



# PLANNING AND ZONING COMMISSION MEETING MINUTES

Tuesday, November 14, 2023 at 6:00 PM

Baxter City Hall, 13190 Memorywood Drive, Baxter, MN

*"A Growing Community"*

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## CALL TO ORDER

The regular meeting of the Baxter Planning and Zoning Commission was called to order at 6:00 pm by Chair Kinzel.

## ROLL CALL

**MEMBERS PRESENT:** Chair Bob Kinzel, Commissioners Chuck Hiltner, Gwen Carleton, Howie Oswald and Council Liaison/Mayor Darrel Olson

**MEMBERS ABSENT:** Commissioners Steve Lund

**STAFF PRESENT:** CD Director Josh Doty and Planner Matthew Gindele

**OTHERS:** Todd Wicklund, James Kramvik, Ben Guthje, Chris McGuire, Scott Gutierrez, Melissa Goodsell and Brandon Dykhuizen

## MINUTES

1. Accept the October 10, 2023 Planning and Zoning Commission meeting minutes.

**MOTION** by Commissioner Carleton, seconded by Commissioner Oswald to approve the Planning and Zoning Minutes from the October 10, 2023. Motion carried unanimously.

Chair Kinzel stated that this Commission is a recommending body and that final approval/denial is taken with the City Council on November 21, 2023.

## COMMENTS AND QUESTIONS

Chair Kinzel asked if all items were approved from the last meeting, CD Director Doty indicated that all items were approved by City Council.

## OLD BUSINESS

## NEW BUSINESS

2. **PUBLIC HEARING.** Conditional use permit for a drive-through and a variance for the drive-through stacking for property located at 15222 Dellwood Drive (city file 23-35)

Chair Kinzel asked for the staff report. Planner Gindele stated the applicant is requesting a conditional use permit for a drive-through and a variance for the drive-through stacking for property located at 15222 Dellwood Drive. The subject property is currently developed with an existing Culver's restaurant which has an existing drive-through. The applicant is proposing to add one

additional drive-through lane to have the flow of traffic through the drive-through. The applicant is requesting approval of the following items to allow the additional drive-through lane:

- Conditional Use Permit (CUP) to expand an existing drive-through to have two lanes.
- Variance for drive-through stacking spaces

Planner Gindele reviewed the site map with the Commission. He reviewed the demo plan, parking layout, the proposed new drive through and the parking standards with the Commission. He reviewed the screening and stacking requirements as well; the stacking requires a variance.

Planner Gindele reviewed the drive-through conditional use standards and offered findings for each standard as follows:

- The business shall be located on a site with direct access to a minor arterial street, collector, or service road.

*Staff finds that the proposed drive-through is located on Dellwood Drive which is a collector service road.*

- Drive-Through Lanes: Drive-through or drive-in lanes are not allowed between the building and a lot line that faces a public street. This does not pertain to driveways.

*Staff finds that the existing and proposed site layout does not place the drive-through lanes between the building and street. The drive-through lanes are located in a rear and side yard that does not face a public street*

- Drive-through facilities, including, but not limited to, the service windows and stacking spaces, shall be separated from residentially zoned or guided property by an arterial or collector street or shall be set back at least two hundred feet (200') from residentially zoned or guided property.

*Staff finds that there is not a residentially zoned or guided property within 200 feet of the subject property.*

- The public address or order system shall not be audible from any adjacent residentially zoned or guided property. Electronic speaker devices, if used, shall not be audible beyond the property being served and shall not be operated between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M., unless extended by the city council as part of the conditional use permit.

*Staff has added a condition to the resolution for compliance with this standard.*

- Adequate stacking distance shall be provided, which does not interfere with other driving areas, parking spaces, or sidewalks. Stacking spaces shall not interfere with parking spaces or traffic circulation.

*Staff finds that the stacking area proposed in the site plan does not interfere with driving areas, parking spaces, or sidewalks but that the stacking could back up during peak times and interfere with internal traffic circulation. A condition of approval has been added to the draft resolution requiring the removal of parking stalls and/or the provision of additional curbed islands if there is a documented traffic circulation issue due to the drive-through.*

- Businesses with two (2) or more drive-through lanes shall provide stacking space for at least six (6) vehicles per lane, as measured from and including the last pick up station, window, or the like.

*The proposed drive-through has two lanes. One lane has 10 stacking stalls and the other has 5 stacking stalls. A variance is discussed later in this report to allow one of the stacking lanes to have only 5 stacking spaces.*

- The applicant shall demonstrate that such use will not significantly lower the existing level of service on streets and intersections. The city may require a traffic study to be prepared.

*Staff finds that the proposed site alterations do not affect the existing traffic patterns and that the level of service on the existing street network will not be significantly reduced with the proposed alterations because the restaurant and the drive-through are existing uses and the restaurant is not being expanded.*

- Screening shall be provided of automobile headlights in the drive-through lane to adjacent properties. Such screening shall be at least three feet (3') in height and fully opaque, consisting of a wall, fence, dense vegetation, berm, or grade change.

*Staff finds that the existing coniferous trees on the north side of the drive-through provide the required screening. A condition of approval has been added to the draft resolution requiring the trees on the north property line to be replaced with coniferous trees meeting minimum size standards if they ever die or are damaged to the point that they no longer function as screening to the property to the north.*

- A bypass lane shall be provided for each drive-through use, allowing cars to leave the drive-through lane from the stacking area.

*A bypass lane has been provided.*

Planner Gindele stated that staff also reviewed the request against the general CUP standards of the zoning ordinance and finds that those standards have been met as identified in the staff report.

Planner Gindele stated that the applicant is also requesting a variance to the required stacking for the drive-through. The ordinance requires a minimum of 6 stacking stalls per drive-through lane. The proposed site plan includes two drive-through lanes, one having 10 stacking stalls and one having 5 stacking stalls, for a total of 15 stacking stalls. The lane with 5 stacking stalls requires a variance. Staff finds that the total number of stacking stalls proposed is still greater than the minimum number required (12) for a drive-through with two lanes.

Planner Gindele stated that staff reviewed the variance request against the ordinance standards for reviewing variances and finds that the standards have been met as identified in the staff report.

Staff recommends approval of the conditional use permit for a drive-through use and variance for the drive-through stacking requirement for property located at 15222 Dellwood Drive, subject to the findings and conditions in the attached resolution.

Chair Kinzel asked if there were any questions for staff. Commissioner Hiltner asked about the jog in the layout of the new design and if there was a reason for it. Planner Gindele stated that there was a reason for the proposed layout. There are width standards in the ordinance. The drive through lane

is required to be 10 feet wide minimum and the escape lane a minimum of 14 feet wide. For one way traffic the code requires 16 feet, the escape lane widens out after the pinch point to meet the code. The pinch point is due to the corner of the building and the trash enclosure location and the fact that there are easements for the utilities in the ground on the north side of the trash enclosure. There was discussion with the applicant about moving the trash enclosure, however, because of the easement there is no place to move the trash enclosure.

Commissioner Carleton asked if there were two variances or just one. Planner Gindel stated there is just one variance for the stacking. He indicated that staff worked with the applicant to meet the by-pass lane code requirements.

Chair Kinzel opened the public hearing.

Chris McGuire, McCon Building Corporation 1209 Joseph St. Dodgeville, WI approached the podium. He thanked staff for all their help and guidance on this project. He stated that they have worked with Culver's in several states and are licensed in 28 states. He stated that the owner of the store is here, should the Commission have any questions for him. He noted that they understood the conditions and they have no concerns.

Chair Kinzel commented that they must be busy if two lanes are required. Council Liaison/Mayor Olson stated that the theme of the company is "fresh made", if you have two orders coming in at a time are you going to have a hard time on the top end. Mr. McGuire stated that during the pandemic when you could only go through the drive through, businesses put in second drive through lanes. He stated that when he was in Chicago he witnessed a person that took five minutes to order their food while the cars behind them had to wait; if there would have been a second drive through lane for ordering the other vehicles wouldn't have had to wait for that car to order. Some people are ordering a smaller order versus a car with a large family in it. The second drive through lane will help traffic flow through the drive through quicker in these types of instances.

No one else was present to address this agenda item.

Chair Kinzel closed the public hearing.

**MOTION** by Commissioner Carleton, seconded by Commissioner Hiltner to approve the conditional use permit for a drive-through and a variance for the drive-through stacking for property located at 15222 Dellwood Drive as presented in the draft resolution. Motion unanimously approved.

3. **PUBLIC HEARING. Conditional Use Permit** to move a structure onto a vacant lot located on the west side of Lynwood Drive (City file 23-39)

Chair Kinzel asked for the staff report. Planner Gindel stated the applicant is requesting a conditional use permit to allow a house from outside Baxter to be moved onto a vacant lot in Baxter on Lynwood Drive.

Planner Gindel reviewed the site plan and location with the Commission. He reviewed the performance criteria to move a home into Baxter.

The applicant is proposing to move a house with an attached garage into Baxter on the subject property. The garage is currently attached to the house and the applicant states that the garage would need to be detached from the house for the move. The applicant would like to set the house

on a basement foundation and leave the garage detached on its own foundation. The two ends where the garage and house were connected would be closed up and sided with siding to match the rest of the house. The applicant plans on putting in a sliding glass patio door in the house wall that was connected to the garage and a service door and window in the garage wall that was connected to the house. The current location of the overhead garage door would be walled off and relocated to the north garage elevation in the proposed site plan. The existing structure is sided with aluminum LAP siding and has a faux stone wainscoting all the way around the structure. The plans indicate that the wainscoting would be continued around both structures after they are separated and placed on their separate foundations. The Code talks about the need for both a conditional use permit and a moving permit in order to move a structure such as this into town. The Code provides application submittal requirements and performance criteria that must be met when reviewing a conditional use permit application to move a structure into Baxter.

The Baxter building official inspected the subject structure for building code compliance and is recommending that the windows be changed out and replaced with updated windows. A condition has been added the draft approving resolution requiring that a city moving permit shall not be issued until the owner has agreed in writing to complete the necessary changes within a period of six (6) months, the city has approved the plan, the building permit fee has been paid, the building permit has been issued and a security acceptable to the city equal to the cost of said proposed work as approved by the city has been provided to the city guaranteeing completion of said changes.

Staff finds that the architecture of the structure including the shape, size and design, siding materials, roofing materials and age are all compatible with the structures in the immediate vicinity of where the structure is proposed to be placed. Staff notes that after the garage is separated from the home the two ends that were connected will need to be sided. A condition of approval has been added to the draft resolution that the siding materials used shall match the rest of the house in color and materials. The color shall account for the fade in the existing siding on the structure. If a match cannot be found that can account for the faded color in the existing siding, then the entire structure shall be resided or the siding shall all be painted so that it is a consistent color; this includes both the house and the garage.

Staff finds that with the required improvements the structure is reasonably worth 75% of the cost of the same structure if it were new.

Planner Gindele stated that staff also reviewed the request against the general CUP standards of the zoning ordinance and finds that those standards have been met as identified in the staff report.

The Utilities Commission did review the application and recommended approval of the application.

Planner Gindele reviewed the pictures of the home and garage and the site plan with the Commission and the reconfiguration of the garage. He noted the applicant wants to save as many trees as possible on the lot.

Staff recommends approval of the conditional use permit, subject to the findings and conditions in the draft resolution.

Chair Kinzel asked if there was city water and sewer on Lynwood Dr., Planner Gindele indicated that there is city water and sewer.

Chair Kinzel opened the public hearing.

Brandon Dykhuizen 8395 5<sup>th</sup> Street NE Buffalo, MN, owner of the lot and applicant approached the podium. They have had a cabin in Merrifield for 20 years and they fell in love with the area. For the past 2-3 years they have been trying to move up here, however the real estate market hasn't really allowed them to.

Chair Kinzel noted that this house is coming from Ada, Mr. Dykhuizen stated it is a 160 mile trip to Ada. Chair Kinzel asked if the house will make it in one piece that far. Mr. Dykhuizen stated that he is working with a local guy from Backus and he has moved a structure this size over 700 miles, the contractor indicated that it was not a problem.

Chair Kinzel asked if he understood the condition, he indicated that he does understand the conditions. Mr. Dykhuizen stated that staff has been great to work with throughout this process.

Commissioner Hiltner asked if he was bringing the full width down the road, 24 feet, Mr. Dykhuizen indicated that was correct. Commissioner Hiltner asked about turning onto the street, CD Director Doty indicated that staff and the movers will look at the route to Lynwood at the time of the moving permit. Commissioner Hiltner noted the footing and ceiling height and asked if the house is going to be raised up several feet. Mr. Dykhuizen indicated that the house will be elevated 2-3 feet higher to accommodate the basement. He added that there is going to be a test pit dug this Friday afternoon. Commissioner Carleton asked if there were other houses in that area with basements. Mr. Dykhuizen stated that there is, one across the street was a recently built Habitat for Humanity house and that one has a full basement.

Chair Kinzel asked if he understood the conditions. Mr. Dykhuizen stated that he has been working with staff and understands the conditions. He added that he has built homes and sold homes in the past, but this one is a personal project and it has turned into his "baby". He just bought the property a couple of months ago and has met the neighbors. CD Director Doty stated that he has worked with staff diligently on this project.

Chair Kinzel closed the public hearing.

**MOTION** by Commissioner Hiltner, seconded by Commissioner Oswald to approve the conditional use permit to move a structure onto a vacant lot located on the west side of Lynwood Drive as presented in the draft resolution. Motion unanimously approved.

4. **PUBLIC HEARING.** Variance to fence height requirements to allow a screen fence for the Brainerd Public Utilities Solar Array located at 8027 Highland Scenic Drive (city file 2023-38)

Chair Kinzel asked for the staff report. CD Director Doty stated the applicant is requesting approval of a variance to allow an 8-foot-high screen fence for the Brainerd Public Utilities Solar Array located at 8027 Highland Scenic Drive. 10-4-8 C, 1 of the Zoning Ordinance states that six feet is the maximum fence height allowed for side and rear yard areas and that four feet is the maximum fence height allowed in front yards. The applicant is requesting a variance to allow an 8-foot-high fence on the east and north sides of the solar array, which is in the side yard of the property. The fence is requested to accomplish the 90 percent opacity screening requirement that was approved by the City of Baxter as part of the Brainerd Public Utility solar array project.

CD Director Doty reviewed the site map and fence colors with the Commission.

He stated that the applicant analyzed elevations taken on the property and created cross sections from the neighboring property to the solar array. The elevation cross sections provided information to show that two feet of additional fence height is needed to meet the city's screening requirement. Staff has added a condition to the resolution that the fence include an earth tone color to blend into the natural wooded environment outside of the fence.

The variance would be in harmony with the general purposes and intent of the ordinance. The City allows 8-foot fences in industrial zoning districts with a conditional use permit. Therefore, the city recognizes that in some instances, a taller fence is needed. In this instance, the variance is solely to improve screening for the neighboring property.

Staff recommends approval of the variance for fence height for the City of Brainerd for property located at 8027 Highland Scenic Drive, subject to the conditions in the attached resolution.

Chair Kinzel asked how many acres is being fenced in, CD Director Doty stated roughly 7 acres. Chair Kinzel asked how many solar panels are going on that site. The applicant indicated approximately 4,000 solar panels. Chair Kinzel then asked what color the fence is going to be, CD Director Doty stated that they have not narrowed it down being all 4 color options are earth tone.

Commissioner Hiltner asked if the 8 feet was only going on the north and east side, staff indicated that was correct. He questioned if the 6 foot and 8 foot would all be on the berm, CD Director Doty indicated that was correct. Commissioner Hiltner asked if there was a maintenance agreement as a condition of approval. CD Director Doty indicated that there was not an agreement in place. CD Director Doty stated that this fence will require a full building permit due to the height and making sure the 90 mile an hour wind load can be met. Commissioner Hiltner asked what type of fencing it is, cedar, pine, treated wood? CD Director Doty stated he did not know what type of wood they were proposing, however it is listed in the plans.

Commissioner Carleton asked if the 8 foot fence is going to screen the neighbor's looking at it from their deck. CD Director Doty stated that is correct the neighbor has worked with staff and it will screen 3-4 feet above the neighbors deck.

Chair Kinzel opened the public hearing.

Mr. Todd Wicklund 925 125 St. Brainerd, MN and James Kramvik (Brainerd Community Development Director) 1615 Norwood St. Brainerd, MN approached the podium. Commissioner Hiltner asked what type of material is being proposed, Mr. Kramvik stated treated lumber.

Chair Kinzel asked about maintaining the fence, Mr. Kramvik asked if Baxter's code requires maintenance on a fence. CD Director Doty stated that there is not, however it is screening a use, if the fence becomes dilapidated and falls down it will need to be replaced. Once the fence is up, Mr. Kramvik stated the Commission is more than welcome to look at the fence and solar panels.

Commissioner Hiltner asked if the person in the audience wanted to speak prior to the motion; they did not.

Chair Kinzel closed the public hearing.

**MOTION** by Commissioner Oswald, seconded by Commissioner Carleton to approve the variance to fence height requirements to allow a screen fence for the Brainerd Public Utilities Solar Array located at 8027 Highland Scenic Drive as presented in the draft resolution. Motion unanimously approved.

**UPDATES**

None

**ADJOURN**

**MOTION** by Commissioner Carleton, seconded by Commissioner Oswald to adjourn the meeting at 6:55 p.m. Motion unanimously approved.

Approved by:

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Bob Kinzel  
Chair

Submitted By:

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Shanna Newman  
CD Administrative Assistant