

**SPECIAL PLANNING COMMISSION  
CITY HALL COUNCIL CHAMBERS  
APRIL 8, 2013  
6:30 P.M.**

**AGENDA**

- I. CALL TO ORDER
- II. CONSENT AGENDA
  - A. Minutes (page 1)
- III. NEW BUSINESS
  - A. Variance Request – Bill & Hancy Fuchs (page 4)
- IV. OLD BUSINESS
- V. INFORMATIONAL
  - A. Next Meeting – Monday, May 6, 2013 at 6:30 p.m.
  - B. Variance Information From LMC (page 19)
- VI. ADJOURN

**Please contact Renee Eckerly at 320-243-3714 ext. 227 or at [renee@paynesvillemn.com](mailto:renee@paynesvillemn.com) if you can't attend the meeting.**

**Members: Dan Roberts, Darlene Loven, Ron Mehr, Bob McDaniel, and Donovan Mayer. Advisory Member: Renee Eckerly**

This agenda has been prepared to provide information regarding an upcoming meeting of the Paynesville Planning Commission. This document does not claim to be complete and is subject to change.

**BARRIER FREE:** All Paynesville Planning Commission meetings are accessible to the handicapped. Attempts will be made to accommodate any other individual need for special services. Please contact City Hall (320) 243-3714 early, so necessary arrangements can be made.

## REQUEST FOR COMMITTEE/COUNCIL ACTION

**COMMITTEE/COUNCIL NAME: Planning Commission**

Committee/Council Meeting Date: April 8, 2013

Agenda Section: Consent

Originating Department: Administration

Item Number: II - A

**ITEM DESCRIPTION: Minutes**

Prepared by: Staff

**COMMENTS:**

Please review the minutes from the April 1, 2013 Planning Commission meeting.

**ADMINISTRATOR COMMENTS:**

**COMMITTEE/COUNCIL ACTION:**

Motion to approve the minutes from the April 1, 2013 Planning Commission meeting.

**MINUTES  
PLANNING COMMISSION**

**APRIL 1, 2013**

Chairman Dan Roberts called the meeting to order at 6:30 p.m. Members present were Darlene Loven, Donovan Mayer, and Ron Mehr. Bob McDaniel was absent. Also present were Renee Eckerly, City Administrator; Ashley Alsum, Cable Coordinator; Brian Savage, Valley Industries; and Corey Gerads, Paynesville Arch, LLC.

**Motion was made by Mayer to approve the minutes of the March 4, 2013 Planning Commission Meeting. Seconded by Loven and unanimously carried.**

**LOT SPLIT – PAY DEL CO - VALLEY INDUSTRIES BUILDING**

A Lot Split Application submitted by Pay Del Co for the purpose of splitting Lot 1, Block 1, River Park Estates into two lots zoned I1 Light Industrial was presented. Eckerly reviewed the lot split layout and Savage commented on the lots. Eckerly informed the Commission that Gary Utsch, Building Inspector may have a way for the cold storage structure for Spanier to be build without the bathroom requirement. Eckerly has contacted Spanier regarding this.

Attorney Spooner's email was reviewed. The Commission may or may not want to include conditions on the proposed lot split. A Report & Recommendation Of The Planning Commission On Lot Split Application was reviewed for consideration; if conditions are necessary, they will need to be added to the document. The Commission decided that additional wording would duplicate the zoning ordinance. Eckerly informed Savage of the Council meeting date.

**VARIANCE REQUEST – PAYNESVILLE ARCH, LLC**

A Variance Application submitted by Paynesville Arch, LLC was presented. Paynesville Arch, LLC plans construct a sign and detached shed/trash enclosure. They wish to erect a sign up to 60', but it could be less, but not any more than 60'. They will meet the 5' sign set back, but not the height restriction of 35'. They also wish to erect a detached shed/trash enclosure, but will not meet the 20' rear set back as they will only be 5' from the property line; therefore, needing a 15' variance. Also the structure will not meet the 10' side set back as they will only be 5'4" so they will need a 4'6" variance. Eckerly reviewed the layout. Gerads explained the trash enclosure and shed. The Commission discussed the utility easement issue with Gerads. Gerads is willing to write a letter regarding reconstructing the structure if there was necessary utility work to be done in the future.

Gerads explained the sign request is a maximum of 60'. McDonalds has a sign company that comes out and does sight line tests. McDonalds also has a structural engineer that will address wind shear. The sign, including the footings, will meet the 5' setback. The Commission discussed the heights of other signs in the City. It was noted that the height is capped at 60' because of the Airport Zoning Ordinance.

The Commission reviewed Attorney Spooner's email as the Commission may or may not want to include further conditions on the sign. A Report & Recommendation Of The Planning Commission

On Application For Variance was reviewed for the Commission's consideration; if conditions are necessary, they will need to be added to the document.

In the preconstruction meeting it was discussed that a statement be added to the Variance that addresses that the City will allow building within the City's easement, but if work must be done within the easement and damage is incurred; the costs and expenses for such would be consumed by Paynesville Arch, LLC. This is being reviewed by Attorney Spooner.

**Motion was made by Loven to approve the Report & Recommendation Of The Planning Commission On Application For Variance. Seconded by Mayer and unanimously carried.**

### **OPPORTUNITY PARK 2<sup>ND</sup> ADDITION – CONCEPT PLAN**

A Preliminary Plat Application submitted by the City of Paynesville to plat Outlot A of Opportunity Park into 5 lots zoned C-2 Hwy Commercial was presented. Eckerly reported that no changes have been made from the Concept Plan, just more detail added.

**Motion was made by Mayer to set the Opportunity Park 2<sup>nd</sup> Addition – Preliminary Plat Public Hearing for Monday, May 6, 2013 at 6:35 p.m. Seconded by Mehr and unanimously carried.**

### **NEXT MEETING**

**Motion was made by Loven to set a Special Planning Commission meeting for Monday, April 8, 2013 at 6:30 p.m. for the purpose of considering a Variance Request submitted by Bill & Hancy Fuchs. Seconded by Mayer and unanimously carried.**

### **BUILDING PERMIT REPORTS**

The Commission reviewed the reports that were distributed at the meeting.

There being no further business the meeting was adjourned at 7:00 p.m.

## REQUEST FOR COMMITTEE/COUNCIL ACTION

**COMMITTEE/COUNCIL NAME: Planning Commission**

Committee/Council Meeting Date: April 8, 2013

Agenda Section: New Business

Originating Department: Administration

Item Number: III - A

**ITEM DESCRIPTION: Variance Request – Bill & Hancy Fuchs**

Prepared by: Staff

### **COMMENTS:**

Please review the attached Variance Application submitted by Bill & Hancy Fuchs of 372 Genesee St. They wish to add on to their existing non-conforming structure. Their current detached shed does not meet the side or rear setbacks as the shed is 1.5' off the rear property line and is over the side lot line by 2". They are requesting a 3.5' rear setback variance and a 5' side setback variance. The Building Inspector has reviewed the proposal and will require a fire wall, footings for the new addition, and the existing overhang nearest the side lot line be removed. Mr. Fuchs will meet the height restriction of 16' and will not exceed their lot coverage.

The Report & Recommendation Of The Planning Commission On Application For Variance is also attached for your consideration.

### **ADMINISTRATOR COMMENTS:**

### **COMMITTEE/COUNCIL ACTION:**

Motion to approve the Report & Recommendation Of The Planning Commission On Application For Variance.

CITY OF PAYNESVILLE  
VARIANCE APPLICATION

221 Washburne Ave. ~ Paynesville, MN 56362  
Phone: 320-243-3714 ~ Fax: 320-243-3713

List All Property Owners: WILLIAM FUCHS - HANCY FUCHS

Contact Person: BILL FUCHS

Address: 372 GENESEE ST.

Telephone No.: 320-237-3510 Parcel No.: \_\_\_\_\_

Legal Description: ALL OF LOT 12 - NORTH 1/2 OF LOT 11 - SOUTH 1/2 OF 13  
Lot: \_\_\_\_\_ Block: 7 Addition: GILBERT'S SECOND ADDITION

ZONE: R1

**Application Fee: \$250.00**  
(non-refundable) These are the fees incurred per document: Advertising \$48.00 (average), Recording \$46.00 (actual), Postage \$33.00 (average), Legal \$123.00 (average), totaling \$250.00.

EXISTING USE OF PROPERTY: Residential

IS THE VARIANCE NEEDED TO REPLACE AN EXISTING STRUCTURE OR ADD AN ADDITIONAL STRUCTURE? Yes

IF REPLACING, IS THE EXISTING STRUCTURE NON-CONFORMING? Yes

DESCRIPTION OF REQUEST: (use separate sheet if needed)

DRAWING OF PROPOSED VARIANCE: (use separate sheet)

Application Must Include:

- A site plan showing existing lot lines and dimensions as well as lot area, all easements, all public streets, and private right of ways bordering and adjacent to the site, the use and location of all adjacent property.
- The specific feature or features of the proposed use, construction, or development that requires a variance.
- Specific provisions of Ordinance from which a variance is sought and the precise variance there from being sought.
- Statement of characteristics of the property that prevent compliance with the provisions of the Ordinance.
- ~~Legal description from abstract~~
- Any written or graphic data required by the City Administrator.

[Signature]  
[Signature]

All Property Owners Must Sign This Application

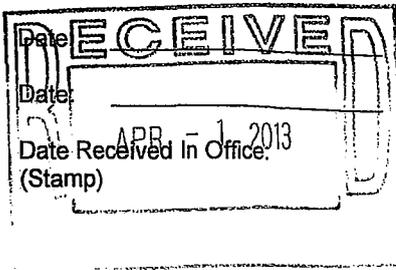
3-28-13  
3-28-13  
Date

For office use only:

Application Fee: \$250.00 (non-refundable)  
For office use only: Cash \_\_\_\_\_ Check No. 8865 Date Paid 4.1.13

Present To Planning Commission Date: 4.8.13  
Board of Adjustment Public Hearing Date: 5.8.13 pm  
Board of Adjustment Set Public Hearing Date: 4.10.13  
Board of Adjustment Makes Determination Date: \_\_\_\_\_

PLANNING COMMISSION ACTION:  
Recommended to Board of Adjustment Approved Denied  
BOARD OF ADJUSTMENT ACTION:  
Approved Denied



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To: City of Paynesville

From: Bill and Hancy Fuchs

Description of request:

We would like to add on to the front of our existing detached garage. We intend to remove the existing 3' by 16' lean-to and build out (east) 20' and maintain the original width of 18' (north and south). The original structure is non-conforming as it is 3' off the rear (west) property line and 5" off the side (north) property line. <sup>1.5'</sup> <sup>-2"</sup>

We are requesting a variance of  $3\frac{1}{2}$  feet of rear (west) setback and 5 feet of (north) side set back. The building meets all other setback and height requirements.

Thank you for your time and consideration,

Bill and Hancy Fuchs

\* All setbacks are from the overhang of the north overhang will be removed.



"NEW" SPACE

17' x 18'

BILL FUCHS

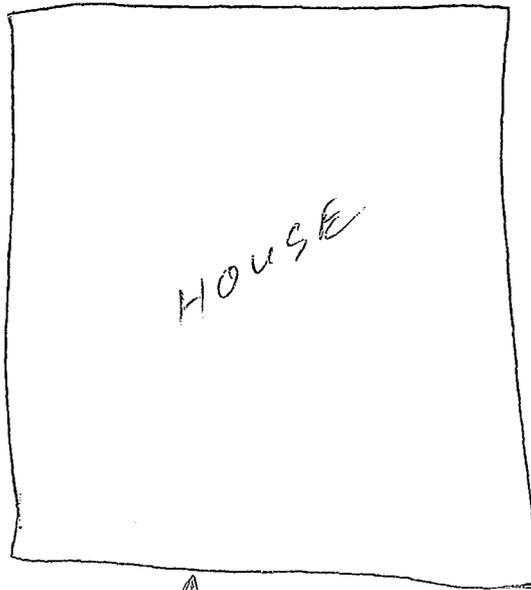
372 GENESEE

P-VILLE MN.

56362

Gene See  
SIDE WALK

98'



↑  
33'

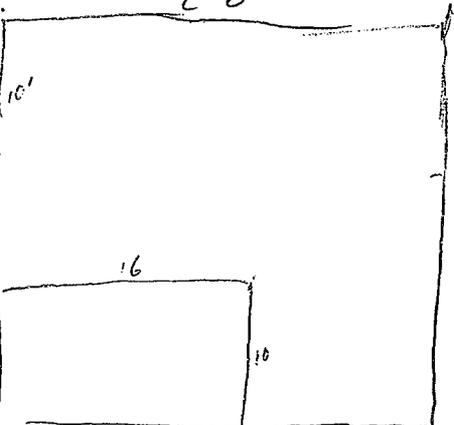
TOOK TO  
CITY HALL  
3-19-13  
4.1.13  
~~4.1.13~~

18'

New  
Addition

28'

→ 55'



2" existing structure + 2" off new prop. line - will not exceed 16'



CITY OF PAYNEVILLE

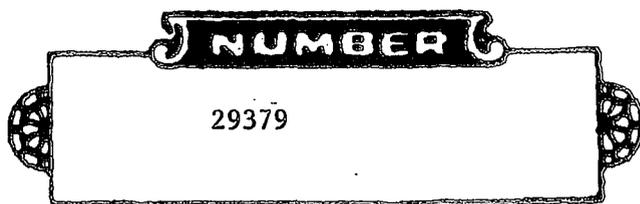
REC#: 00028380 4/01/2013 3:52 PM  
OPER: FRONT TERM: 001  
REF#: 8865

TRAN: 10.0100 VARIANCE FEE  
MM FUCHS - VARIANCE  
VARIANCE FEES 250.00CR

TENDERED: 250.00 CHECK  
APPLIED: 250.00

CHANGE: 0.00

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# *Abstract of Title to:*

Lot 12, N $\frac{1}{2}$  Lot 11, S $\frac{1}{2}$  Lot 13, Blk. 7, Gilbert's 2nd Addn.

## IMPORTANT INFORMATION ABOUT YOUR ABSTRACT OF TITLE

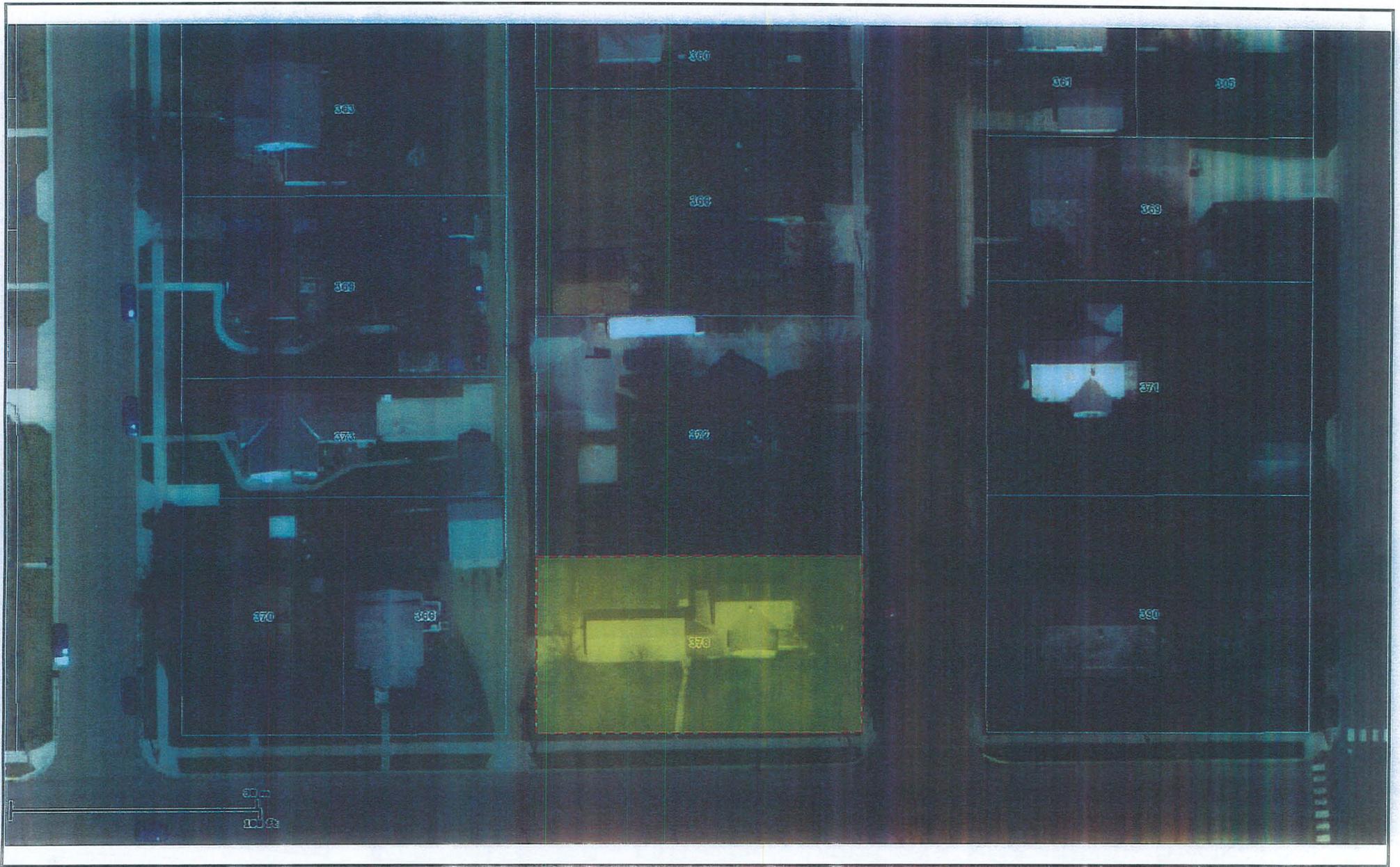
An Abstract of Title is a summary of the history of ownership of a parcel of land. It also shows the purchases and sales, mortgages, judgments, and other liens or rights against the property recorded with the county.

An Abstract may be a necessary part of the sale, financing or refinancing of your land. You can replace a lost or damaged abstract but it will cost lots of money. The average cost of replacing an abstract ranges from \$400.00 to \$1,000.00 in the Twin Cities area and \$150.00 to \$500.00 in other parts of Minnesota.

You as the owners of the property are entitled by law to possession of the abstract. You should store it with the same care you use for other valuable documents. If an abstract company or other party has your abstract, they must offer to return it to you before charging any fees for storage.

^





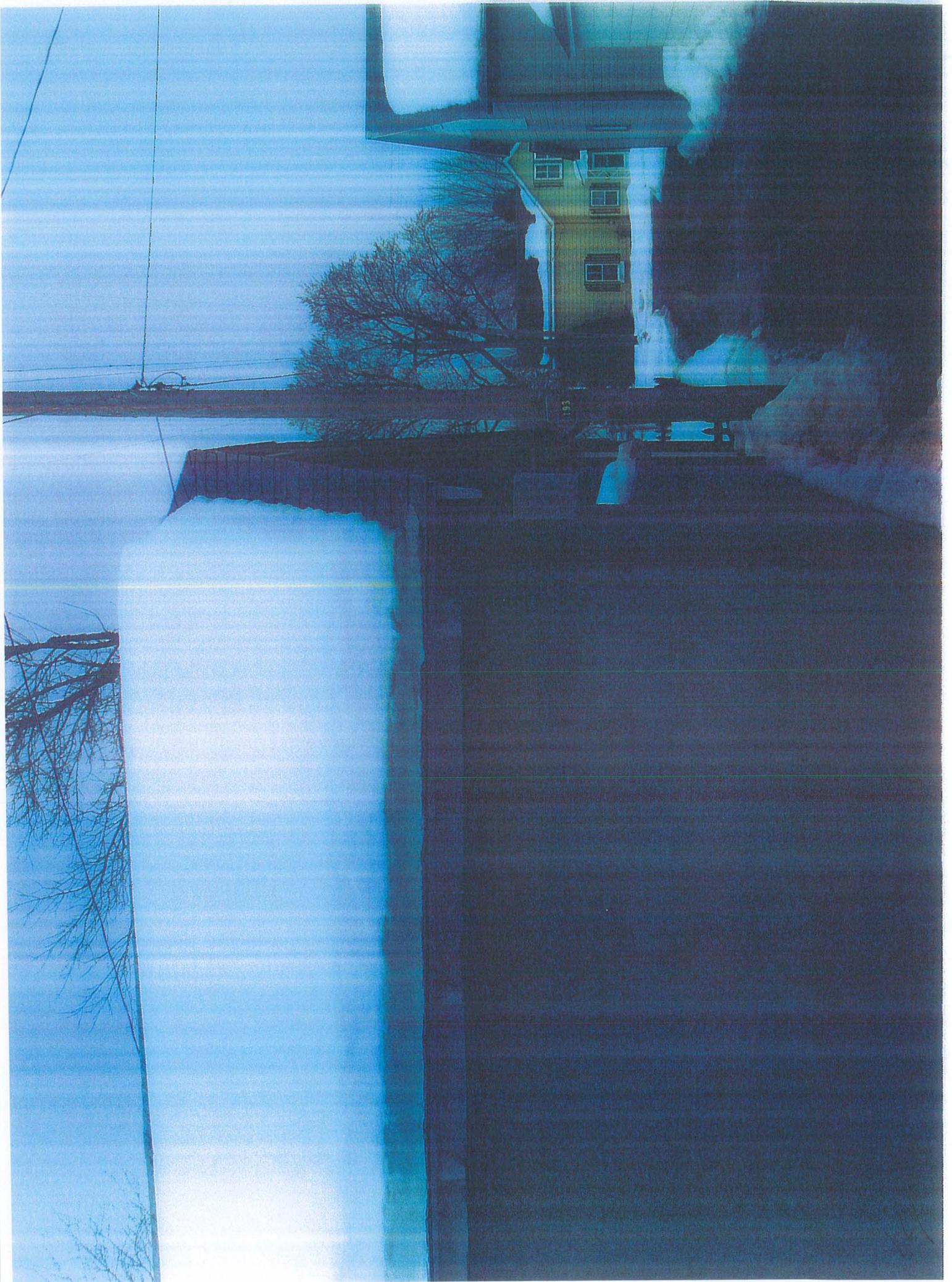
\* property - 372 Genesee St.

Friday, Mar. 29, 2013 at 11:18 AM

These data are provided on an 'AS-IS' basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.







**REPORT & RECOMMENDATION OF PLANNING COMMISSION  
ON APPLICATION FOR VARIANCE**

WHEREAS, the City Administrator has received from Bill Fuchs and Hancy Fuchs, a Variance Application requesting a Variance from the side and rear lot setback requirements of Chapter 11, Section 11.30, Subd. 5A, as follows:

The applicant seeks a Variance from the minimum side setback of 5' so as to allow a structure to be built up to, but no closer than, 2" from the side property line, and a Variance from the 5' rear setback requirement so as to allow that structure to be 1'6" from the rear property line.

The Planning Commission noted that this Variance application is in connection with an addition to an existing non-conforming building and that the granting of this Variance will extend the length of the building, thereby expanding the current pre-existing non-conforming use, which will be generally consistent with the current conditions.

It is further noted that in order to achieve the side lot setback of 2" the building inspector will require the removal of a portion of the eave so that the structure is not overhanging the property line. It was further noted that on the side setback issue that this property and the neighboring property both have pre-existing non-conforming structures very close to the property line, both of which fail to meet the 5' side setback requirement, and the foundations of which are approximately 2'2" from one another; and

WHEREAS, Bill Fuchs and Hancy Fuchs are the owners of that certain parcel of real estate located at 372 Genesee Street, Paynesville, MN 56362; and

WHEREAS, this parcel is more particularly identified as Tax Parcel No. 70.38891.0000 and is legally described as follows, to-wit:

*All of Lot 12; the North One-half of Lot 11, and the south One-half of Lot 13, Gilbert's Second Addition, Stearns County, Minnesota; and*

WHEREAS, the property in question is zoned "R-1" – Residential District; and

WHEREAS, City Code Chapter 11, Section 11.30, Subd. 5(A), requires a side yard setback of no less than 5'; and

WHEREAS, City Code Chapter 11, Section 11.10, Subd. 3(A), requires that all accessory building in residential districts have a rear lot setback of no less than 5'; and

WHEREAS, the structure proposed would not meet the side or rear setback requirements and would be set back 1'6" of the rear property line and 2" off the side property line, thus requiring a Variance of 3'6" from the minimum rear setback requirement of Chapter 11, and a 4'10" Variance from the minimum side yard setback requirement of Chapter 11; and

WHEREAS, the Planning Commission believes the owner's use of the property is reasonable and otherwise complies with the requirements of

Chapter 11 of the City Code, with the exception of the side and rear setback Variances applied for; and

WHEREAS, the Variance is sought to allow the expansion of a current pre-existing non-conforming use and is an older neighborhood where such pre-existing non-conforming uses are not unique or out of character with the neighborhood; and

WHEREAS, the Planning Commission finds that the Variance as requested, if granted, will not alter the essential character of the locality; and

WHEREAS, the Planning Commission finds that the proposed use of the property is in harmony with the general purpose and intent of the zoning ordinance, and the Variance as sought by the property owner will not change the fact that the property's use is in harmony with the general purpose and intent of the ordinance; and

WHEREAS, the Planning Commission is satisfied that the strict enforcement of the requirements of the zoning ordinance with regard to the rear and side setback would cause the owner practical difficulties with the use of the property;

NOW, THEREFORE, the Planning Commission recommends granting the Variance as requested, contingent only upon complying with the building inspector's requirement that the existing structure be modified so as to eliminate the encroachment on the adjoining land owner's property along

the side yard area, and that the structure to be added to the pre-existing non-conforming structure be built so as to have a minimum of 2" setback from the side yard line and a 1'6" setback from the rear property line.

PAYNESVILLE PLANNING COMMISSION

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Daniel Roberts, Chairperson



## VARIANCES

Frequently Asked Questions  
(Reflects 2011 law change)

### **What is a variance?**

A variance is a way that a city may allow an exception to part of a zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance allows the landowner to break a dimensional zoning rule that would otherwise apply.

### **Who grants a variance?**

Minnesota law provides that requests for variances are heard by a body called the board of adjustment and appeals; in many smaller communities, the planning commission or even the city council may serve that function. A variance decision is generally appealable to the city council. For more information, see Minn. Stat. § 462.357.

### **When can a variance be granted?**

A variance may be granted if enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner “practical difficulties.” For the variance to be granted, the applicant must satisfy the statutory three-factor test for practical difficulties. If the applicant does not meet all three factors of the statutory test, then a variance should not be granted. Also, variances are only permitted when they are in harmony with the general purposes and intent of the ordinance, and when the terms of the variance are consistent with the comprehensive plan. For more information, see Minn. Stat. § 462.357.

### **What kind of authority is the city exercising?**

A city exercises so-called “quasi-judicial” authority when considering a variance application. This means that the city’s role is limited to applying the legal standard of practical difficulties to the facts presented by the application. The city acts like a judge in evaluating the facts against the legal standard. If the applicant meets the standard, then the variance may be granted. In contrast, when the city writes the rules in zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

### **What is practical difficulties?**

Practical difficulties is a legal standard set forth in law that cities must apply the when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied. For more information, see Minn. Stat. § 462.357.

This material is provided as general information and is not a substitute for legal advice.  
Consult your attorney for advice concerning specific situations.

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**What are the practical difficulties factors?**

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line, or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

The second factor is that the landowner's problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land, and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

**Are there are other factors a city should consider?**

Yes. State statute provides variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance, and when the terms of the variance are consistent with the comprehensive plan. So, in addition to the three-factor practical difficulties test, a city evaluating a variance application should make findings as to (1) whether or not the variance is in harmony with the purposes and intent of the ordinance, and (2) whether or not the variance is consistent with the comprehensive plan.

**What about economic considerations?**

Sometimes landowners insist that they deserve a variance because they have already incurred substantial costs or argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties. Rather, practical difficulties exists only when the three statutory factors are met.

**What about undue hardship?**

"Undue hardship" was the name of the three-factor test prior to a May 2011 change of law. Effective May 6, 2011 Minnesota Laws, Chapter 19, amended Minn. Stat. § 462.357, subd. 6 to restore municipal variance authority in response to *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721 (Minn. June 24, 2010). In *Krummenacher*, the Minnesota Supreme Court interpreted the statutory definition of "undue hardship" and held that the "reasonable use" prong of the "undue hardship" test was not whether the proposed use is reasonable, but rather whether there is a reasonable use in the absence of the variance.

**What did the 2011 law change?**

The 2011 law changed the first factor back to the “reasonable manner” understanding that had been used by some lower courts prior to the *Krummenacher* ruling. The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character. The 2011 law also provides that: “Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan.”

**Can a city grant a use variance?**

Sometimes a landowner will seek a variance to allow a particular use of their property that would otherwise not be permissible under the zoning ordinance. Such variances are often termed “use variances” as opposed to “area variances” from dimensional standards. Use variances are not generally allowed in Minnesota—state law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located. For more information, see Minn. Stat. § 462.357.

**Is a public hearing required?**

Minnesota statute does not clearly require a public hearing before a variance is granted or denied, but many practitioners and attorneys agree that the best practice is to hold public hearings on all variance requests. A public hearing allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

**What is the role of neighborhood opinion?**

Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While city officials may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the statutory practical difficulties factors. Residents can often provide important facts that may help the city in addressing these factors, but unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, the decision could be overturned by a court.

**What is the role of past practice?**

While past practice may be instructive, it cannot replace the need for analysis of all three of the practical difficulties factors for each and every variance request. In evaluating a variance request, cities are not generally bound by decisions made for prior variance requests. If a city finds that it is issuing many variances to a particular zoning standard, the city should consider the possibility of amending the ordinance to change the standard.

**When should a variance decision be made?**

A written request for a variance is subject to Minnesota’s 60-day rule and must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is deemed an approval. For more information, see Minn. Stat. § 15.99.

**How should a city document a variance decision?**

Whatever the decision, a city should create a record that will support it. In the case of a variance denial, the 60-day rule requires that the reasons for the denial be put in writing. Even when the variance is approved, the city should consider a written statement explaining the decision. The written statement should explain the variance decision, address each of the three practical difficulties factors and list the relevant facts and conclusions as to each factor.

**Can meeting minutes adequately document a variance decision?**

If a variance is denied, the 60-day rule requires a written statement of the reasons for denial be provided to the applicant within the statutory time period. While meeting minutes may document the reasons for denial, usually a separate written statement will need to be provided to the applicant in order to meet the statutory deadline. A separate written statement is advisable even for a variance approval, although meeting minutes could serve as adequate documentation, provided they include detail about the decision factors and not just a record indicating an approval motion passed.

**Can a city attach conditions to a variance?**

By law, a city may impose a condition when it grants a variance so long as the condition is directly related and bears a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed an otherwise applicable height limit, any conditions attached should presumably relate to mitigating the affect of excess height. For more information, see Minn. Stat. § 462.357.

**What happens to the variance once granted?**

A variance once issued is a property right that “runs with the land” so it attaches to and benefits the land and is not limited to a particular landowner. A variance is typically filed with the county recorder. Even if the property is sold to another person, the variance applies.

Jed Burkett 2011/06