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MEMORANDUM

TO: PLANNING COMMISSION
FROM: KYRA CHAPMAN – PLANNER
SUBJECT: REQUEST TO AMEND CONDITIONAL USE PERMIT #C2-2022 FOR THE EXISTING FENCE GATE TO REMAIN AT 500 10TH AVE. NE, AS PROPOSED BY COMMUNITY BAPTIST CHURCH.
DATE: NOVEMBER 7, 2024

Background

On July 19th, 2022, New Prague City Council formally approved Conditional Use Permit #C2-2022 to allow the expansion of a religious institution with the addition of four athletic fields, pavilion and playground at the Community Baptist Church located at 500 10th Ave NE. To approve the permit, 14 conditions were added. Most of these conditions were related to fencing, refuse, field use, lighting, and parking. The original conditions associated with C2-2022 were as follows:

1. All original conditions of the Conditional Use Permit approval from 1988 to remain.
2. Approval is subject to the site plan/preliminary grading plan by KJ Walk, Inc. dated 4/13/22 on file with the New Prague Planning Department as amended by additional conditions listed below.
3. Use of the athletic fields is not allowed concurrent with activities within the church building as the traffic and parking demand will exceed the site capacity.
4. If City Staff's sole discretion deems on-street parking by athletic field users to be excessive or problematic (defined as ingress/egress of emergency vehicles on a public roadway being affected and if reports of driveways being blocked are addressed by the police department), the applicant will be required to pay the city to install parking related signage associated with athletic field use on the subject property to restrict parking during time periods determined in the sole discretion of the city to be problematic.
5. The proposed chain link fence as shown on the site plan / preliminary grading plan is limited to 5' in height, must be black coated to limit its visual impact and must be located outside of the required sight triangle at the corner of 3rd Street NE and 10th Ave. NE.
6. At least one overlapping opening in the southern fenced area must be provided for pedestrian access.
7. Trash that collects along the fenced areas must be collected at least monthly on a year-round basis.

8. Outdoor garbage receptacles must be made available for users of the athletic fields, playground and pavilion and emptied as necessary.
9. Indoor restroom facilities must be made available for users of the playground, pavilion and athletic fields when the facilities have been scheduled for public use.
10. Lights are not allowed to be installed for the athletic fields to be used outside of normal daylight hours.
11. Athletic field use is limited to 30 minutes prior to sun rise and 30 minutes following sunset.
12. Soccer nets and athletic field related equipment must be stored within a building or removed from the site between November 1st and April 30th each year when not being used.
13. The applicant shall reimburse the city for all fees and costs it incurs for processing, reviewing, and acting on the application approved herein, including but not necessarily limited to any fees charged by the city's professional consultants in accordance with established rates.
14. The property shall be subject to all requirements of the New Prague City Code and shall otherwise comply with all other applicable federal, state, and local laws, rules and regulations.

All original conditions of the conditional use permit are in compliance except for condition #6. Condition #6 states that "at least one overlapping opening in the southern fenced area must be provided for pedestrian access". Currently, there is a gate flush and attached to the southern fence near 3rd St NE. The fence was installed in April 2024. Although the gate is unlocked for pedestrian use, it is not an overlapping gate as required in the Conditional Use Permit. The Community Baptist Church is requesting an amendment to #C2-2022 conditional use permit for the gate to remain as it is.

Legal Description

Lots 1 & 2, Block 1, Community Baptist Church First Addition, Scott County, Minnesota.

Lot Size

The property is approximately 4.69 acres in total between the two platted lots that make up the property.

Zoning

North —RL90 Single Family Residential District

South — RL90 Single Family Residential District, Greenway Park, and B2 Community Commercial District

East —RH High Density Residential District, B2 Community Commercial District, and RM – Medium Density Residential District.

West –RL90 Single Family Residential District and Northside Park

This property is zoned RL-90 Single Family Residential and within this district, religious institutions are listed as conditional uses. Any changes to the conditions require an amendment to the conditional use permit. Fences are a permitted accessory use in the RL90 Single Family Residential District.

The property was platted in 1988, and the existing building was constructed between 1988 and 1989. The church was approved to be constructed through a conditional use permit, which was approved by City Council on 4/4/1988 with the following conditions:

1. Drainage must go off property to southeast to nearest catch basin on County Road 37.
2. Church must pay all normal assessments once County Road 37 is finished.
3. Park Dedication will be decided by City Attorney.

While the conditional use permit was amended in 2022 and today, it notable that the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) does constrain the city's review of the request. The city cannot place a "substantial burden" on the applicant's request and must treat the applicant as a religious institution on the same terms as other places of assembly.

Fencing

The applicant is requesting to amend condition #6, which currently requires an overlapping fence opening on the southern fence. The existing gate on the southern fence is unlocked and flush with the fence.

In the C2-2022 staff report, it detailed some information regarding fencing. The staff report from 2022 stated that fencing for non-residential uses is allowed up to a height of 6' along property lines but staff required a maximum fence height of 5'. A 5' tall fence was recommended because it would have less visual impact and would still mitigate balls from getting into the street. Additionally, staff required that the fence be a black coated chain link fence and would look similar to St. Wenceslaus' fence around their outdoor play area. As a condition, staff recommended that the fence must be outside the required sight triangle at the corner of 3rd Street NE and 10th Ave NE. The fence is currently meeting all the requirements except condition #6 that states "at least one overlapping opening in the southern fenced area must be provided for pedestrian access". The reason staff first wrote condition #6 is so that players could quickly and easily access the field or street. The overlapping fence would make the field accessible all year long.

Staff recommends that **no lock should be fastened to the southern gate** to maintain accessibility. Furthermore, **staff recommend that two signs should be posted on the fence (inside and outside) near the southern gate**. The gate should say something along the lines of "This gate is unlocked at all times for public accessibility."

Engineering / Public Works / Utilities Comments

N/A

Police Chief Comments

N/A

Building Official Comments

N/A

Conditional Use Permit Findings

Section 505 of the Zoning Ordinance states that when granting a conditional use permit the City Council shall make the following findings:

- A. The use will not create an excessive burden on existing parks, schools, streets and other public facilities which serve or are proposed to serve the area. (The fence gate will not create an excessive burden on existing parks, schools, streets and other public facilities which serve the area because the site is simply allowing the fence gate to remain which does not place any burden on parks, schools, streets or other public facilities.)
- B. The use will be sufficiently compatible or separated by distance or screened from adjacent residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land. (The fence gate will be sufficiently separated from the adjacent residential homes to the south as it will be separated by 3rd Street NE and it will act as a screening method.)
- C. The structure and site shall have an appearance that will not have an adverse effect upon adjacent residential properties. (The existing fence with the church will have an appearance similar to a city park which will not have an adverse effect upon the adjacent residential properties as parks are commonly found in residential neighborhoods)
- D. The use, in the opinion of the City Council, is reasonably related to the overall needs of the City and to the existing land use. (The fence gate is reasonably related to the overall needs of the City and to existing land use, as residential zoning districts allow fencing as a permitted use.)
- E. The use is consistent with the purposes of the Zoning Ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use (The fence gate is consistent with the purposes of the Zoning Ordinance and the purposes of the RL90 Single Family Zoning District as the proposed use is specifically listed as a permitted accessory use.)
- F. The use is not in conflict with the Comprehensive Plan of the City. (The fence gate is not in conflict with the Comprehensive Plan of the City because religious institutions are listed as a Conditional Use while fences are a permitted accessory use.)
- G. The use will not cause traffic hazard or congestion. (The existing fence gate will not generate any additional traffic above what exists at the site today.)
- H. Adequate utilities, access roads, drainage and necessary facilities have been or will be provided. (Adequate utilities, access roads, drainage and necessary facilities have been provided to the site.)

Section 505 of the Zoning Ordinance also states that conditions may be placed upon the approval as are considered necessary to protect the public health, safety and welfare.

Staff Recommendation

Staff recommends approval of an amendment to the existing Conditional Use Permit to allow existing fence gate to remain as it currently is at 500 10th Ave. NE, as proposed by Community Baptist Church, with the following findings:

- A. The fence gate will not create an excessive burden on existing parks, schools, streets and other public facilities which serve the area because the site is simply allowing the fence gate to remain which does not place any burden on parks, schools, streets or other public facilities.
- B. The fence gate will be sufficiently separated from the adjacent residential homes to the south as it will be separated by 3rd Street NE and it will act as a screening method.
- C. The existing fence with the church will have an appearance similar to a city park which will not have an adverse effect upon the adjacent residential properties as parks are commonly found in residential neighborhoods.
- D. The fence gate is reasonably related to the overall needs of the City and to existing land use, as residential zoning districts allow fencing as a permitted use.
- E. The fence gate is consistent with the purposes of the Zoning Ordinance and the purposes of the RL90 Single Family Zoning District as the proposed use is specifically listed as a permitted accessory use.
- F. The fence gate is not in conflict with the Comprehensive Plan of the City because religious institutions are listed as a Conditional Use while fences are a permitted accessory use.
- G. The existing fence gate will not generate any additional traffic above what exists at the site today.
- H. Adequate utilities, access roads, drainage and necessary facilities have been provided to the site.

And with the following conditions:

- 1. All original conditions of the Conditional Use Permit approval from 1988 to remain.
- 2. All original conditions of the Conditional Use Permit approval from 2022 to remain except for condition #6 which will be removed in its entirety.
- 3. At least one fence gate in the southern fenced area along 3rd St NE must be provided for pedestrian access. A sign must be posted on the inside and out the fence gate with verbiage that states “this gate is unlocked at all times for public accessibility.”

Attachments

- 1. Aerial Site Map – Dated 11/5/24
- 2. Zoning Site Map –Dated 11/5/24
- 3. Fencing Map Detail – Dated 4/20/222
- 4. Fence Gate Location – Dated 11/6/24
- 5. Pictures – Dated 11/6/24

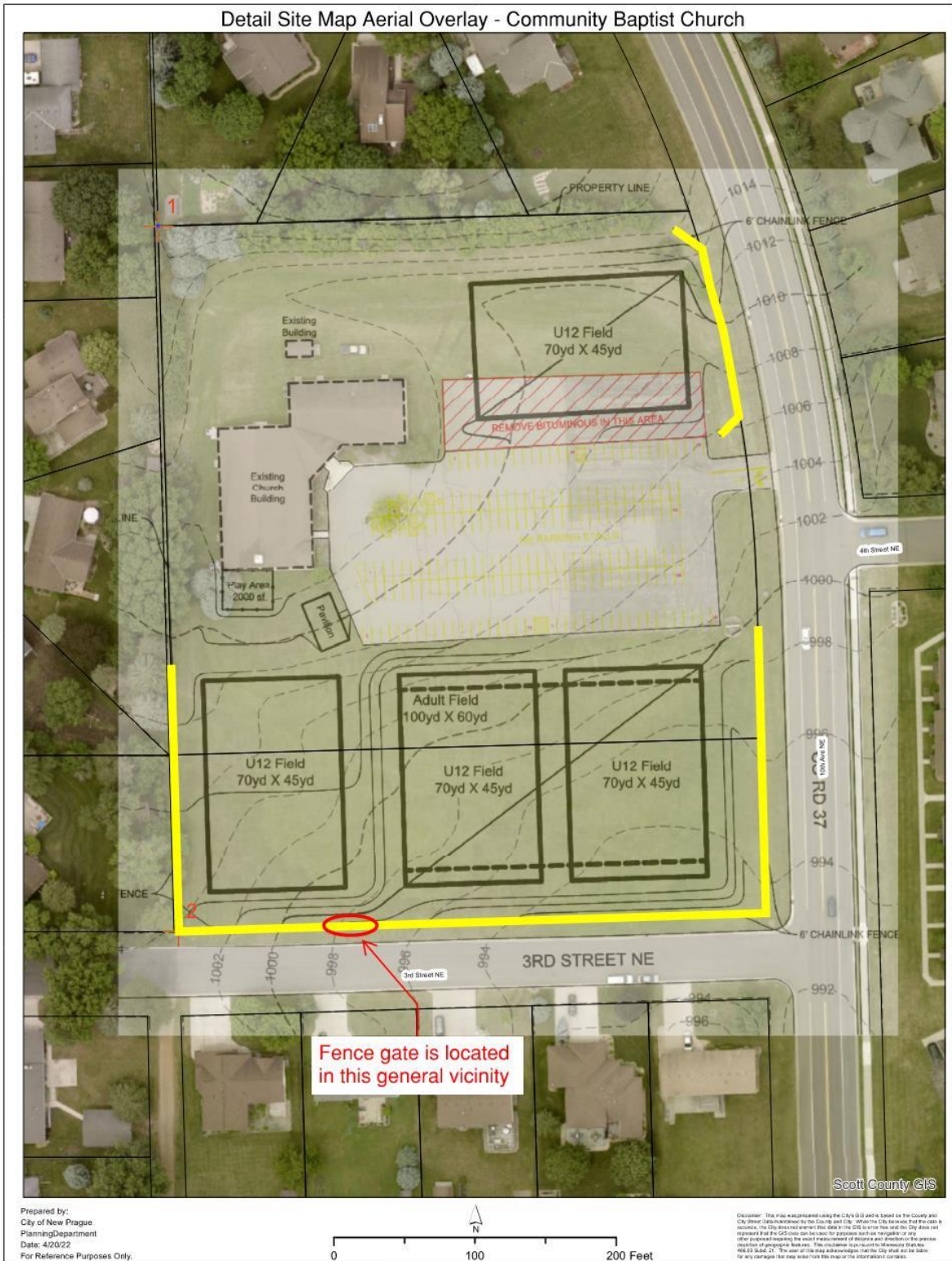


Aerial Site Map



Map Showing the Fence Location – 4/20/22

Detail Site Map Aerial Overlay - Community Baptist Church



Fence gate is located in this general vicinity

Fence Gate Location



Existing Fence Gate



Existing Fence Gate Looking North from 3rd Street NE



Existing Fence Looking North from 3rd Street NE



Existing Fence Looking Northwest from 10th Ave NE