

1 **a.) Urness Fence – 143 and 151 Westwood La**
2 **i. Variance and Conditional Use Permit**
3

4 Director of Planning and Building Jeff Thomson stated the property owners, Todd and Katherine
5 Urness, have submitted a development application for a fence and gate located on the properties
6 at 143 and 151 Westwood Lane. These are two separate lots that are in common ownership by the
7 Urnesses. The applicant is proposing a five (5) foot tall chain link fence in the side and front yard,
8 a five (5) foot tall steel fence in the front yard, and a wooden, 100% opaque, gate across the
9 driveway in the front yard. The development application requests approval of a variance for the
10 fence material, a variance for the height of the fence in the front yard, and a conditional use permit
11 for a gate consisting of more than 50% solid in the front yard. The City has varying fence
12 regulations for fencing in the front, sides and back yards of a property that are determined by the
13 location of the house on the property. A backyard fence can be up to six (6) feet tall, and there are
14 no material restrictions or opaqueness requirements. A fence in the front yard can be up to 42
15 inches in height and must be at least 50% opaque. The fence located on the side of a property can
16 be either six-foot tall fencing with no more than 50% opaqueness, or 42-inch tall fencing and 100%
17 solid. The property has an existing chain link fence that pre-dates the applicants' ownership of the
18 property. The applicants are proposing to extend the existing chain link fence in the front yard to
19 connect with new steel fencing and a wooden gate to be added across the front of the property.
20 Mr. Thomson added that the plans include driveway entrance monuments to be located next to the
21 gate. He stated that the monuments are common in the area, and the City does not apply the fence
22 requirements to driveway entrance monuments. An inspection of this property by Staff on
23 December 12, 2018 showed that the property owner and/or their contractors had begun work to
24 construct the fences. The chain-link fencing has already been installed in the side and front yards
25 as requested in the application. In addition, the posts for the five-foot fencing in the front yard
26 have been installed. The City issued a citation and fine to the contractor, and the fine has been
27 paid.
28

29 Vice Chair Flannigan asked if the Commission had questions for Mr. Thomson.
30

31 Commissioner Plantan asked if the fence is located on the property line or set within the property
32 line.
33

34 Mr. Thomson stated that his understanding is that the fence is located up to the property line but
35 not directly on it.
36

37 Commissioner Parkhill asked if the proposed fence will serve as a pool fence or if an additional
38 pool fence would be added later.
39

40 Mr. Thomson responded that the proposed fence would satisfy the City's pool fencing
41 requirements. He explained that meeting the pool fencing requirements with front yard fencing,
42 as in the proposed plans, requires variances. He further added that there would be a way to enclose
43 the property and meet the pool fencing requirements staying within the fence zoning requirements,
44 but not how it is currently proposed. An alternative arrangement would need to be considered.
45

46 Commissioner Merriam asked if the front yard fence is set back 75-feet from the property line.

1 Mr. Thomson responded that the northern edge of the proposed fence is set back 75-feet from the
2 street while the southern edge is closer to the street.

3
4 Vice Chair Flannigan asked for the date that the City's current fence ordinance was put into the
5 City code.

6
7 Mr. Thomson responded that the exact date is unknown to him, and he would suspect the ordinance
8 was more than ten years old.

9
10 Vice Chair Flannigan asked if there was any City record of the existing fence on the property.

11
12 Mr. Thomson responded that attempts were made to determine when the fence was constructed
13 and if the City had record of a permit or variance. He stated that no record was found.

14
15 Commissioner Plantan asked if the existing fence outlined on the proposal was coated in black
16 vinyl.

17
18 Mr. Thomson explained that the home owner recently extended the existing fence with black vinyl
19 coated fencing without proper permits.

20
21 Commissioner Iverson joined the meeting at 6:48 p.m.

22
23 Commissioner Plantan stated that the homeowner's application cited security as a reason for their
24 requested fence variance. The homeowners' application stated the property had an Indian burial
25 mound and that the Bureau of Indian Affairs (BIA) strongly advised for increased security due to
26 the risk of unwanted persons pursuing buried Indian artifacts. She asked if the Commission had
27 been provided any documentation that cited the concerns from the Bureau of Indian Affairs. She
28 also stated that the homeowners thought the property was at a high risk of vandalism due to the
29 previously vacant house on the property being known as a party house for local youth. She asked
30 if there were any police reports supporting the information provided by the property owners.

31
32 Mr. Thomson explained that the City was aware of the historical remains on the property, and that
33 the homeowners were working with the Bureau of Indian Affairs. He stated that the
34 communication between the BIA and the homeowners is private, and the City is not privy to those
35 communications. He also stated that no police reports have been included with the application,
36 but inquiries could be made with the police department for any such documentation.

37
38 Commissioner Plantan stated that she is aware that there are other such Indian burial sites in
39 Wayzata, and she asked if these other sites had concerns with theft and/or vandalism.

40
41 Mr. Thomson responded that he is aware of other such Indian historical sites, and the BIA typically
42 works directly with homeowners with the intention of keeping the sites private and not known to
43 the public.

44
45 Commissioner Iverson apologized for her tardiness. She explained that for seven years the
46 Commission meetings began at 7:00 p.m., and apologized for mistaking the time change.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

Vice Chair Flannigan opened the public hearing on the application at 6:51 p.m.

Applicant Mr. Todd Urness, 143 Westwood Lane, apologized to the Commission for not realizing the changes made on his property were not in accordance with the Code. He said that although he spoke with Mr. Thomson, Director of Planning and Building, about the added extension of the existing chain link fence to the front of the property, he must have confused the information that Mr. Thomson had given him regarding the requirements for the different lots that he owns. He apologized for extending the fence without the proper approval and for using materials that do not meet regulations. He added that he will change the material of the newly extended front yard fence to a steel material that meets Code. He explained that during construction of the home, a large Indian burial mound was discovered. Mr. Urness stated that they have not been working with the Bureau of Indian Affairs (BIA) as previously mentioned, they worked with the Minnesota Indian Affairs Council (MIAC) for over a year and a half. He stated that the MIAC worked closely with the homeowners during the construction project with the intention of preserving the area and any artifacts or remains discovered. Mr. Urness stated that the MIAC identified the area on his property as the largest, previously undiscovered, mound to be discovered in the last 100 years, and recommended increased protection from those pursuing grave artifacts. He explained that the prior building had a large amount of graffiti and was evidently a location for underage parties. He stated that he does not have police records to verify this information, and he acknowledged that this information may not be apparent to his neighbors. He further explained his intention for extending the front yard fence was to add security, as well as meet the pool fence requirements.

Vice Chair Flannigan asked for clarification on the proposed front yard fence extension, and if the applicant was planning on changing the material and the height of the fence to meet the 42" front yard Code requirement.

Mr. Urness responded that he had read a few letters from neighbors whom had raised concerns regarding the fence and it's look. He stated that he wanted the property to look good and fit into the neighborhood. He was open to changes that meet those requirements.

Vice Chair Flannigan asked the applicant how much of the existing chain link fencing needs to be repaired.

Mr. Urness answered that he had already replaced all of the damaged fencing, which amounted to about six different spots. He also explained that the neighbor's driveway to the south encroaches onto his property. He stated that he approached the neighbor and offered to pay to move the neighbor's driveway off of his property and onto the neighbor's property. He stated that the neighbor was in the final closing steps of selling their property and were not interested in doing anything that would affect the closing of the sale.

Commissioner Plantan asked for clarification on the applicant's intentions for the front yard fence height.

Mr. Urness stated that he was thinking out loud earlier, and that his intention would be to change the material to meet the fence requirements. He would like to keep the height of the front yard

1 fence at five feet to meet the pool fence height requirement. He understands that these two
2 requirements are in conflict with each other, and that he would need to get a variance from the
3 code requirement. He would like to avoid adding additional fencing elsewhere on the property.
4

5 Commissioner Plantan asked if there was a reason that the front gate was proposed as a solid gate
6 which does not meet the opacity requirement.
7

8 Mr. Urness replied that the intention for the solid gate was to architecturally tie into other features
9 of the home, and the code was overlooked in error. He reiterated that his goal is to have a fence
10 that complies with the pool regulations, a gate that allows control of access to the property, and to
11 have a small number of variances.
12

13 Commissioner Plantan stated that there are no other gates on properties of any other homes in the
14 area.
15

16 Mr. Urness stated that his property is likely unique in that he has a 400-foot driveway which makes
17 it difficult to view the front of the property. His intention was to place the gate 75-feet back from
18 the road so that it was not easily visible from the road. He understood that the requirement was
19 that a gate had to be at least 35-feet back from the road, and he extended this to 75-feet to assure
20 its invisibility.
21

22 Vice Chair Flannigan asked Mr. Urness if he was the general contractor for the project, and if he
23 would be willing to move the gate back at 100-foot from the road.
24

25 Mr. Urness stated that he was not the general contractor, and he had already had the gate columns
26 built and would rather not have to move them. He added that he is interested in feedback from his
27 neighbors.
28

29 Commissioner Merriam asked for clarification about the front yard fence extension. She
30 questioned if the issue was the chain link material being used or just the height of the fence.
31

32 Mr. Thomson clarified that the front and side fences have material restrictions of wood, wrought
33 iron, and similar materials. Chain link is not allowed in front or side yard fences.
34

35 Commissioner Merriam further clarified that the pool requires a five-foot fence enclosure, and the
36 front yard fence is restricted to a 42-inch height under the Code.
37

38 Vice Chair Flannigan again invited anyone wishing to speak to address the application.
39

40 Resident Winnie Willcox, 178 Westwood Lane, stated that she would have rather addressed her
41 concerns directly with her neighbor, than about her neighbor at this venue. Ms. Wilcox explained
42 that the Highland neighborhood is a unique neighborhood in that the members really look out for
43 each other. She provided the example that the neighbors chose not to have curbs on their road due
44 to increased options for a bicyclist to easily access a yard for safety reasons. She stated that the
45 gate and the chain link fencing gave the neighbors a feeling of restriction and barricade that she
46 feels does not feel fits the neighborhood. She further added that the columns are beautiful, but the

1 opacity of the gate is very confrontational to the neighbors in sight of it. Ms. Wilcox is also
2 concerned about the precedent that a five-foot fence would set in the neighborhood. She is
3 concerned that as the neighbors change, the character of the open neighborhood will also change,
4 and allowing a five-foot fence and gate may be the precursor to this unfortunate change.
5

6 Resident Harriett Chute, 182 Westwood Lane, asked why the fence proposal application is for a
7 fence above 42-inches tall. She stated that there are a lot of animals in the neighborhood and many
8 neighbors utilize invisible fencing. She understands that this option does not work for all animals,
9 but this type of fencing is not as restricting and allows for a more open welcoming community
10 feeling. She also questioned how the entire property fencing can meet a pool fencing requirement
11 unless the main gate is always closed.
12

13 Vice Chair Flannigan responded that it would appear that the main gate enclosure would need to
14 be closed predominately to assure safe access to the pool. He also agreed that the entire fencing
15 would need to be at a five-foot height to meet the pool fencing requirement.
16

17 There being no one else wishing to comment on this application, Vice Chair Flannigan closed the
18 public hearing at 7:16 p.m.
19

20 Vice Chair Flannigan asked Mr. Thomson if there was any clarification needed on the application,
21 and then he opened the Commission for initial discussion regarding the application.
22

23 Commissioner Merriam stated that after reading through the ordinance and variance standards she
24 does not find a good reason to grant the variance. There may be other options available for
25 enclosing the family dogs. She agreed with the neighbors that have stated concerns with the height
26 of the fence not being in character with the neighborhood. She is also worried about the risk of a
27 negative precedent being set with this type of a fence.
28

29 Commissioner Parkhill asked if there were other options considered by the architect to solve the
30 pool fence and outer fence issues.
31

32 Applicant's landscape representative, Drew Torrence, stated that other options were considered
33 for the fence but due to the uniqueness of the property and the client's needs, this proposed fence
34 option was developed. He stated that the house on the property is set back a great deal more than
35 other homes in the neighborhood, and separating the front and back yard at the side of the property
36 greatly decreases the homeowner's usability of the property. He added that the road is difficult to
37 see from the front of the house, and this created a concern for safety that was determined to be best
38 addressed by adding an access gate to the front of the property. The design aesthetic of the gate
39 was intended to tie into the architecture of the home.
40

41 Commissioner Parkhill asked if there were other similar properties where the City has granted a
42 variance from the 42-inch height front yard fence requirement.
43

44 Vice Chair Flannigan responded that the Commission did not like to look back at other applications
45 as much as consider each application on its own merit and apply the ordinances appropriately.
46

1 Commissioner Merriam added that in her previous experience serving on the Commission, there
2 were a number of fence height variances that the Commission recommended approval of due to
3 the properties' proximity to a busy road.

4
5 Commissioner Parkhill stated that the gate did not create issue for him because he views it as an
6 aesthetic choice for the homeowner. He agreed with the concerns of being able to see through
7 the fence and with the material change of chain link to steel fencing. He further stated that he
8 would agree to recommending a variance for the additional height of the front fence if the applicant
9 had a good reason.

10
11 Commissioner Plantan stated that a gate, especially one that is 100% opaque, at the end of the
12 driveway was not appropriate or fitting to the neighborhood. She was confident that the design
13 team working with the applicant could find another option that meets the homeowners needs and
14 follows the City ordinances. She did not believe that this application warrants approval of a
15 variance.

16
17 Commissioner Iverson agreed with many of the comments of the other Commissioners. She did
18 not feel fencing on the property should require a variance. She agreed with Commissioner Plantan
19 that the design team is talented enough to find another way to meet the needs of the homeowner
20 and follow the code. She questioned why the design team did not consider the need of a fence for
21 the pool earlier into the project. She stated that there are options for a less opaque gate available
22 that would continue to fit the design aesthetic of the home as well as the neighborhood. She stated
23 that the Comprehensive Plan focuses on keeping the character of the neighborhoods intact, and
24 she is not for approval of the variance.

25
26 Vice Chair Flannigan stated that variances should be used sparingly. He would recommend denial
27 on all components.

28
29 Commissioner Iverson asked the applicant, Mr. Urness, if he would be interested in taking the
30 feedback from the meeting and returning at a later date with an updated application.

31
32 Mr. Urness stated that he would be open to this option.

33
34 There being no further questions for staff or the Applicant, Vice Chair Flannigan asked for a
35 motion on the application.

36
37 Commissioner Iverson made a motion, seconded by Commissioner Plantan, to table action on the
38 application to allow the applicant to submit a revised plan and application to be considered at the
39 next Planning Commission meeting on February 4, 2019. The motion carried unanimously.

40
41 The Applicant asked for a time line as to when the revised application would need to be submitted
42 to the City to be on the next Planning Commission agenda.

43
44 Mr. Thomson responded that the revised application would need to be received by January 25,
45 2019.

46

1
2 **AGENDA ITEM 3. Consent Agenda (continued)**
3

4 **a.) Approval of December 17, 2018 Meeting Minutes**

5 **b.) Adoption of Report and Recommendation for Approval of Preliminary and Final**
6 **Plat Subdivision for Akeny Addition at 353 Ferndale Rd S**
7

8 Vice Chair Flannigan asked for a motion on the consent agenda.
9

10 Commissioner Iverson made a motion, seconded by Commissioner Plantan, to approve the
11 Consent Agenda as presented. Motion carried: 3-ayes (Flannigan, Iverson, Plantan) and 2-abstain
12 (Merriam and Parkhill).
13

14
15 **AGENDA ITEM 6. Other Items:**
16

17 **a.) December 18th City Council Meeting Report – Commissioner Plantan**
18

19 Commissioner Plantan provided an update from the December 18th City Council meeting. The
20 Heritage Preservation board presented the Centennial house award. The Mayor presented the Best
21 Historic Restoration house award. Police Chief introduced newly promoted Sergeant Dustin
22 Edberg to the Council. The Council did not approve a request to construct a public access street
23 for 445 Bovey that was requested by the owner. The Council did not approve the preliminary and
24 final plat at 153 Peavey Lane as recommended by the Planning Commission. The Council
25 appointed new Planning Commission members, Park and Trail Board members, Heritage
26 Preservation members, and Housing and Redevelopment Authority members. The next City
27 Council meeting is scheduled for January 8, 2019.
28

29 **b.) Review of Development Activities**
30

31 Director of Planning and Building Jeff Thomson stated there are two pending development
32 applications. There is a redevelopment application for a vacant gas station on Wayzata Blvd to be
33 redeveloped into a retail bank. This application will likely come forward in February. The second
34 item that will come forward in February is a request from Penny's coffee. They are looking at a
35 new site on Lake Street in the CrossCreek building and are in need of parking approvals due to the
36 increased use.
37

38 **~~c.) Election of Chair and Vice Chair~~**
39

40 This item was removed from the agenda upon adoption.
41

42 **d.) Next Meeting**
43

44 Vice Chair Flannigan stated the next meeting was scheduled for February 4, 2019 at 6:30 p.m.
45

1 Commissioner Iverson asked if Mr. Thomson had a timeline for when the approved installation
2 for Verizon of veneer on the Edina building was going to be completed.

3
4 Mr. Thomson responded that those responsible were contacted recently and an explanation was
5 given that the panels had been ordered and installation would be completed shortly. He
6 commented that the recent holidays may have delayed the installation slightly, but he had been
7 assured the project will be completed soon.

8
9 **AGENDA ITEM 7. Adjournment.**

10
11 There being no further business on the agenda, Vice Chair Flannigan asked for a motion to adjourn.

12
13 Commissioner Plantan made a motion, seconded by Commissioner Iverson, to adjourn the
14 Planning Commission meeting. The motion carried unanimously.

15
16 The Planning Commission meeting was adjourned at 7:36 p.m.

17
18 Respectfully submitted,

19 Jenny Groess

20 *TimeSaver Off Site Secretarial, Inc.*