphalt and no less than 10 feet from the property line.

Vice-Chair Prestegaard – Do we want to add a condition about vehicle length? That would put it in the Police Department’s hands and makes it a little more complex for enforcement.

Chairperson Lund – The Police already have the ability to force people to not park in the City right-of-way, so I don’t think we need to put that in the conditions.

Susan Lindoo – I would like to point out that they are not doing a good job of enforcing it because we’re looking at those two cars on the map.

Chairperson Lund – That’s a separate issue though.

Susan Lindoo – Not really. I’ve been on the Planning Commission when we gave a variance and asked the applicant “You won’t do this other thing that’s illegal will you?” and the person said “Of course not” and it came back to us several years later because they were doing the illegal thing that they said they wouldn’t do. I like the idea of saying that it shouldn’t be happening. We’re going against the City Ordinance because we feel there’s good reason to, because it screws up the guy’s backyard. So I think there’s a justification of why we’re doing it. We’re saying that we’re going to trust but verify. We would do this with a business. We did that with the Transit Station and have with almost everything we’ve seen. If we’re saying yes then I think it makes sense to add a condition for the vehicle length.

Vice-Chair Prestegaard – I think it’s reasonable to add as well. Dan was only refuting my point about complexity about enforcement. We can add the condition.

Ms. Buss – You’re proposing a condition that they shall not park on the City right-of-way?

Chairperson Lund – I think it was a vehicle length.

Vice-Chair Prestegaard – It was your suggestion, a vehicle length. It’s a given that the Police can ticket them if they do park on the right-of-way.

Chairperson Lund – There’s only going to be 10 to 15 feet of right-of-way and if they’re not in the garage then the vehicle could only be 10 feet.

Janice Anderson – That’s a small vehicle.

Engineer Stewart – This would be somewhat analogous to saying that cars could park within five feet of the curb line at Holiday on Hastings Avenue. You’re allowing parking here so if you had a commercial, why wouldn’t you allow parking in the same way? If you looked at the gas station and you were to say that you can park your cars within six or 12 feet from the curb on Hastings Avenue in the right-of-way. The way the Ordinance is written now is that they cannot park vehicles in the City right-of-way, it has to be on their property. You’re saying that it doesn’t matter for a residential property.

Chairperson Lund – No one has said that.

Vice-Chair Prestegaard – We make the assumption that someone might park outside of the garage. We make a second assumption that we might need the right-of-way, which may come true at some point. There's a driveway there right now and they won't get a ticket unless they are in the right-of-way so we're not going to change that rule or law.

Chairperson Lund – Do we have an ordinance about parking semi-trailers in residential areas?

Executive Analyst Helm – It can't be parked for more than 48 hours.

Susan Lindoo – John, are you saying that if we do the variance the way that Dan is suggesting that anyone that parked outside of the garage would automatically be in the right-of-way unless it was a smart car?

Vice-Chair Prestegaard – Almost certainly.

Ms. Buss – Yes, because there would only be 10 to 12 feet from the right-of-way.

Chairperson Lund – And in that case, the Police can ticket them.

Susan Lindoo – And they never do.

Anthony Mahmood – There aren't any signs prohibiting parking on the street so the sight line is already compromised. All we're saying is that there's a hardship right now and he needs to have his backyard. Let's pass it and let the Council take a look at it.

Vice-Chair Prestegaard – Dan's proposal?

Anthony Mahmood – Yes.

Janice Anderson – I'll obtain my motion without adding the condition for vehicle length.

Chairperson Lund – So the motion is to approve the variance with an added condition that the setback not only be 10 feet from the property line but also 30 feet from the current paved surface of the street.

Motion by Anderson, seconded by Prestegaard to approve Resolution No. P.C. 2013-9 as amended recommending that the City Council approve a Variance requested by Brian Domeier for property located at 615 8th Street. With 4 Ayes, 0 Nays, 1 Abstaining, the motion carried.

C. Public Hearing – To consider an application from Kim Brown for Approval of a Conditional Use Permit and Variance for Property Located at 1675 Kolff Street

Sherry Buss, TKDA Planner, presented on this item as outlined in the September 12, 2013 Planning Commission Packet.

Vice-Chair Prestegaard – What is to the north of her property?

Ms. Buss – There is a City-owned right-of-way that is about 75 feet wide north of her property. If you thought about it as the 50 foot setback plus the 75 feet of the City right-of-way, it's 125 feet from the next property line.

Janice Anderson – There are two properties in view of the new structure.

Admin. Hill – There's a water main in that right-of-way.

Susan Lindoo – What is that odd little shape on the north side?

Janice Anderson – That's the roadway to the pump house.

Susan Lindoo – So that's also part of City property?

Ms. Buss – Yes.

Susan Lindoo – Can you explain what you mean when you're talking about site lines?

Janice Anderson – The two properties north of this property will be able to see the new building.

Vice-Chair Prestegaard – From the property line or their houses?

Janice Anderson – From their houses.

Ms. Buss – The Code says that accessory structures need to be compatible with the existing structure in terms of material and color. She is proposing to paint this the same color as the house and have the same type of roof as the house. Obviously, a pole barn is made of metal and the house is not metal. I don't know if we've permitted pole barns in the RE District before or if you guys have had discussions in the past before about whether that building material meets that Code requirement or not.

Susan Lindoo – I can remember two that we approved some time ago and I can't remember if we've updated the Code since then.

Vice-Chair Prestegaard – Pertaining to the sight lines, you were saying from their houses. Is that during the winter or summer, or does it not matter? It says buckthorn on the map and if I know anything about buckthorn, I can't see three feet from it.

Janice Anderson – From 1270, that visual would be all the time. From 1260, it would be more winter, but there is an elevation as well.

Vice-Chair Prestegaard – Can they see the house, existing structure or road?

Janice Anderson – They can't see the house because it's far enough back. They can see the pump house.

Vice-Chair Prestegaard – So should we have a shorter height?

Janice Anderson – I sit higher at my house than either of them and I can see the pump house. During the winter, I can see her house.

Vice-Chair Prestegaard – Would height make a difference?

Janice Anderson – No. Earlier, we talked about septic positions. If there is an office in the building, I would expect restroom facilities so would there be an additional septic system?

Ms. Buss – We would need to ask the applicant.

Kim Brown, 1675 Kolff Street – There are no restroom facilities in the building.

Susan Lindoo – The original drawing from August 20, shows the house and then shows two existing structures and then the revised drawing shows only one existing structure. Was the other one torn down?

Ms. Brown – There's a portable shed that is not attached to the ground.

Ms. Buss – Since it's not attached to the ground it's not considered a structure.

Susan Lindoo – There was something about the house being 19 feet and 25 feet. On page 4 you state “The proposed building will be approximately 19’ in height based on the definition of building height in the City’s ordinance. The applicant indicated that the height of the primary structure (house) is approximately 25’ (two stories).” What is the definition of building height in the Code because on the drawings it shows that it is 25 feet?

Ms. Buss – The definition of height is from the ground elevation to half way up the eaves, so the midpoint between the eave and peak of the roof.

Ms. Brown – The house is 29 feet.

Chairperson Lund – So the plan shows that it would be 25 feet to the peak but under our definition, the height would be less?

Ms. Buss – Yes because you don’t measure to the peak.

Chairperson Lund – So the house is taller than the pole barn?

Ms. Buss – Yes.

Janice Anderson – There’s been some concern addresses to me that this would become a business.

Ms. Buss – Businesses are not allowed however we do allow home occupations. A home occupation means that the person who lives in the house and potentially one employee, there’s a limit on the number of vehicles and activities so that this remains a single-family house. That’s why one of the conditions is that the building cannot be used for commercial use or a dwelling unit.

Susan Lindoo – I remember a situation where we did approve a pole barn and it was used as a business later and one of the neighbors said that we originally knew that it would be used as a business and I didn’t. I’m glad you have that in there, I was wondering if you could add that it can’t be used as commercial, manufacturing or industrial use. It would feel better to have that on the record now.

Ms. Buss – Yes, we can add that.

Janice Anderson – Well this might be considered agricultural use.

Ms. Buss – Yes, but agricultural use is allowed in the RE District. A commercial agricultural use is not allowed. She is not allowed to do riding lessons or anything like that.

The public hearing opened at 7:29 p.m.

Vice-Chair Prestegaard – It looked like initially it was facing the other direction, so it looks like an accommodation and that this is the best that you could have done in that area. My recollection is that behind the house, there’s a drop off and some sort of flat area, did you give consideration to that area?

Ms. Brown – No, that’s pasture for the horses.

Susan Lindoo – We’re all under DNR specifications to get rid of our buckthorn...

Ms. Brown – I don’t have the money to get rid of all of the buckthorn on my land.

Susan Lindoo – Buckthorn is a tree that normally doesn’t get above 30 or 40 feet so it does screen pretty well.

Janice Anderson – Buckthorn is pretty thick.

Susan Lindoo – So you couldn't see from the sight lines?

Janice Anderson – They still could, above the sight lines.

Anthony Mahmood – There was some concern from a letter that if you moved it 50 feet from your house, your neighbors would be happy. Could you do that?

Ms. Brown – I don't have neighbors. It wouldn't matter and then it would be too close to my house. It's not going to work.

Anthony Mahmood – Even if she did move it, you would still see it because of elevation?

Janice Anderson – Yes.

Ms. Brown – And the pump house is 20 feet higher than this structure.

Janice Anderson – I know, I can see it.

Bob Niebuhr, 1250 Kolff Court – My property is directly north of Kim's property. I have some concerns and questions. What's the intent of that size of a building?

Ms. Brown – What's the intent of my pole building, that's what you want to ask?

Mr. Niebuhr – Well, it doesn't seem to me to fit the intent of the environment to put a 9,000 square feet building in a residential area. That concerns me and concerns the impact of the value on my property. I went to the back of my lot and there isn't that much buckthorn that I couldn't see the building. I walked the property line and there's not that much vegetation to block that view. I would be concerned in the winter when the leaves are gone that it would have an impact. Then, I noticed when I was back there that there were some areas that had been mowed on my property in an oval shape and I'm concerned that if it is intended for horses that they'll be wondering into my property. That's why I asked the intent.

Ms. Buss – The application says that the building will be used for a barn, hay storage and an office.

Mr. Niebuhr – Why do you need 9,000 square feet for hay storage and an office? That's a lot of space. To me that doesn't seem reasonable.

Ms. Brown – Let me explain something to you. I don't just have normal horses. I have American Saddle Bred Show Horses. The intent is to bring them back to my house so I can work them myself in my own arena. That's why I need that size of a building. I also need enough room to put 1,100 bales of hay because I'm storing them up in Forest Lake right now. That's why I want this size of a building.

Mr. Niebuhr – So will the horses always be inside?

Ms. Brown – Yes, they're show horses.

Mr. Niebuhr – So you don't ride them?

Ms. Brown – I do, inside.

Vice-Chair Prestegaard – There's existing pasture in that bowl area.

Ms. Brown – Yes but the intent of this building is to bring my show horses home. I've got them in training right now.

Vice-Chair Prestegaard – There are other horses that use the pasture?

Ms. Brown – Yes, there are two that are up for sale right now.

Susan Lindoo – How many horses would you have at maximum?

Ms. Brown – It depends on how many sell. Right now I have three in training and two up for sale so I would say three.

Chairperson Lund – Renee can you refresh my recollection on how many horses are allowed?

Executive Analyst Helm – I am looking that up right now.

Mr. Niebuhr – It just seems to me that the size doesn't fit the environment. I know that it's agricultural but it doesn't fit with the size of the homes. It seems that it would be out of place and have some impact on property values among Kolff Court.

Executive Analyst Helm – There shall be at least four acres for the first animal and then 1 additional acre for each additional animal. She has about 8.75 acres so it would be five horses.

Janice Anderson – Did you say that the arena is in the pole barn?

Ms. Brown – Yes.

Jeff Robinson, 1270 Kolff Court – I submitted written comments on this letter (attached as part of the minutes) so I won't go through that again. Due to the ravine on Kolff Court, we are in the back right corner of the lot. Right now, as it sits, I can see the lights of the house on this property. There is a nice healthy border of trees, not buckthorn, in this area. As I see the proposed sight, I see roughly 50 feet of this tree barrier being taken down for the building. As I look at this proposal, the request is for preference not necessity. Given the size of the property, I feel that moving it closer to the house or in a different location could be done in a way that it would meet the setback requirements. The placement of this is between our house and her house. I wouldn't put it right behind my house. I'm very concerned about the size of the facility and visual. We built our house there as part of the Wild Ridge Estates 20 years ago to have a home in the woods and have enjoyed it. The more trees you could have between us and our facility would provide more screening. I would ask you to deny the variance; I think it's one of preference, not necessity.

Chairperson Lund – Are you only concerned about the variance to the north property line?

Mr. Robinson – Yes.

Chairperson Lund – Because they do need the variance for the property line to the pump house as well.

Mr. Robinson – It's all about the north variance for me. I don't know what is front or side because it's shaped irregular.

Ms. Buss – That's all a side setback, even though it has a funny shape.

Mr. Robinson – It's just the north that it would be a complete visual from our back window. I just want to impress the size of this facility and how much it is going to impact our sight line and property value.

Janice Anderson – Would you have a suggestion for screening?

Mr. Robinson – My suggestion is to try and move it. I don't see the slope issue between the proposed building and house. I think it can be moved closer to the house, it looked relatively flat.

Vice-Chair Prestegaard – It indicates 10 feet.

Ms. Buss – The only data we can get from the County is 10 foot contours.

Vice-Chair Prestegaard – There's an implied 10 foot drop. Does that mean 10 feet or more or up to 10 feet?

Chairperson Lund – From one line to the next is 10 feet but that doesn't represent any particular slope.

Susan Lindoo – Has anyone gone out to look at the slope?

Ms. Buss – No. I think that would be a question to think about. Do you want the applicant to bring in a survey that has the topography if that's the basis for the variance? We don't require that for residential in this district. If someone proposed a commercial building on a steep slope we would require that.

Chairperson Lund – There's nothing in our Code that relates to size.

Ms. Buss – The only thing that relates to size is that if someone wants more than 2,000 square feet for a building they need to have a larger setback. That's where the 100 feet came from and the maximum setback is 100 feet. If there wasn't a maximum of 100 feet, she would have needed a setback of like 170 feet. Per the Code, for every 40 square feet beyond 2,000 square feet, she would need an additional one foot setback. Her argument is that she should not need to make the 100 foot requirement because it pushes it onto steeper slopes and this is a regularly flat area.

Vice-Chair Prestegaard – We can't forget about this 70 feet of City-owned space.

Ms. Buss – That's up to you, it isn't part of her property but it is sort of like a setback and another barrier. It's likely to remain in City ownership.

Anthony Mahmood – Your main concern is being able to see the building?

Mr. Robinson – Yes.

Anthony Mahmood – Earlier you had said that from your house you could see the lights in her house already. So if that building was setback another 50 feet you would still be able to see it because her house is further back.

Mr. Robinson – I don't care about the light in her house, it's a light in the woods. This is an enormous structure that will be right there about three houses wide. It is partly in between this light and our house so it's going to be in front of me. There are tall trees there currently. Any additional setback would mean additional screening.

Chairperson Lund – Sherri, did you visit the site?

Ms. Buss – Just from the road.

Mr. Robinson – Our house was there before the City put the pump house in and that was necessary because the residents below had bad pressure. The Mayor and Planner did come out and meet with us because they needed to clear some trees. The pump house is a small building and the City did a good job and keeping as many trees as they could. That was necessary; I view this as something where I really think the setback requirements are there for good cause and to protect those who are adjacent. Yes, I'm not directly adjacent because of the right-of-way but as a practical standpoint, I am adjacent to what this is going to be.

Susan Lindoo – One thing that's difficult is that the request is based on slope considerations and we don't know what those are so I'm uncomfortable with this because we're in the dark about it.

Vice-Chair Prestegaard – I have similar feelings. Someone had asked earlier about it being closer to the house and you said that wasn't workable, could you say why?

Ms. Brown – Well I would have to pull out several trees and it would be right next to the garage that is there now.

Vice-Chair Prestegaard – I’m trying to get a sense of whether or not you’re able to move it closer at all. Right now it looks like the proposed structure is 95 feet from the house and the garage is about 60 feet from it. I’m trying to get an idea of whether it’s a slope issue or a proximity issue.

Ms. Brown – That’s all flat right there.

Susan Lindoo – It feels like there’s an argument that you don’t want it too close to your house and the neighbors don’t want it too close to their homes. We won’t give a variance because you don’t want it close to your house. We would give it based on slope because it’s not possible to build in that spot. We’ve never done this but we could consider tabling it until we get a chance to get up there and look at it.

Ms. Buss – We could ask the applicant to provide a map that shows one or two foot contours between the proposed structure and house.

Chairperson Lund – You just said that it is flat between the structure and your house.

Ms. Brown – Yes.

Susan Lindoo – So it could be moved closer to your house?

Chairperson Lund – I think what we’re hearing is that slope is not an issue.

Ms. Brown – It starts sloping down.

Ms. Buss – Between the proposed barn and house?

Ms. Brown – Yes.

Chairperson Lund – Are you saying now that there is a slope?

Ms. Brown – Behind the garage is all flat but if you go closer to the property line it starts to slope immediately.

Chairperson Lund – We’re suggesting you go closer to the house in the flat area. I’m going to be honest, given the size of the structure; I’m not inclined to vote for the variance to put it closer to the property line given the neighbors’ concerns.

Susan Lindoo – The one thing I would be worried about is if it started screwing up water erosion if it were built on a slope. That’s why I would like to have more information on this and have someone who knows about water erosion look at it. I want to know where the water will go. I’m uncomfortable about a structure this size going up in a neighborhood when the Ordinance says that it should be 100 feet back. I remember creating that ordinance and talking about residential areas and that we don’t want them to feel like industrial areas. I want more information.

Vice-Chair Prestegaard – I want more information as well and would be in favor of tabling it until we get more information. I’ll also state that what would be interesting to me, because we do have the 70 feet of City property, if it would be possible to move the building 20 feet to the south but obviously we don’t know what the impact of that would be.

Chairperson Lund – How do we define an accessory structure? Can they insulate it, heat it, put water in?

Ms. Buss – You can do that, you can’t turn it into a dwelling unit, which means both a kitchen and full bath can’t be put in there. A lot of people will put in some sort of shower or sink in an accessory structure. We would allow that but they can’t put in both a kitchen and full bath.

Vice-Chair Prestegaard – I’m assuming there’ll be water out there.

Ms. Buss – And that’s perfectly fine.

Susan Lindoo – If there were water, would there need to be a septic system?

Ms. Buss – That would be a question for the building inspector.

Vice-Chair Prestegaard – And there are animals there today.

Anthony Mahmood – It looks like the problem we have is that someone wants to build a structure on their property and some of the neighbors don’t want that big of a structure. Is there any way you guys can work together and come back to us with a solution?

Ms. Brown – I don’t see their house. Do you want us to plant trees on the City property?

Susan Lindoo – I think for me the question is why we need to do a variance. There could be good evidence but I don’t see it now.

Anthony Mahmood – Right now, it would be almost on top of the garage if we did the 100 feet.

Vice-Chair Prestegaard – It would be about 10 to 15 feet.

Susan Lindoo – But we don’t know that.

Chairperson Lund – Would you prefer that we table it for more evidence or vote on it as is. It’s fairly certain that we would deny it tonight with the information we have.

Ms. Brown – Since everyone has an issue with the size of this building, and everyone knows that I have like the largest parcel in town, what if I put five of the 2,000 square feet structures up?

Ms. Buss – You can only have two accessory structures.

Desiree Bailey, 1800 Kolff Street – I’m not visually impacted by the building but I am concerned by the size of it. If she sold her property to someone else you can see the potential of them putting 10 horses, 20 vehicles in it. I could see some abuse of it and it would impact the neighborhood. My other concern is that what if my next door neighbor wants to put a large building up after she does? I’m concerned about everyone putting up a pole barn.

Susan Lindoo – I was surprised too that we don’t have a maximum square footage for buildings in the RE District.

Ms. Buss – Even if we had a maximum percentage, it wouldn’t be an issue with this property because it’s so large. We may want to think about that.

Chairperson Lund – The way that the ordinance was written is that the setback is dependent on the size of the building. We’re of course limited to comply with the Ordinance. We do also have an Ordinance for farm animals.

Ms. Bailey – But the cops aren’t going to be counting horses especially with it being so far back.

Ms. Buss – So do you want the contours from the applicant?

Chairperson Lund – The applicant already said that it’s flat between the proposed building and house. We understand that it’s steep to the north of the proposed building but there seems to be some confusion about the slope between the proposed building site and house. Could you explain?

Ms. Brown – You would have to see photos or come and see it yourself.

Chairperson Lund – Is it flat between the house and proposed site?

Ms. Brown – Yes. As soon as you start going north it drops off.

Vice-Chair Prestegaard – We're talking about the south.

Ms. Brown – To the south, it would buck right up to the garage.

Chairperson Lund – So you're biggest concern about moving south is interfering with the current structures?

Ms. Brown – Yes.

Vice-Chair Prestegaard – There appears to be 60 feet from the garage and proposal and 90 feet from the house and proposal. So what we want is something that might show the contours or a chance to take a look to get an understanding of the slope and secondly the distances between the garage and proposed site and distances in between.

Anthony Mahmood – Could you move it closer?

Ms. Brown – I could try.

Chairperson Lund – I don't think anyone minds but you would need the variance for the side lot line from the pump house as well to be 50 feet from there.

Ms. Buss – Everyone's concern is about the north property line so they're suggesting that you be closer to your house to meet that 100 feet setback and they are fine with you being 50 feet from the pump house lot line. Could you have your guy do another drawing to show how much closer you could get to the 100 feet?

The public hearing closed at 8:14 p.m.

Vice-Chair Prestegaard – I would move that we table it until the next meeting and request more information from the applicant to see how close we can come to compliance.

Ms. Buss – You want to request that the applicant provide a new plan that either meets the setback or comes as close as possible from the north property line.

Vice-Chair Prestegaard – To the extent that you can't move it closer, you need to provide the slope of the area.

Susan Lindoo – Could we go up and view it?

Ms. Buss – If she's willing to let you on the property.

Ms. Brown – Just let me know when.

Chairperson Lund – So in any case, she still needs the variance for the 50 feet from the pump house lot line.

Motion by Prestegaard, seconded by Mahmood, to table Resolution No. P.C. 2013-10 until October 10, 2013 and request that the applicant provide a new plan that either meets the setback from the north lot line or comes as close as possible and includes the slope of the area. With 5 Ayes, 0 Nays, the motion carried.

Chairperson Lund – We might want to consider a maximum building size in the RE District.

Susan Lindoo – I think it's appropriate to have again.

Ms. Buss – We haven't revisited the requirements for this District since we changed the lot size.

D. Public Hearing – To consider amendments to the Zoning Code, Chapter 1300, Section 1330 General District Regulations and Section 1350 Nonresidential Districts

Executive Analyst Helm presented on this item as outlined in the September 12, 2013 Planning Commission Packet. The Planning Commission discussed two items in regards to this Resolution. The first item was regarding fences. The following items were requested in regards to fences:

- Add language allowing barbed wire fences in the industrial districts in Section 1330.05, Subdivision 15 and requiring it to be at least eight (8) feet in height
- Amend Item F in Section 1330.05, Subdivision 21 allowing electric fences instead of barbed wire fences in the RE Districts

The second item that was discussed was regarding day care services and centers. The Planning Commission requested that staff complete the following:

- Review the definition for "Day Care Services" and "Day Care Centers" in the State Statute to clarify which one to use for the uses tables
- Review the State Statutes to clarify whether it should be "14 or less" or "14 or more."

The public hearing opened at 8:37 p.m.

The public hearing closed at 8:38 p.m.

Motion by Prestegaard, seconded by Mahmood, to table Resolution No. P.C. 2013-11 until October 10, 2013 and requesting the above information. With 5 Ayes, 0 Nays, the motion carried.

Ms. Buss – Just to clarify, the rationale for the Domeier one is that we want to preserve the yard space and minimize impervious surface?

Chairperson Lund – And he's a long way from the street so it seems like we're hitting him more with the rules than the practical effect.

Ms. Buss – I think the reason for the rule is that you used to not have more than a five foot setback and then someone changed the ordinance to 30 feet and I'm sure it's for this reason, to keep vehicles and buildings out of the right-of-way.

Chairperson Lund – It would be different if there wasn't a structure there already.

Ms. Buss – And that's what you have to consider when you grant a variance but I think the reason for the wider setback on corners is partly about this issue. I'm sure it was a recommendation of the engineer to preserve visibility. The variance comes forward because it's an opportunity for you to say that in this particular context, you don't want to enforce that part of the Code.

Susan Lindoo – For me, it's not an excuse to say that "Everybody breaks the law."

Ms. Buss – That shouldn't be the rationale.

Susan Lindoo – That didn't go over too well with me.

Chairperson Lund – That didn't come from the applicant though.

Susan Lindoo – Yes that was his rationale.

Chairperson Lund – He was confronting what the Engineer had said, that he can't have his building that close because it would lead to a car in the right-of-way. The Police can enforce that Ordinance.

Anthony Mahmood – If we’re concerned about the sight lines then we should have “No Parking” signs on the corners.

Chairperson Lund – I understand your frustration with the lack of enforcement but a lot of people have real practical problems like this.

Susan Lindoo – I agree with that but saying that other people do it isn’t a good rationale. To me the bigger issue was that he wouldn’t have a backyard.

5. COMMISSION AND STAFF REPORTS

Executive Analyst Helm – Just an update on the street vacation from the August meeting, they did withdraw their request before it went to the City Council. The City Council did make note that it is the City’s position that there is a street there. There’s been no movement on the issue at all, including the license for the fence.

Councilman Ingemann – There’s a meat raffle for the Fire Department at Cloverleaf tomorrow.

6. NEW BUSINESS

7. ANNOUNCEMENTS

A. Upcoming Meetings and Events:

- | | | |
|------------------------------------|--------------------|------------|
| 1. City Council Meeting | September 19, 2013 | 5:30 p.m. |
| 2. Park Board Meeting | September 26, 2013 | 7:00 p.m. |
| 3. Annual Fun Walk – Loveland Park | September 28, 2013 | 10:00 a.m. |
| 4. City Council Meeting | October 3, 2013 | 5:30 p.m. |

8. ADJOURNMENT

Motion by Mahmood, seconded by Prestegaard, to adjourn the Planning Commission Meeting at 8:47 P.M. With 5 Ayes, 0 Nays, the motion carried.

Signed: _____
Dan Lund, Chairperson

Respectfully submitted,

Renee Helm
Executive Analyst

Newport Planning Commission

Dan Lund, Chairperson
Matt Prestegaard, Vice Chairperson
Janice Anderson, Commissioner
Susan Lindoo, Commissioner
Anthony Mahmood, Commissioner

**PLANNING COMMISSION RESOLUTION NO. P.C. 2013-10
A RESOLUTION RECOMMENDING THE NEWPORT CITY COULCIL
APPROVE A CONDITIONAL USE PERMIT AND VARIANCE REQUESTED BY
KIM BROWN, PO BOX 25407, WOODBURY, MN 55125, FOR PROPERTY
LOCATED AT 1675 KOLFF **STREET**, NEWPORT, MN 55055**

Written Comments filed on behalf of Jeffrey and Beverly Robinson,
1270 Kolff Court, Newport MN 55055

By way of introduction, we are Jeff and Bev Robinson. We purchased our current lot and built our house over 20 years ago as part of a planned development know as Wild Ridge Estates. The primary goal this development was to provide residence a place for a home in the woods. All lots in this planned development were wooded and approximately 2 acres in size with protective covenants intended to have new houses blend in with the surrounding wooded environment. Since building our home, we have enjoyed over 20 years of woods and wildlife as City Planners envisioned decades ago.

Our house is the closest in proximity to the Kim Brown proposed 156ft. x 60ft horse arena and barn. Currently, the house on this property is directly in-line with the back of our house. Also, a reasonable buffer of trees exists between these two dwellings. The construction of this large structure as planned would change all of that. The proposal places this structure in very close proximity to our house and would remove approximately 50 feet of the existing tree buffer.

As a result, we will clearly be looking at the full 156 ft barn/arena out of our back window.

Having reviewed the filed request for a Conditional Use Permit and Variance, I believe the request for the 100 ft side setback variance is one of preference and convenience rather than one of necessity. First, compliance with this requirement at the current planned site would simply place barn/arena 50ft closer to the house while at the same time retain an additional 50ft of wooded buffer. I do not believe slope to be an issue in this area of the lot. Second, given that the lot is roughly 10 acres in size, numerous other building sites are available that could be utilized and be in conformance with the existing side setback requirements.

Based on this, we respectfully request that the Planning Commission deny the setback variance portion of this proposal. In so doing, this Commission will continue to support the intent of planning decisions made in the past and provide a setting in which the large arena/barn structure can coexist with the rest of the neighborhood by upholding the existing setback requirements intended to protect the interests of others.

Sincerely,

Jeff & Bev Robinson

1270 Kolff Court

Newport, MN 55055