



**CITY OF MONTROSE  
200 CENTER AVENUE SOUTH  
MONTROSE, MINNESOTA 55363  
PLANNING & ZONING COMMISSION  
August 10, 2011  
MINUTES**

Pursuant to call and notice, the Montrose Planning and Zoning Commission met in special session on Wednesday, August 10, 2011. Those present were Commissioners, Chuck Smallwood, Gerald Lamb and Georgina Stanley-Woidyla ( and Charlie Nelson. Absent Cory DeWitte

Also present: Barb Swanson, City Administrator. Bob Kirmis, City Planner, Justin Kannas, City Engineer and Roy Henry, Ex-Officio

**MISSION STATEMENT**

*The Planning Commission, serving a key leadership role as an advisory body to the City Council, reviews and evaluates land use issues utilizing zoning and subdivision regulations to ensure conformity to the Comprehensive Plan and community values, to manage the future growth of Montrose.*

**Public Hearing - Variance**

Shingobee Builders, Inc – request approval of a variance to allow a 34 foot front yard setback within the I-2, General Industrial District.

Kirmis, City Planner, reviewed the planning report dated July 25, 2011. (attached)

On September 29, 2010, the City Council approved an application of Shingobee Builders, Inc. to allow the construction of an approximate 16,000 square foot Xcel Energy Service Center upon a 4.2 acre lot located north of U.S. Highway 12 and west of Clementa

Avenue. The facility, now constructed but not occupied, consolidates existing service facilities located in the Cities of Delano and Howard Lake.

Related to the project, the following specific approvals were granted by the City:

1. A rezoning of the property from UR, Urban Reserve to a combination of B-2 Highway Business and I-2, General Industrial.
2. Preliminary/Final Plat (Montrose Business Park).
3. A Conditional Use Permit to allow accessory outside storage upon Lot 1. Block 1 (the Xcel Energy Service Center parcel).

The subject site is zoned I-2, General Industrial which imposes a 40 foot front yard setback. It has been found that the building was inadvertently located 34 feet from Energy Drive which borders the subject property on the south. Thus, the building encroaches 6 feet into the required front yard. To correct this non-conforming front yard setback condition, the processing of a variance has been determined to be the most reasonable course of action.

#### ISSUES ANALYSIS

Site Plan Modifications. At the September 29, 2010 City Council meeting, the applicant brought forth an alternative site concept plan which differed from the originally submitted site plan which was subject to Planning Commission review. The alternative plan, attached as Exhibit C, called for a change in building orientation from “east/west” to “north/south”. Both the City Council and City staff supported the proposed building orientation change subject to the submission of refined plans and approval of such plans by City Staff.

A revised site/landscape plan (and associated plan set) was subsequently submitted to City Staff for review. Like the original site/landscape plan considered by the Planning Commission, the refined alternative site/landscape plan (dated 10/5/10) also illustrates compliant front yard setbacks.

Over the following months, many minor modifications were made to the plan set. As some point, it is believed a change to the building setback was made. The “as built” survey (attached as Exhibit E) illustrates a 34 foot front yard setback along Energy Drive.

Setback Requirements. The applicant has requested approval of a variance to allow a 34 foot front yard building setback along Energy Drive.

As noted, the applicable I-2 zoning district imposes a 40 front yard setback. Such setback (greater than setbacks imposed in most other zoning districts) is intended protect adjacent properties and rights-of way from the often intense nature and large scale of heavy industrial uses.

State Statutes. In May of this year, State Statutes regarding variance consideration criteria were changed. The new law adopts language related to “practical difficulties” rather than “hardship”, and alters the level of necessity by allowing cities to decide that the applicant’s proposal constitutes using the property in “a reasonable manner”, rather than finding that the variance is necessary to allow “any reasonable use”.

While this latter point may seem like a fine distinction, it is a major change in the City’s authority. Under previous law, the City was required to find that a property owner had almost no alternative to seeking a variance, even to make minimal use of the property in question. Now, the City may decide that even though a property owner has options that would meet all zoning regulations, a proposal that requires a variance is still a reasonable way of using that property, and may approve if the City chooses to do so.

The variance standards to be utilized by the City include the following definitions:

**Practical Difficulties:** A situation in connection with the request for a variance from compliance with the requirements of this ordinance, where a property owner proposes to use the subject property in a reasonable manner not permitted by the ordinance in which the plight of the property owner is due to circumstances unique to the property not created by the property owner and the variance, if granted, is in harmony with the general purposes and intent of the zoning ordinance, is consistent with the comprehensive plan and will not alter the essential character of the locality. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Economic considerations alone do not constitute practical difficulties.

**Variance:** A relaxation of the requirements of the Ordinance where a property owner proposes to use the subject property in a reasonable manner not permitted by the Ordinance, such deviation will be in harmony with the general purposes and intent of the Ordinance, consistent with the Comprehensive Plan, and will not alter the essential character of the locality, and where, owing to physical conditions unique to the individual property under consideration and not the result of the actions of the applicant, compliance with the ordinance would result in practical difficulties.

**Variance Evaluation Criteria.** As noted previously, the applicant has requested a variance from the City’s minimum 40 foot front yard setback requirement (imposed in the I-2 District). In consideration of variance requests, State Statutes dictate that the following criteria must be considered:

A. The variance is in harmony with the general purposes and intent of the Ordinance; **Comment.** A general purpose of the Zoning Ordinance is to provide development opportunities and parameters for commercial and industrial development within the City. In this regard, the Ordinance is intended to protect adjacent properties and rights-of-way from potential negative impacts associated with such uses. One of these “protections” is providing an appropriate separation between buildings and adjacent streets/properties.

The existing 34 foot building setback is in harmony with the area in that the 6 foot deviation abuts a street which is internal to the subdivision. In this regard, the setback will not adversely affect the City's right-of-way or any other properties outside the subdivision.

B. The variance is consistent with the Comprehensive Plan.

Comment. The variance is consistent with the Comprehensive Plan in that the subject property is guided for industrial use and the only properties affected by the variance are other industrial parcels located within in the subdivision.

C. The applicant for the variance establishes that there are practical difficulties in complying with the Zoning Ordinance. "Practical Difficulties", as used in connection with the granting of a variance, means that:

a. The property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance;

Comment. The service center use (including accessory outside storage) is a reasonable use of the property in that it is allowed within the applicable I-2, General Industrial zoning district. The 34 foot front yard setback is considered reasonable as it constitutes only a 6 foot difference from the district setback requirement and abuts an internal street within the subdivision. In this regard, concerns requiring a 40 foot setback are not considered relevant as only lots within the subdivision will be affected.

b. The plight of the landowner is due to circumstances unique to the property not created by the landowner; and

Comment. The landowner's plight is unique in that the depth of the subject site (325 feet) limits the reasonable use of the property and specifically the ability to comply with the applicable 40 foot front yard setback requirement. In this regard, the 6 foot setback encroachment is considered reasonable.

c. The variance, if granted, will not alter the essential character of the locality.

Comment. The 6 foot setback encroachment does not alter the essential character of the area. The building is industrial in nature and located within an area zoned for general industrial uses.

## RECOMMENDATION

The building in question was located in error. To correct the non-conforming front yard setback condition, the processing of a variance was determined to be the most reasonable course of action.

It is the opinion of City Staff that approval of the requested setback variance can be justified. In this regard, Staff recommends approval of the variance to allow the 34 foot front yard setback based upon the following findings:

1. The variance is in harmony with the general purposes and intent of the Zoning Ordinance in that the 6 foot setback deviation abuts a street which is internal to the

subdivision. In this regard, the setback will not adversely affect the City's right-of-way or any other properties outside the subdivision.

2. The variance is consistent with the Comprehensive Plan in that the only properties affected by the variance will be other industrial uses located within in the subdivision.

3. The property owner proposes to use the property in a reasonable manner in that the service center use and related outside storage are is allowed within the applicable I-2, General Industrial zoning district.

4. The landowner's plight is unique in that the depth of the subject site (325 feet) limits the reasonable use of the property and specifically the ability to comply with the applicable 40 foot front yard setback requirement.

5. Granting of the variance will not alter the essential character of the City. The building is industrial in nature and located within an area zoned for general industrial uses.

A discussion was held regarding the responsibility for the plans to be allowed, who did the measurements etc.

Scott Schmidt, representing Shingobee Builders, explained an issue with the wetland delineation on the property. It was determined later that the wetland was further south than originally thought. The encroachment is internal to this site. It will not affect other occupants.

**Public Comments were taken:**

Scott Jensen wondered if anyone was present from Xcel and if so, is there concern?

Sue Stienwell, attorney with Frederickson and Byron, representing Xcel, stated at closing a survey was discovered that a setback variance is needed. Without this the use would be considered non-conforming.

Jensen asked if anything other than the variance would be needed by Xcel.

Stienwell stated that a variance would suffice.

Motion by Lamb, seconded Nelson, to approve the Variance as presented.

**Adjournment**

6:20pm The Public Hearing was closed.

Author: Kristine M. Richter  
City of Montrose

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Barbara C. Thwing-Swanson  
Administrator/Clerk/Treasurer