

Item 23-0949: Request for a Terrace Occupancy Permit to keep an existing 4' fence, lilacs, landscaping stone and pavers in the street terrace along W. Commercial Street

Municipal Services Committee

Mon, Aug 07, 2023, 4:30PM

Aldersperson Katie Van Zeeland (District 5) 25:21

23-0949 a request from [Colleen V.] at [XXXXX] for a terra—terrace occupancy permit to keep an existing four-foot fence, lilacs, landscaping stone, and pavers in the street terrace along west commercial street. Do we have a motion?

Aldersperson Vered Meltzer (District 2) 25:42

Move to approve.

Aldersperson William Siebers (District 1) 25:44

Second.

Aldersperson Katie Van Zeeland (District 5) 25:45

We have a motion to approve. And a second. I know that we have some folks here to speak. Would staff like to say anything before we invite the folks up to the podium? Okay, great. Who would like to speak on this item first?

[Note: they briefly discussed a point of order regarding the previous agenda item before returning to this item.]

Aldersperson Katie Van Zeeland (District 5) 27:01

And if you could just introduce yourself, give me your name and address for the record. I would appreciate it. I'm sorry, let me just—I think I turned us off. There we go. Let's try that again. Please. Could you speak into the microphone? Can anybody—can? Is this not working? It's green. Yeah, it was green, but I couldn't. Let's try it again.

Colleen V. (Resident) 27:25

I'm [Colleen V.].

Aldersperson Katie Van Zeeland (District 5) 27:27

Oh, perfect.

Colleen V. (Resident) 27:28

My address is [XXXXX].

Aldersperson Katie Van Zeeland (District 5) 27:32

Great. Thank you. And you are requesting a permit for this street terrace. Could you just explain a little bit of why you are applying for the permit or what you'd like us to do.

Colleen V. (Resident) 27:43

I run a licensed daycare, and I've lived in the house since 2007, and never—nobody ever said a word to me about any of this. The fence and the trees were there when I bought the house. And then I got a letter that I needed to take it all down. I need the four-foot fence to run a licensed daycare.

Aldersperson Katie Van Zeeland (District 5) 28:09

Sure. Okay. Director Block, could you give us a little more information, please? Eight?

Director Danielle Block (Department Of Public Works) 28:20

Thank you, Chair. Last fall a customer service request came into the office related to the vision obstruction at the intersection. So it's the intersection of Commercial street and Linwood Avenue. The aerial photo after the memo helps paint the picture about what terrace we're pointing to it's along West Commercial Street, series of lilac bushes, planting bed, and it appears the private fence is on to the public right of way versus on the private property.

Aldersperson Katie Van Zeeland (District 5) 28:57

I see. Okay. So this is not just an update as we updated the street terrace policy just last—was it last fall? This is something outside of that policy.

Director Danielle Block (Department Of Public Works) 29:11

Correct. This came into our office.

Aldersperson Katie Van Zeeland (District 5) 29:14

Okay. Could somebody address the concern about the right of way? You know the issues with vision and obstruction?

Director Danielle Block (Department Of Public Works) 29:24

Sure. It would be the fourth page which starts off as the City of Appleton street terrace policy that was included in the packet gives a pretty good visual at a street corner how we define the vision triangle, 25 feet setback from the survey pin either direction and the triangle's drawn across from the street to the other side of the street. Allowed in there is obstructions with within three feet max height. So it's within the vision triangle, and it's also the items that are in the terrace need to fall under our terrace policy. Or if not, they can request a permit to be in the terrace. So that would be the fence and the size of the lilac bushes is such that they would fall into this, and the landscape materials also trigger, you know, the request. So we're rolling it all into one request, fence, lilac bushes, and the etching.

Aldersperson Katie Van Zeeland (District 5) 30:35

Do we have any idea how that fence came to be? Was there a permit applied for at the time that fence was erected on the property?

Director Danielle Block (Department Of Public Works) 30:46

No, there was no fence permit in our records.

Aldersperson Katie Van Zeeland (District 5) 30:49

Okay. Was there anything that you wanted to add regarding the vision or obstruction or the fence being on the right of way and not private property?

Colleen V. (Resident) 31:05

That I don't know anything about. I bought the house like this. So with the full-grown lilacs and the fence so I have I have no idea.

Alderson Katie Van Zeeland (District 5) 31:15

Okay.

Colleen V. (Resident) 31:15

I didn't—we've always maintained them so the street sweeper could get through. Because I—in my daycare, one of my parents worked for the city of Appleton. So we have always maintained those being up far enough that the street sweeper could get through.

Alderson Katie Van Zeeland (District 5) 31:35

Is there any option for moving the fence off of the right of way into the private? Are we able to ask that? I guess, city attorney, I just want to make sure I'm not violating any issues here.

Colleen V. (Resident) 31:50

I have moved a panel of that. And taken—well, we cut down a lilac tree and a bridle bush, but I don't know if anybody knows about lilacs, they're gonna grow back. I mean, they don't—unless you dig those out. And they're very mature lilac trees. But we took it down to the ground as far as we could with chainsaw.

Alderson Katie Van Zeeland (District 5) 32:15

What specifically are we able to ask questions about just to make sure that I set the standard going forward? This—with these all being together it's giving—I'm having a hard time knowing which direction to take this discussion.

Attorney Christopher Behrens 32:30

I'm not sure I understand your question about what questions you can ask.

Alderson Katie Van Zeeland (District 5) 32:37

Okay, well, I just want them to, I just want to make sure that there's nothing off limits.

Attorney Christopher Behrens 32:42

If you're asking about what kind of conditions you can impose, well, we can circle back to that at some point.

Alderson Katie Van Zeeland (District 5) 32:48

Okay. Could you just clarify the panel that you moved? Is that since the city has been out?

Director Danielle Block (Department Of Public Works) 32:58

Okay, so on the following page from the plan—or the aerial view—the second picture at the top shows the wooden fence, it used to go out and I guess meet the point of the property. That fence panel was moved back in. So later in the application, after the insurance paperwork, there's a visual that shows the stop sign, and you can see that fence panel is now squared off, if you will. That part is on private property. As the fence continues along west Commercial, that's where it goes back on to public property.

Alderson Katie Van Zeeland (District 5) 33:47

So there is still a portion of this fence that is in the right of way.

Director Danielle Block (Department Of Public Works) 33:51

Correct.

Aldersperson Katie Van Zeeland (District 5) 33:52

Okay.

Director Danielle Block (Department Of Public Works) 33:52

Correct. And the requests to move on to private property was made—we asked that question, and we're working with the property owner, and helping to guide them on what process they wanted to take. And as I understood it from Colleen, she wanted to request this first.

Aldersperson Katie Van Zeeland (District 5) 34:13

I see. Maybe that's where I'm having a little bit of trouble putting this together. Alder Hartzheim.

Aldersperson Sheri Hartzheim (District 13) 34:25

Thank you, chair. It looks as though the property owner is trying to do the best that she possibly can to mitigate some of this vision corner issue and I appreciate that very much. I'm wondering if there is any evidence that there have been traffic issues because of the vision occlusion.

Director Danielle Block (Department Of Public Works) 34:45

We looked back in the crash history reports. Two crashes noted at this intersection, none of which were denoted that it—this vision obstruction was cause of crash.

Aldersperson Katie Van Zeeland (District 5) 34:57

Thank you. Any other questions? From alders present? Alder Doran.

Aldersperson Chad Doran (District 15) 35:05

Thank you. I just—I drove by the intersection myself because I was just curious I guess to see it in person versus what the photos are, and I guess my two cents, my thought was coming west on Commercial street towards Linwood with the stop sign there and the work that had been done by the homeowner, I guess, to—I didn't know that the homeowner had already moved this fence, but clearing that corner. 'Cause it didn't really seem like that much of a vision obstruction from that standpoint, to me. I mean, I guess if we're following the letter of the law so to speak, or the ordinance here. But I did have a question, I guess related to some of some of the other—the fence and the shrubs and things on there. There also were a couple of large mature trees there that look like they would be in what the terrace is, and I don't know if those were trees the city had planted in the terrace or if maybe a home—past homeowner had planted those because there's no sidewalk there on that that section of commercial either, which makes it I guess, a little different.

Director Danielle Block (Department Of Public Works) 36:11

It's my assumption that the large trees there were part of the city's tree terrace planting program many moons ago. The trees measure 25 feet back, so they're outside of the vision triangle. Street terrace trees are also allowed under the street terrace policy. City planted street terrace trees.

Aldersperson Chad Doran (District 15) 36:40

Right. Thank you.

Aldersperson Katie Van Zeeland (District 5) 36:43

Any other questions? Yes. Alder Hartzheim.

Aldersperson Sheri Hartzheim (District 13) 36:47

Thank you, Chair. I would be interested to understand if we as a Council approve this particular request if this is something we should be expecting to see year after year, because that is essentially what we're looking at, unless the issue is mitigated between applications for this approval.

Aldersperson Katie Van Zeeland (District 5) 37:10

Who would like to address that? Director Block?

Director Danielle Block (Department Of Public Works) 37:14

While I can't accurately state the number that would come forward, I can tell you that DPW when these issues come forward, we work with the homeowner first to get the property into compliance. And then the discussion led down the path of "this is one mechanism to allow the items to stay." Part of the permit application does include that insurance waiver and the liability of these items remaining in the right of way. That would have to be completed prior to the permit being issued.

Aldersperson Katie Van Zeeland (District 5) 37:55

Thank you. Alder Jones, you are two, correct? Oop, yep. It's not working.

Aldersperson Vaya Jones (District 10) 38:06

Just some comments more than questions at this time. I've been working with Colleen. As soon as it became an issue, she began working with the city. So I want to highlight her work and trying to find a solution to this. My concern is that she has not advocated enough for herself. She runs a daycare in her home, so a three-foot fence is not in compliance with her accreditation or certification to continue this. This is her livelihood. So that for me is very important for us to consider this.

Aldersperson Vaya Jones (District 10) 38:48

Again, just kind of saying this is not a high traffic volume street. There have been two issues not caused by this. So between this work, between this being her livelihood, she has decided to move forward with this to take on the responsibility and the liability so that she can move forward in this process. So I would support the approval of the occupancy permit, granted that the resident has agreed to the full liability agreement.

Aldersperson Katie Van Zeeland (District 5) 39:18

Thank you. I concur. I think that the homeowner has been very responsive, and I actually did run a daycare in my home. So I know that it is true that you must have that fence for your certification. So this is a matter of your livelihood, and as long as it sounds like the vision situation is being dealt with, I'd be amiable to voting for this. Anyone else like—Alder Doran?

Aldersperson Chad Doran (District 15) 39:46

Thank you. I guess this is sort of maybe a related question about the terrace occupancy policy. When this was—when I guess Council passed this a year or so ago, my understanding was this—the intent of this resolution was to encourage sort of people to bring forward new—or give people the opportunity to plant in terraces. Have we actually had anyone who's applied for that purpose yet? I don't recall something coming forward to municipal services for that.

Director Danielle Block (Department Of Public Works) 40:18

So if they're planting an acceptable use in that street terrace, they wouldn't actually come to us for a permit. No. So I can't tell you how many people who have decided to plant a street terrace garden or do a flower bed in

their terrace. So long as it meets the items of the policy that are acceptable, they can go ahead and do that without a permit.

Aldersperson Chad Doran (District 15) 40:40

Okay, thank you.

Aldersperson Katie Van Zeeland (District 5) 40:43

Alder Hartzheim?

Aldersperson Sheri Hartzheim (District 13) 40:45

Thank you, Chair. My—I agree with the sentiments offered that the homeowner is trying to do things to make the situation better. And these are preexisting conditions to her purchasing the home and starting the business there. So I have I have complete empathy for her and believe that this is a great stop gap measure to try to fix the existing problem we have. My concern is what is, what are the next steps? And I guess, that maybe is subsequent to what we're discussing today?

Aldersperson Katie Van Zeeland (District 5) 41:18

Yeah. I think I was having the same issue. I was trying to divorce these two items. But, you know, what we have in front of us is the permit. And, you know, I guess we can only hope that with a responsive homeowner and with our Department of Public Works working together that things would follow through.

Aldersperson Katie Van Zeeland (District 5) 41:40

Any other questions or discussion on this item? All right. So with that, we'll vote. All those in favor say aye. Aye. Any opposed? That motion passes four zero. So that—the recommendation from the committee will be to approve. The final vote on this will be on Wednesday at the Council meeting. Next Wednesday. Sorry, not this coming Wednesday, the next Wednesday, the 16th. Thank you very much.