



118 Central Avenue North, New Prague, MN 56071
phone: 952-758-4401 fax: 952-758-1149

MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL
CC: JOSHUA M. TETZLAFF, CITY ADMINISTRATOR
FROM: KYRA CHAPMAN, PLANNER
SUBJECT: PLANNING COMMISSION SUMMARY - REQUEST FOR VARIANCE #V8-2024 TO ALLOW A 5' TALL FENCE AT 1232 OLIVIA STREET SE, AS PROPOSED BY MARK AND CHRISTINE SHAW.
DATE: SEPTEMBER 26, 2024

Planning Commission Summary

The Planning Commission heard the above variance request on September 25th, 2024. Applicants, Mark and Christine Shaw currently have a 5' tall black chain link fence in their side and backyard at 1232 Olivia St SE. They are requesting a variance for their existing fence to remain as it is. According to the Zoning Ordinance, fences may not exceed a height above 4' until the rear corner of the home and must 30' away from the front setback line. This property is unique in that it has two front property lines (north and south) due to frontages; Olivia St SE and CSAH 29. To be consistent with the Zoning Ordinance and the neighborhood, staff recommend that the 5' tall fence should be installed behind the rear west corner of the home to be consistent in the neighborhood and the Zoning Ordinance. Despite staffs' recommendation, the Planning Commission recommended the removal of condition G, which called for adjusting the fence so that it is behind the rear west corner of the home.

The Planning Commission recommended approval of the variance request for staff's recommendation with an exception of removing condition G with a unanimous vote (3-0) based on the findings listed in the attached resolution.

Staff Recommendation

Staff recommends approval of the attached resolution "...Approving Variance (#V8-2024)...".

RESOLUTION #24-10-07-05

**RESOLUTION OF THE NEW PRAGUE CITY COUNCIL APPROVING
VARIANCE (#V8-2024) TO ALLOW A 5' TALL FENCE AT 1232 OLIVIA STREET SE, AS
PROPOSED BY MARK AND CHRISTINE SHAW, NEW PRAGUE, MINNESOTA**

WHEREAS, Mark and Christine Shaw, owners of the following real estate in the County of Le Sueur to wit:

Lot 36, Block 4, Tikalsky Acres, according to the plat thereof, Le Sueur County, Minnesota.

WHEREAS, staff recommends that the 5' fence should be installed behind the rear west corner of the home.

WHEREAS, the New Prague Planning Commission has completed a review of the application and made a report pertaining to said request (#V8-2024), a copy of said report has been presented to the City Council; and,

WHEREAS, the New Prague Planning Commission on the 25th day of September, 2024, after due consideration of presented testimony and information, voted unanimously (3-0) to forward staff's recommendation to the City Council with a recommendation for approval with the removal of condition G to adjust the fence behind the rear west corner of the home; and,

WHEREAS, the New Prague City Council finds:

- A. The variance is in harmony with the general purposes and intent of the Ordinance because the RL-90 Single Family Residential Zoning District allows fences to be constructed as a permitted use.
- B. The proposed variance is consistent with the comprehensive plan because fences are allowed as a permitted use in the RL-90 Single Family Residential Zoning District.
- C. The applicant proposes to use the property in a reasonable manner by having a 5' tall fence in their side and backyard.
- D. Unique circumstances apply to the property in that it is a through lot abutting a road on two sides (front and rear) with the roadway along the rear yard being a County Road.
- E. The variance does not alter the essential character of the neighborhood because there are adjacent properties that have tall fences that were grandfathered in or similarly received fence height variances such as 1214 Olivia St SE (V1-2018) and 1110 Olivia St SE (V2-2018).

- F. The variance requested is the minimum variance which would alleviate the practical difficulties because it would contain their dogs and prevent the removal of the existing fence.

NOW, THEREFORE BE IT RESOLVED, by the City Council of New Prague, Minnesota, that the request for variance #V8-2024 to allow a 5' tall fence in the backyard at 1232 Olivia St SE, is hereby approved based on the above findings.

This Variance approval becomes effective immediately upon its passage and without publication.

Passed this 7th day of October, 2024.

Duane J. Jirik, Mayor

State of Minnesota)
)ss. (CORPORATE ACKNOWLEDGMENT)
County of Scott & Le Sueur)

Subscribed and sworn before me, a Notary Public this _____ day of _____, 2024.

Notary Public

ATTEST: _____
Joshua M. Tetzlaff, City Administrator

State of Minnesota)
)ss. (CORPORATE ACKNOWLEDGMENT)
County of Scott & Le Sueur)

Subscribed and sworn before me, a Notary Public this _____ day of _____, 2024.

Notary Public

THIS INSTRUMENT DRAFTED BY:
Kyra J. Chapman
City of New Prague
118 Central Ave. N.
New Prague, MN 56071
(952) 758-4401



118 Central Avenue North, New Prague, MN 56071
phone: 952-758-4401 fax: 952-758-1149

MEMORANDUM

TO: PLANNING COMMISSION
FROM: KYRA CHAPMAN – PLANNER
SUBJECT: REQUEST FOR VARIANCE #V8-2024 TO ALLOW A 5’ TALL FENCE AT 1232 OLIVIA STREET SE, AS PROPOSED BY MARK AND CHRISTINE SHAW
DATE: SEPTEMBER 11, 2024

Background / History

Applicants, Mark and Christine Shaw applied for a fence height variance for their 5’ tall chain link fence to remain where it is. The existing fence does not meet the Zoning Ordinance requirements for fence height. The Zoning Ordinance does not allow fences to exceed 4’ tall if they are erected in front of the rear corner of the home. The west front/side fence is located near the porch and is exceeding 4’ tall. The Zoning Ordinance also states that fences may not exceed 4’ tall when located less than 30’ from the road right of way. This also applies to the backyard of a home as it’s less than 30’ from the street right way (sidewalk and CSAH 29).

Currently, they have a 5’ tall chain link fence installed on the side and rear of their property. Some neighbor’s fences were constructed prior to the existing fence ordinance or received a fence height variance. For instance, 1214 Olivia St SE (V1-2018) was approved for a 6’ tall wooden privacy fence in the backyard and 1110 Olivia St SE (V2-2018) was approved for a 6’ tall white vinyl fence in the backyard. The applicants are requesting a fence height that is 1’ shorter than some of their neighbors, but 1’ over the ordinance height limit.

Legal Description

Lot 36, Block 4, Tikalsky Acres, according to the plat thereof, Le Sueur County, Minnesota.

Zoning

The subject property is located in the RL90 Single Family Residential Zoning District. The following are the residential fence regulations:

2. Residential Fences.

- A. Fences may be located on any lot line to a height of four (4) feet and a fence up to six (6) feet in height may be erected behind the nearest rear corner of the principal building. The side of the fence considered to be the face (facing as applied to fence posts) shall face abutting property. For corner lots, a six (6) foot fence may only be erected at the 30' building setback line. A fence up to six (6) feet in height may also be erected behind attached garages where the location of the fence is not entirely erected behind the nearest rear corner of the principal building.

The applicants currently have a 5' tall black chain link fence installed from the side of their home to their rear property line. (They are currently maintaining the required 2' setback from the trail.) Section 708 (2) (A) of the Zoning Ordinance Section states that fences may be a maximum height of 6' from the rear corner of the home to the rear property. This property has two front yards due to CSAH 29, therefore, a 5' fence could not be installed until the rear corner of the house and 30' away from the south property line. From the rear corner of the home to the front property line, the fence cannot exceed 4' tall. If the ordinance was followed, the applicant would only be able to install a 5' fence on a portion of their property limiting their usable area in their backyard.

Staff recommend that the front fence near the west side of the property should be adjusted. Currently the west side fence is 5' tall and begins near the front porch. The Zoning Ordinance states that fences that exceed 4' tall may be built at the rear corner of the home. Fences that are a maximum of 4' tall may be built before the rear corner of the home. Staff recommend that the 5' tall fence should be moved so it is behind the rear west corner of the house.

Neighborhood Conditions and Nearby Land Uses

North — Residential homes in the RL90 Single Family Residential District and Settlers Park

South — Outside City limits and County State Aid Highway 29

East — Residential homes in the RL90 Single Family Residential District

West – Residential homes in the RL90 Single Family Residential District

Areas to the north, west, and east are residential homes zoned RL90 Single Family Residential District. South of the property is a city trail, the edge of City limits, and CSAH 29.

All homes on Olivia Street SE with backyards facing CSAH 29 must abide by the same fence regulations. In other words, all those homes may not erect a fence taller than 4' tall unless it is 30' away from their rear property line and behind the rear corner of their homes.

There have been some fence height variances awarded along Olivia St SE. At 1214 Olivia St SE, V1-2018 was approved to allow a 6' tall wooden privacy fence to encompass the backyard. At 1110 Olivia St SE, V2-2018 was approved, allowing a 6' tall white vinyl fence in the backyard.

Statement of Practical Difficulties

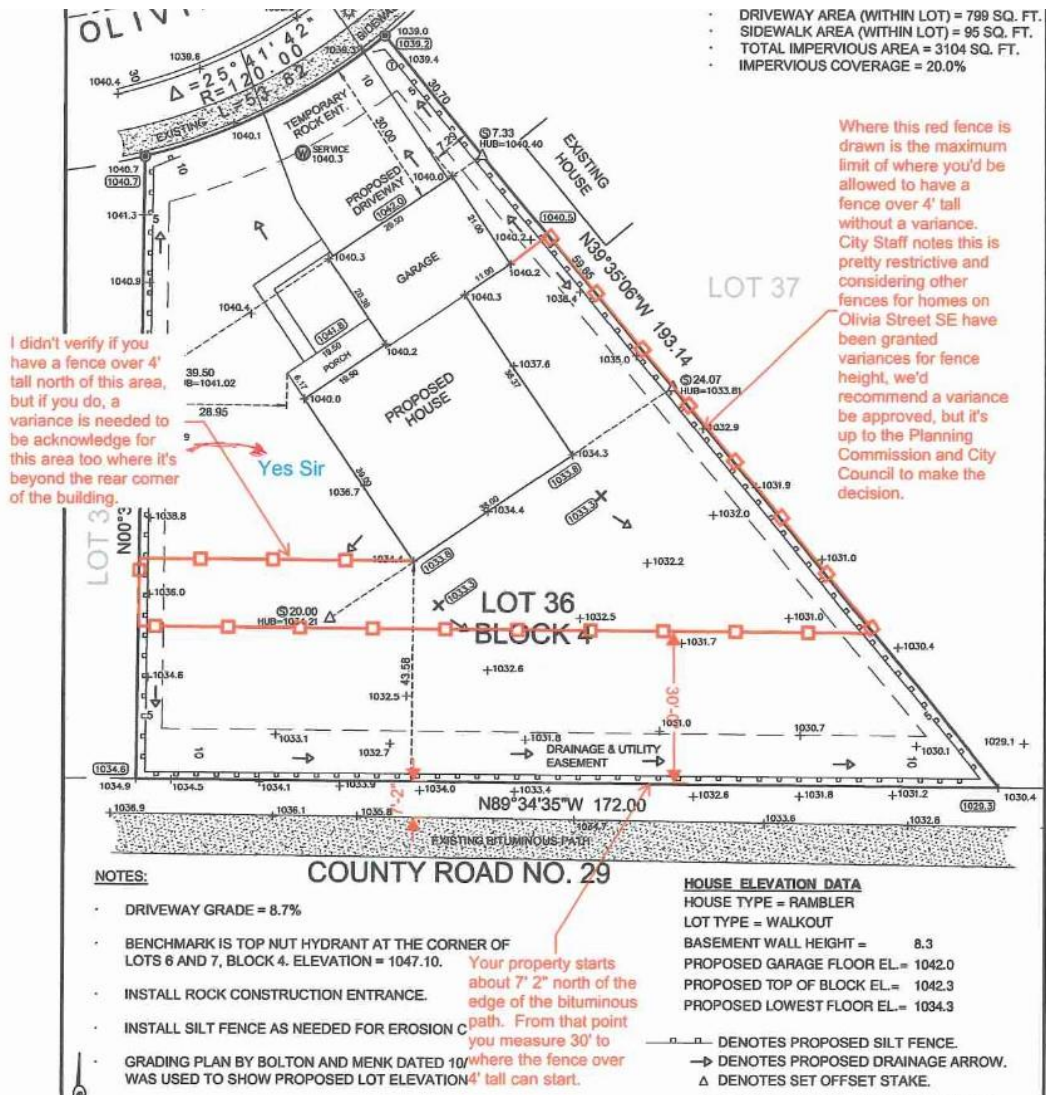
A letter dated on August 26th, 2024 by applicants Mark and Christine Shaw, provided the following letter of practical difficulty:

Requesting variance to allow the "as installed" 5' chain link fence to remain in place. Prior to the installation by Northland Fence Company, my wife and I walked the neighborhood; up and down the walk path on 29 as well as up and down Olivia Street. We took note of many of the existing fences. A good number of existing fences are well over 5' and are also placed much, much closer to the walk path on 29 than our installed fence happens to be.

The purpose of the 5' fence is to accommodate our two dogs. A fence lower than 5' defeats the purpose of the fence in the first place. I don't believe it prudent to have a fence any lower than 5'.

Prior to the fence installation, I ensured that all property pins were fully exposed. There is absolutely no question that the fence is installed well within the confines of our property.

I have attached the information received by the City of New Prague. I have also indicated "Yes" to the question posed on the left side of the document.



Public Works / Utilities / Engineer Comments

Public Works Director Matt Rynda, Utilities General Manager Bruce Reimers, and City Engineer Chris Knutson with SEH, Inc. were not solicited for comments on the matter.

Building Official Comments

Comments from the Building Official were not solicited as the variance is related to fences only.

Criteria for Granting Variances - Section 507

The Zoning Ordinance defines a variance as follows: A modification or variation of the provisions of this Ordinance where it is determined that by reason of unique circumstances relating to a specific lot, that strict application of the Ordinance would cause practical difficulties. Practical difficulties is a legal standard set forth in law that cities must apply when considering applications

for variances. To constitute practical difficulties, all three factors of the test must be satisfied, which are reasonableness, uniqueness and essential character. The Zoning Ordinance's criteria addresses these standards.

The Zoning Ordinance identifies criteria for granting variances as noted below. These items must be evaluated by the Planning Commission and City Council when considering variance requests. It is important to note that variances should only be granted in situations of practical difficulties. A variance may be granted only in the event that all of the circumstances below exist. Staff has attempted to evaluate the established criteria for this specific request. Staff's comments are highlighted in yellow below:

- A. The variance is in harmony with the general purposes and intent of this Ordinance. (The variance is in harmony with the general purposes and intent of the Ordinance because the RL-90 Single Family Residential Zoning District allows fences to be constructed as a permitted use.)
- B. The variance is consistent with the comprehensive plan. (The proposed variance is consistent with the comprehensive plan because fences are allowed as a permitted use in the RL-90 Single Family Residential Zoning District.)
- C. The applicant proposes to use the property in a reasonable manner not permitted by this Ordinance, the City Code or the City Subdivision Ordinance. (The applicant proposes to use the property in a reasonable manner by having a 5' tall fence in their side and backyard.)
- D. Unique circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography or other circumstances over which the owner of the property since enactment of this Ordinance has had no control. The unique circumstances do not result from the actions of the applicant. (Unique circumstances apply to the property in that it is a through lot abutting a road on two sides (front and rear) with the roadway along the rear yard being a County Road.)
- E. The variance does not alter the essential character of the neighborhood. (The variance does not alter the essential character of the neighborhood because there are adjacent properties that have tall fences that were grandfathered in or similarly received fence height variances such as 1214 Olivia St SE (V1-2018) and 1110 Olivia St SE (V2-2018).)
- F. That the variance requested is the minimum variance which would alleviate the practical difficulties. Economic conditions alone do not constitute practical difficulties. (The variance requested is the minimum variance which would alleviate the practical difficulties because it would contain their dogs and prevent the removal of the existing fence.)

- G. The Board of Adjustment may impose such conditions upon the premises benefited by a variance as may be necessary to comply with the standards established by this Ordinance, or to reduce or minimize the effect of such variance upon other properties in the neighborhood, and to better carry out the intent of the variance. The condition must be directly related to and must bear a rough proportionality to the impact created by the variance. No variance shall permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permit standards lower than those required by federal, state or local law. (The 5' tall fence should be moved so it is behind the rear west corner of the house.)

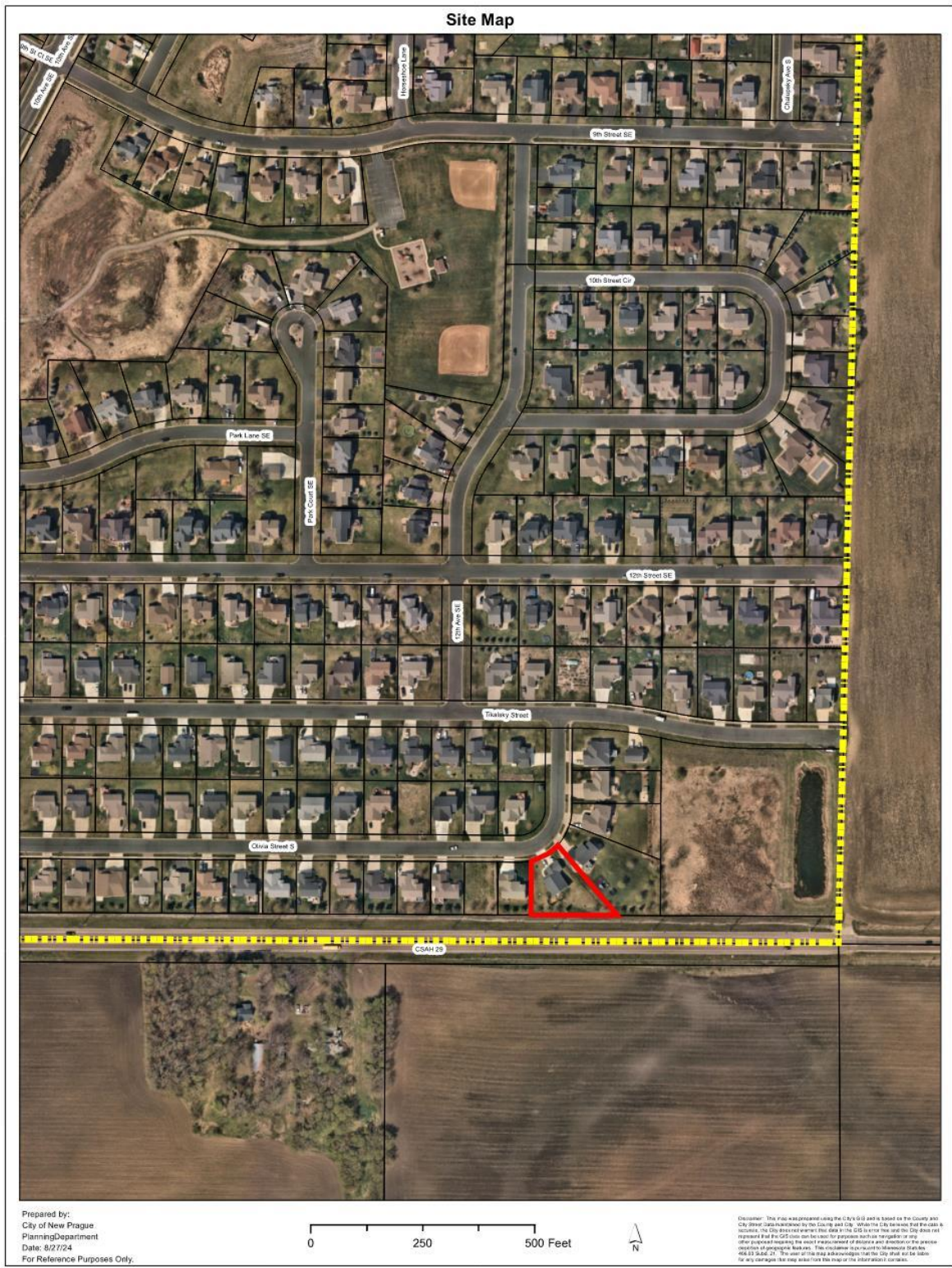
Staff Recommendation

Staff recommends **approval** of Variance #V8-2024 to allow a variance for a 5' tall fence in the side and backyard of 1232 Olivia St SE, as proposed by Mark and Christine Shaw for the following reasons:

- A. The variance is in harmony with the general purposes and intent of the Ordinance because the RL-90 Single Family Residential Zoning District allows fences to be constructed as a permitted use.
- B. The proposed variance is consistent with the comprehensive plan because fences are allowed as a permitted use in the RL-90 Single Family Residential Zoning District.
- C. The applicant proposes to use the property in a reasonable manner by having a 5' tall fence in their side and backyard.
- D. Unique circumstances apply to the property in that it is a through lot abutting a road on two sides (front and rear) with the roadway along the rear yard being a County Road.
- E. The variance does not alter the essential character of the neighborhood because there are adjacent properties that have tall fences that were grandfathered in or similarly received fence height variances such as 1214 Olivia St SE (V1-2018) and 1110 Olivia St SE (V2-2018).
- F. The variance requested is the minimum variance which would alleviate the practical difficulties because it would contain their dogs and prevent the removal of the existing fence.
- G. The 5' tall fence should be moved so it is behind the rear west corner of the house.

Attachments

1. Site Map Aerial – Dated 8/27/24
2. Site Map Aerial Zoning – Dated 8/27/24
3. Survey – Planning Comments – Dated 9/11/24
4. Staff recommendation – Dated 9/11/2024
5. Pictures — 9/11/2024

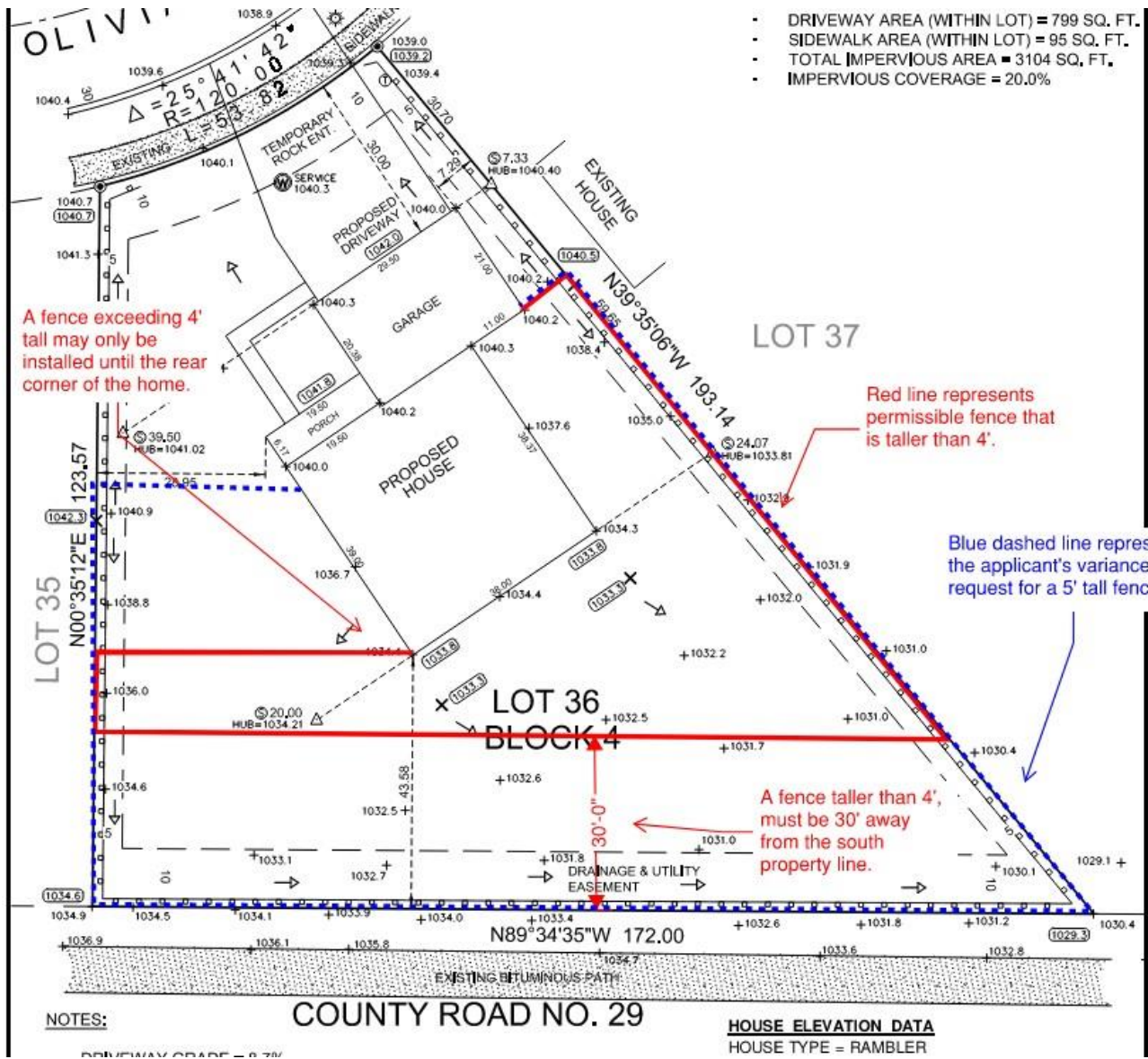


Aerial Site Map

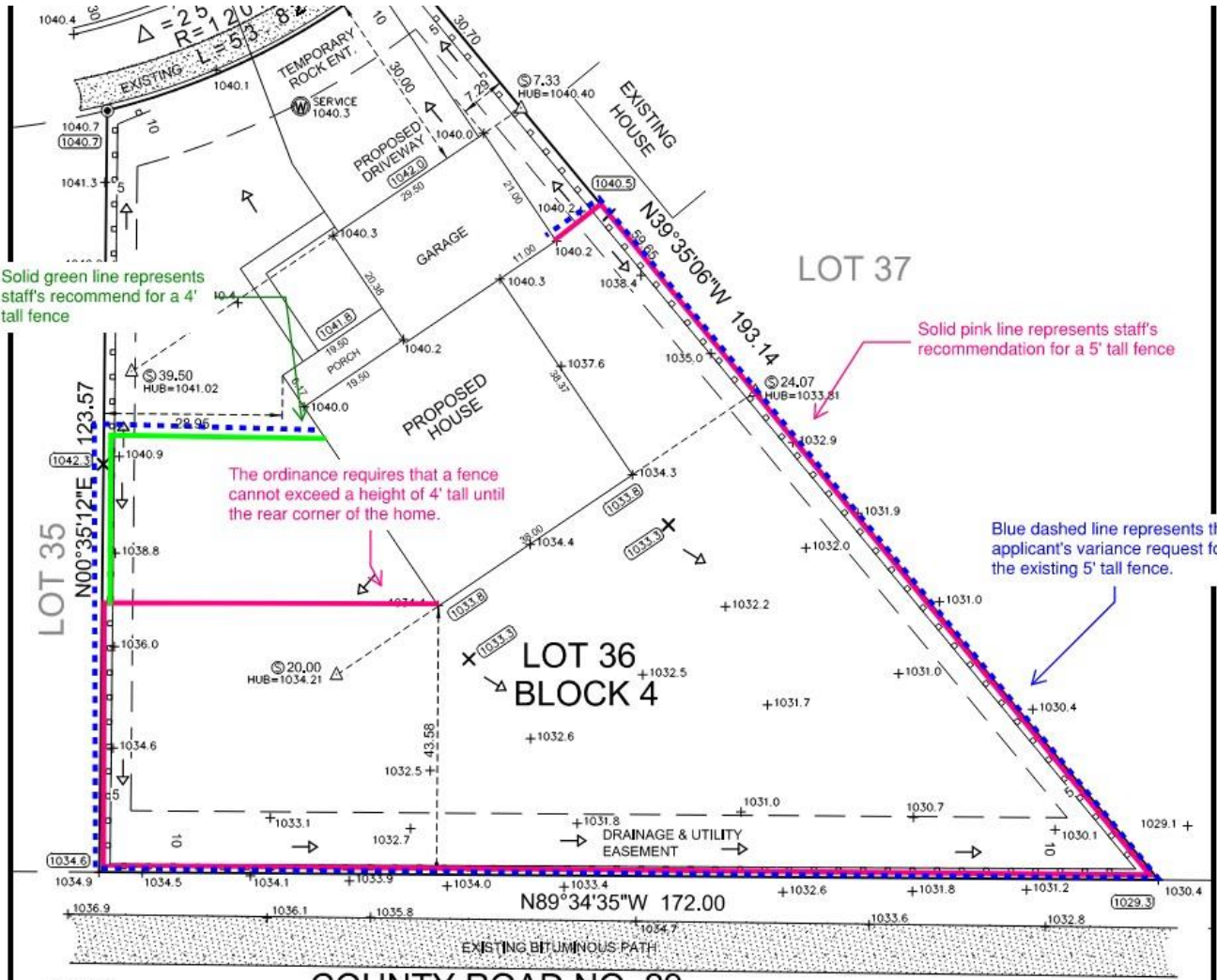
New Prague Community Center Association – Variance #V8-2024
 September 25, 2024 Planning Commission Meeting
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Site Map of Zoning Districts



Fence Requirements – Zoning Ordinance vs. Applicant's Request



Staff's Recommendation – Applicant's Request vs. Staff's Suggestion



Existing Fence at 1232 Olivia St SE



Looking South from Olivia St SE – Front Yard of 1232 Olivia St SE



Looking South from Olivia St SE – Front Yard of 1232 Olivia St SE



5 Foot Tall Fence – Looking West Along the Trail Near CSAH 29



5 Foot Tall Fence – Looking North Along the Trail Near CSAH 29



5 Foot Tall Fence – Looking North Along the Trail Near CSAH 29