

**CHASKA PLANNING COMMISSION
MINUTES
NOVEMBER 13, 2024**

1. Call to Order

Vice-Chairperson Urbanski called the meeting to order at 7 pm.

2. Roll Call

Roll call was taken. Members present: Commissioners Olson, Gaare, Aasen, Baswa, Kerber, Campbell, and Vice-Chairperson Urbanski.

Members absent: Commissioners Brass and Purdy.

Also present: Nate Kabat, Community Development Director; and, Liz Hanson, City Planner.

3. Adopt the Agenda

Motion by Commissioner Olson, second by Commissioner Aasen, to adopt the agenda as presented.

Motion carried.

4. Visitor Presentation

No one appeared under Visitor Presentation.

5. Approve Previous Meeting Minutes

- a. Approve the October 9, 2024, Chaska Planning Commission Meeting Minutes

Commissioner Olson asked if the minutes had been attached to the packet.

City Planner Hanson stated that they should have been included in the packet.

Commissioner Olson explained that he had not seen them in the packet.

Vice-Chair Urbanski suggested that they carry this action over to the next meeting in order for everyone to be able to see the minutes.

Motion by Commissioner Olson, second by Commissioner Baswa, to carry approval of the October 9, 2024, Planning Commission meeting minutes to the December Planning Commission meeting.
Motion carried.

6. Consent Agenda

7. Action Items

- a. PUBLIC HEARING: Recommend Denial of a Major Variance for 2979 Hilltop Drive to Encroach into the Rear Yard Setback/Joe & Michelle Heiland/PC #2024-19

City Planner Hanson presented the item to the Commission and noted that this item would come before the City Council on November 18, 2024.

Commissioner Olson asked if, for tax purposes, a three-season porch space would be considered living space.

City Planner Hanson confirmed that, per building code, it would be considered living space, but noted that she could not say what it would be considered for tax purposes.

Vice-Chair Urbanski opened the public hearing at 7:30 p.m.

Joe and Michelle Heiland, 2979 Hilltop Drive, stated that they were asking the City to consider approving their variance request that will allow them to complete a three-season porch addition on the back of their home where they have lived since 2003. He stated that they were never notified by their contractor, or the City, that the permit for the porch had not been approved until Tony Zappa had arrived at their home on July 18, 2024. He explained that they had been acting in good faith that all the necessary permits had been sorted out between their contractor and the City. He noted that if they had been made aware of the permit status on May 3, 2024, they would have put a stop to the project and explored other options. He explained that by the time the stop-work had had been issued, their project was about 80-90% completed. He stated that they felt that the City had the ability to approve their request without creating a precedent for future variances and explained that the smaller lot sizes that are permitted in their neighborhood have put their lots at a disadvantage when it comes to meeting the setback requirement which was not created by the property owners. He reiterated that they were not aware of the permit status until the porch was near completion.

Commissioner Olson asked how long the Heilands had been planning the transition from a deck to a three-season porch.

Mr. Heiland stated that it began around the beginning of COVID when they started taking the deck apart with the intention of just replacing the floorboards with a maintenance-free product and had talked to some friends in the construction industry who raised the idea of a three-season porch. He explained that because their backyard has limited space their idea was to be able to maximize the space as much as possible and have space that could also be used in the spring and fall months. He stated that when COVID hit, material pricing went through the roof, so the project essentially went into an unfinished mode until this spring, when they finally reached out to a contractor.

Commissioner Gaare asked if the Heilands were the original owners of the property.

Mr. Heiland confirmed that they had built the home in 2003.

Commissioner Gaare stated that if they had built the home then they should have been aware of the lot size and the setback.

Ms. Heiland stated that they were about 24 or 25 years old and saw a lot that hadn't been built on and thought it was amazing and when the house went up, she explained that she had ended up disappointed because of the end result in the yard space, but noted that was due to her own ignorance.

Commissioner Gaare stated that the 30-foot setback was not new and had been around for a long time.

Mr. Heiland stated that he believed that setback was established in 2003, the year that they moved in.

City Planner Hanson confirmed that it was established at the onset of building out there.

Vice-Chair Urbanski stated that he believed it was part of that PUD. He asked what the Heiland's contractor had to say about this.

Ms. Heiland stated that she believed he was in attendance via Zoom.

Vice-Chair Urbanski noted that all the letters of support that the Heilands had submitted were included in the packet.

Ms. Heiland stated that they had submitted letters from all of their neighbors who could actually see it and they were all in support of their request. She noted that they have put a lot of money into this project and it would be really sad to have to take the porch down and be out that much money. She stated that if they had been told 'no' at the very beginning, it would have been a non-issue, but they did not know anything and invested a ton of money.

Commissioner Gaare confirmed that the Heilands had stated that they were not aware of the issues until July.

Vice-Chair Urbanski stated that the Heilands also did not dispute the fact that their contractor knew about the issue much earlier than July.

Mr. Heiland stated that was true and noted that they found that out afterward.

Ms. Heiland stated that she thinks their contractor, initially, was going in good faith. She explained that initially he thought it had been approved and went ahead and got the engineering drawings done which he paid for. She stated that, at some point in the building process, he did find out and explained that there was work done after that point.

Mr. Heiland stated that was not their intent and explained that every communication with their contractor was that the permits had been taken care of. He stated that, in hindsight, he wishes that he would have had the contractor physically show them to him and reiterated that he thought it was all taken care of. He asked the Commission to put themselves in their shoes in this situation.

Commissioner Gaare asked if the contractor was online.

City Planner Hanson stated that there was one guest present online but wasn't sure if it was the contractor. She asked if the contractor was online to raise his hand so the City could give them the ability to address the Commission.

No hands were raised online.

Ms. Heiland noted that their contractor does have a child in the hospital, so if he wasn't online it was not just a simple 'no-show'.

Vice-Chair Urbanski asked if anyone else wanted to speak during the public hearing.

Brian Wisdorf, 2997 Hilltop Drive, explained that he reviewed the materials that were included in the packet and was here to express his support for the variance request. He stated that he disagreed with the analysis and recommendation within the staff report and that was based on his 20 years of real estate experience dealing with variances. He stated that he had reviewed the City code and the statute, and noted that the Chaska Heights development was associated with the plat that the developer used in order to build the number of units on this parcel that would allow them to maximize the number that could be sold. He stated that when it comes to practical difficulty, the plight of the landowners has to be due to circumstances unique to the property and staff focused on this particular PUD in their analysis. He stated that an interesting thing about Ordinance 746 is that it appeared that it was passed after the platting of the property when usually they go hand in hand. He stated that when looking at the City's ordinance requirements for this area, ultimately, under the current code it was a minimum of 11,500 sq. ft. with an average of 15,000 sq. ft. He noted that when Ordinance 746 was passed, they allowed the developer to create smaller lots of 11,200 sq. ft. for 20 of the lots within Block 5, which includes his lot and the Heiland's lot, and had allowed smaller lots within the R-1 district. He stated that when this development was approved, the City said that they would allow them to put houses on smaller parcels of property. He stated that this ultimately allowed the property owners to put in houses that did not meet the square footage that would otherwise be required. He noted that in this development there are 20 lots that are identified as R-1A and 6 of those are below the 11,500 sq. ft. that the current code would require. He stated that he felt that, in and of itself, made the property unique and noted that this was not a situation created by the property owner. He stated that allowing a smaller lot and keeping the setbacks that would normally apply to an 11,500 sq. ft. minimum requirement, created a crunching of the property for purposes of the property owner and made it more difficult for them to build what they are seeking to build. He stated that he felt that was what made this a practical difficulty and a unique situation and reiterated that it was not created by the property owner. He stated that he felt for those reasons, the Commission and the City Council have a basis to make a finding that this was a unique situation for the Heilands and permit them to move forward with their three-season porch. He stated that the Heilands were not informed in May when the building inspector had informed the contractor that the permit was approved and then told him that the permit was not approved anymore because he had looked at the setbacks. He stated that based on the sequence of events outlined within the staff report, nobody came out to the property to inform the Heilands that they shouldn't be doing anything on their property until the building inspector showed up in his driveway. He stated that he felt that also made this somewhat unique because it was not often that the contractor is informed that a permit has been granted and then later on informed that it was not granted. He stated that this was a difficult situation and, an after the fact variance was

not ideal for anyone, nor was it to be promoted, but, when there are unique circumstances associated with the parcel itself, that would otherwise permit the variance to be granted, he would argue that it was a unique situation. He stated that he felt that by the City approving this request, it did not 'rubber stamp' anything for any of the other properties in the area.

There being no additional comment, Vice-Chair Urbanski closed the public hearing at 7:50 p.m.

Commissioner Campbell asked if, when a permit was issued, signage was posted on the site that showed that it had been signed off for every step of the process.

City Planner Hanson stated that was correct.

Commissioner Campbell asked if the Heilands had not noticed the lack of signage that would usually be applied for this kind of project.

Mr. Heiland stated that they had seen it done before, but explained that they were not aware that it was a requirement to have it posted outside.

Commissioner Campbell stated that the contractor knew there was no permit but decided to go on his own and finish the construction.

Mr. Heiland stated that the contractor had done that unbeknownst to them.

Commissioner Olson asked what prompted the two-month gap between the visit between the contractor and the building inspector going to the site on July 18, 2024.

City Planner Hanson stated that once the message was given to the contractor that the building permit was not approved, the ball was back in their court to correct their plans and resubmit to the City. She stated that she does not know if that was something that had been mentioned by the contractor, but ultimately, the City was notified by an electrical inspector that the work was being completed, when they contacted the City to see if there was a permit on file for it.

Commissioner Baswa stated that this was really sad to see after the Heiland's had spent a lot of money, but if the City considers this lot as a special lot, it would be opening a can of worms, because someone else can easily build something and say that they have difficulties and my neighbor said to build what they wanted. He stated that they may give a free hand to the contractors who would go and do similar things to other residents and just ignore the process and go and build what they want. He stated that he thinks that the Commission needs to also consider aspect this as well and felt that they needed to make sure that the contractor was responsible for their actions and not just look at it from the resident's perspective.

Commissioner Olson asked what the alternatives were that staff has provided outside of tearing it all down or tearing half of it down and explained that he was trying to see what other creative things may be able to be done. He stated that he wanted to find a solution and a way to get through this and noted that they were putting this on the same footprint as the deck that was already there. He stated that if they can set aside the fact that this was already built and think about it as though it was just coming to them as a request for a variance, as a plan. He questioned

what was really different from a deck and something that was the same measurement, but had walls and a ceiling and noted that he was kind of pushing on City code for that issue.

Commissioner Gaare stated that it was because it was a structure.

Commissioner Olson noted that they had said it was a permanent thing, but he felt a deck was also a permanent thing. He asked why there was a distinction between a deck and an enclosed porch and asked if there would be a difference if it was something that just had screens and asked where the delineation was between an enclosed porch, a three-season porch, and a deck.

Commissioner Kerber stated that she would like to know what qualified for the 30-foot setback and what qualified for the 20-foot setback.

City Planner Hanson stated that an unenclosed deck, without a roof and walls, is technically what would be considered for the 20-foot setback. She stated that whether something would be screened or walled, it would be put into the 30-foot setback requirement.

Commissioner Olson asked if someone had a deck and then put a pergola on top of it and whether it would be considered an enclosed deck.

City Planner Hanson stated that a pergola is an open structure, so it would not be considered an enclosed deck. She stated that she believed that the Heilands had a pergola on their deck before this structure.

Mr. Heiland stated that they had not had a pergola on their deck.

Commissioner Baswa asked what other options the Heiland's contractor had provided to them.

Ms. Heiland stated that she did not think there were any really good options. She stated that they could shorten it by 8 feet, but then it wouldn't be large enough for them to have a table out there. She noted that someone had mentioned the possibility of detaching it so it would just be an independent structure and asked if that may be an option.

Mr. Heiland stated that Mr. Zappa had brought up that idea the day he showed up in the driveway and explained that they hadn't explored that option. He stated that when they found out about things in July they asked City staff what options were available to them and the first option was for them to apply for the variance and explained that they had not really explored any other options with the contractor yet.

Commissioner Campbell asked if the deck was original to the house.

Mr. Heiland explained that the deck was built a few years after they built the home.

Commissioner Campbell asked if he had done the work himself or if he had gone through the building permit process.

Mr. Heiland explained that they did pull a permit but the work was kind of done with the assistance of a friend of his within the construction trade.

Commissioner Campbell stated that Mr. Heiland then knew what the setbacks were for the deck.

Mr. Heiland confirmed that he did know the setback requirements for the deck but was not aware that the setbacks changed once there were walls.

Commissioner Baswa stated that the City has seen similar cases when someone wanted to put in a sports court in place of a deck.

Commissioner Campbell stated that there was a letter in the packet from the house directly behind the Heilands who said that this was not a big deal and asked about the homes on the other sides of them.

Mr. Heiland stated that there should have been a total of 3 letters submitted and explained that they had received letters of support from the neighbors behind them as well as to their left and right. He noted that he had also included photographs that showed the view from the neighboring yards as well.

Vice-Chair Urbanski asked if it may be possible for the Heilands to purchase land from the home behind them in order to extend the lot but noted that he believed that lot may be located within a different township.

City Planner Hanson stated that technically that would be a possibility, but it could put that home in violation of where their setbacks sit in relation to their building.

Vice-Chair Urbanski stated that it may also be more expensive to go that route as well.

Commissioner Aasen asked what happened with insurance when there was no permit for a structure.

Community Development Director Kabat stated that would be a question for the insurance company.

Commissioner Aasen stated that his thought was that if there was no permit, then the insurance company may pull their insurance.

Commissioner Olson stated that it feels like staff has two different lanes, one for residential and one for industrial and commercial, when it comes to variances or doing something different for the property at hand. He stated that last month, with the CloudHQ application, the property was zoned for a 36-foot building, which the applicant knew, and yet the City approved something larger than that. He stated that the parcel was zoned and planned for something smaller, but they came in and wanted to build something larger, and the City let them. He stated that setting aside what the contractor did in this situation, the property owners were asking to put a three-season porch on the same footprint of the deck that previously had on the back of the house. He noted that the three-season porch would not change the character of the neighborhood, nor

was it impacting anything and their neighbors were all in support of the request. He stated that what gave him the biggest heartburn was that it was an issue just because it was changing from an open deck to something with four walls.

Commissioner Baswa stated that everything was a different case and explained that he strongly disagreed with the point Commissioner Olson was making. He stated that with CloudHQ, there is a mitigation plan in place regarding its size and noted that the City has the option to say 'yes' or 'no' based on their discretion. He stated that he feels for the homeowners because they have been blindsided, but at the same time, tomorrow, or next month, the Commission shouldn't be hearing the same thing from someone else in this same situation asking for a variance because the City had granted it in this case. He stated that the CloudHQ situation was different than this situation and staff had provided information and did not feel that the Commission should be blaming them because they were just providing the facts.

Commissioner Gaare stated that she knows that Commissioner Olson stated that he was not overly concerned about setting a precedent but her concern was in where the City draws the line. She noted that these are houses in close proximity to one another rather than the situation with the CloudHQ building. She stated that she drove through the area to take a look at what they would be talking about tonight and noted that she felt it was incredibly unfortunate that the contractor was not up front with the Heilands, but she felt that she had to look at the precedent this may set.

Vice-Chair Urbanski stated that the way he looks at this is that there was not a mistake made, but a decision. He stated that the Heiland's were not the ones that made the decision, but there were two decisions made, one on May 3, 2024, when the contractor decided to disregard the e-mail and another when he came in to pay for the permit and made the decision not to tell the Heiland's that the permit had been denied and had essentially rolled the dice with the hope that he wouldn't get caught. He stated that his issue is that if the City approves this, the City would basically give all contractors across the City the right to come in and build something and then come back later and say that they were 'sorry' and that they would do it right next time. He stated that in that way, he felt this would set a precedent.

Mr. Heiland stated that he thinks that this issue could be fixed moving forward if the homeowners are included in the communication process. He stated that there was never any communication to them as the homeowners when the City communicated with the contractor.

Vice-Chair Urbanski explained that if the City does not issue a permit, it was not their job to go out to a house and see what was going on. He stated that the permit was intended to make sure that inspections take place during the building process in order to ensure that things like the framing, windows, and roof installation were all done properly and noted that in this case, none of those inspections were done for the Heiland's project. He reiterated that his big thing is the precedent that this would set for the rest of the City.

Ms. Heiland stated that she felt that if this was denied they would be the ones penalized and not the contractor because while he will be out some money, they will be out a lot more money.

Commissioner Olson stated that they should have legal standing in this situation, but understood that would also cost money.

Motion by Commissioner Olson, second by Commissioner Gaare, to recommend denial of the major variance request to encroach into the rear yard setback 8 feet (Zoning Ordinance 15.12.200) for the purpose of an existing porch addition that did not receive a building permit, to the City Council based on the following findings:

FINDINGS:

1. The property in question can be put to reasonable use under the current regulations and setbacks. There are no unique physical constraints on the property which would put the applicant in a position of not reasonably using their property per this request.
2. The variance is greater than necessary to reasonably use the property. There are reasonable alternatives for a building addition meeting setbacks that should be explored.
3. The variance, if granted, will alter the essential character of the area by allowing a smaller rear yard setback. A rear building addition encroaching into the minimum building setback would set a negative precedence for other homes that have the same rear yard setback.
4. The variance, if granted, is contrary to the City's zoning ordinance (Section 15.12.200), which requires a 30-foot rear yard setback.
5. The variance, if granted, would set a negative precedence for projects that do not obtain a building permit.

Motion carried.

Mr. Heiland asked what happened next.

Community Development Director Kabat explained that the Planning Commission was making a recommendation to the City Council, so the next step would be at the City Council meeting on November 18, 2024. He stated that the City Council will be the one making the ultimate decision and will take into consideration the recommendation from the Planning Commission. He noted that it would not be a public hearing, so they were not obligated to take public comment, but explained that the Council did typically take it, so he would expect that the Heilands could make a statement at the meeting if they would like.

8. Other Business

9. Receive Other Meeting Minutes

- a. Receive the September 16 and October 7, 2024, City Council Meeting Minutes

Vice-Chair Urbanski noted that the other meeting minutes were also not attached to the packet and asked those to be brought forward to the next meeting.

10. Adjourn

Motion by Commissioner Aasen, second by Commissioner Baswa, to adjourn the meeting at 8:16 pm.

Motion carried.