



City of Olivette
Planning & Community Development Department
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DEPARTMENT MEMORANDUM

DATE: NOVEMBER 30, 2020
TO: ZONING BOARD OF ADJUSTMENT
FROM: CARLOS TREJO, AICP
DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT
RE: BUILDING PERMIT NOS. P2020-00774
508 NORTH WARSON ROAD
PETITION FOR ADMINISTRATIVE APPEAL

SUMMARY OF STAFF'S REVIEW AND RECOMMENDATIONS:

1. A building permit, permit number P2020-00774, was issued on September 15, 2020. The permit authorized the construction of a privacy fence and the placement of 4, fourteen-foot posts at the southeast corner of the parcel grounds.
2. Adjacent property owners objected to the issuance of the building permit on October 13, 2020, and they filed a formal appeal, pursuant to Section 400.1640, on October 22, 2020.
3. Pursuant to Section 400.1630 (A.1), the Board has jurisdiction to hear and decide appeals where it is alleged there is error in any determination made by the Building Official in the enforcement of Chapter 400.
4. The appeal alleges that the permitted posts are intended to support an enclosure for a batting practice facility, and thus constitute an "accessory structure", and that the Building Official accordingly erred in issuing the permit for the posts, for the following reasons:
 - A. The batting practice facility violates the requirements of Section 400.020, because:
 - (1) It is not subordinate to the residential use of 508 North Warson, and so violates Section 400.020.1, because the property owner intends to permit non-occupants to use the facility; and
 - (2) It is not located on the same lot as the principal structure, and so violates Section 400.020.4;
 - B. If the batting practice facility meets the requirements of Section 400.020, then it still violates the city code, because:
 - (1) It is not enumerated as a permitted accessory structure in the city's SR District, and as such it violates Section 400.1592 (Permitted Accessory Structures in Residentially Zoned Districts);
 - (2) Even if it could be considered as a permitted accessory structure under Section 400.1592.B.5 ("Open accessory structures") or Section 400.1592.B.9 ("Play structures"), it violates the applicable setback, height, and area limitations; and
 - (2) It does not otherwise qualify as a permissible non-enumerated accessory structure under Section 400.1592.C, because it has not been subject to Site Plan or Community Design review as required by that subsection.
5. Pursuant to Section 400.1640 (D), the Board may: (a) reverse or affirm the determination of the Building Official, in whole or in part, or (b) modify the determination, or (c) make such determination as ought to have been made.

ATTACHMENTS

- Appeal petition
- Building Permit Nos. P2020-00774

STAFF REPORT

On September 15, 2020, a building permit was issued for the construction of a privacy fence and four, 14-foot posts. The assigned building permit number was P2020-00774 and authorized the following construction:

- A six-foot tall wooden privacy fence located on the north property line, extending approximately 445 feet; and
- The embedding of four, fourteen foot tall metal posts into the ground located at the southeast corner of the parcel grounds.

Each poles is separate and independent from the other. Posts are paired, with a distance of 14 feet from the paired partner and distanced 70 feet from one another. The two nearest post to north property line measure 14-feet and the two nearest post from the east property line measure 20 feet.

APPEAL APPLICATION

The appeal petition claims that the posts authorized under Building Permit P2020-00774:

1. Would not meet the criteria, as established under the definition, to be considered an accessory structure for the following reasons:
 - the post, and the intended use to form the corners of a batting cage, would not be subordinate to the principle use because the intended use of the batting cage is for non-occupants of a *select baseball team*;
 - the location of the four post are on a separate vacant lot that is independent from the lot containing the primary structure.
2. Even if a determination was made that the four posts were found to meet the definition of an accessory structure, the posts:
 - would not be an enumerated permitted accessory structure in residentially zoned districts;
 - the placement of the posts and the area framed within the post would exceed the maximum area and permitted location;
 - prior to a building permit being issued the four post would require review and approval by the City's Planning and Zoning Commission in accordance with Article XVI Accessory Structures and Uses of Chapter 400 Zoning Regulations.

THE BUILDING PERMIT REVIEW.

At the time the building permit application was submitted for review staff acknowledged the following:

- Four post, 14-feet in height were proposed.
- The four post are embedded permanently into the ground with a 48-inch footing.
- The four post are not interconnected by any structural or constructed flooring system or overhead beam.
- A net will be hanging from overhead tree limbs and tied to each post.

With the posts embedded permanently into the ground, a determination was made that said post represent a structure. In both the City's adopted building codes and Chapter 400 Zoning Regulations a structure is defined as anything constructed or erected permanently into the ground.

When does a post require a building permit?

Traditionally, administrative determinations are made as to when a post requires a permit. The intent of the City's building codes is to establish minimum requirements to safeguard the public safety, health and general welfare. The building codes do give staff some leeway in interpretation if adopted as policies or procedures. One the Department has adopted includes waiving the building permit requirement for the following:

- the placement of a residential flagpole;
- the placement of a post for a basketball backboard.

It was in staff's view that the posts, as presented in the building permit application, fell within the consideration of not requiring a building permit. Given the responses received from neighboring property owners as the posts were being installed, a building permit was requested for the embedding of the posts into the ground.

When does a structure become an accessory structure or use?

Under Chapter 400 Zoning Regulations, an accessory structure is “subordinate to and serves”, “is subordinate in area, extent or purpose”, contributes to, and is located on the same lot as the principle building or use.

When the inquiry to the placement of the posts was noted by the property owner, a discussion occurred within staff to determine whether the assembly method proposed would require a permit. During the permitting for the installation of the fence, the four posts were illustrated in the permit plans and noted to be embedded into the ground. Given the posts were embedded into the ground and the history of grievances, a building permit was required.

As noted previously, Department past practice has not required a permit for the placement of a post into the ground. This is applied to residential flagpoles or post to hold a basketball backboard.

As to whether the posts represented an accessory structure, in review of the building permit there was no formal assembly of the posts other than a net overhanging from tree branches. A decision was made that:

1. the posts, as embedded into the ground, represented a structure and thus a permit would be required.
2. The posts, with no other structural improvement tying the post together, did not represent an accessory structure.

When a child’s playhouse is connected to a tree, it is not required to go through a permitting process or considered an accessory structure. When a basketball backboard post is installed at the end of a driveway turnaround, it is not required to go through a permitting process nor is the post and turnaround considered an accessory structure (court).

APPEAL REQUEST

Not subordinate.

Claims by one of the appellants notes that in discussions with the property owner it was mentioned that the property owner is a *coach for a select baseball team in the area*. The reference of this discussion with the property owner does not present sufficient evidence to deny the issuance of a building permit.

Different lot.

The basis for justifying the separate lot issue is based on the St. Louis County Recorder of Revenue website information. The County has assigned two locator numbers to the property, one for the portion in Creve Coeur, the other for the portion in Olivette.

The County’s website does not indicate that the two locator numbers present two separate subdivided parcels.

Within the building permit application submitted by the property owner a survey, signed and sealed by a professional land surveyor in Missouri, was provided. This boundary survey illustrated the referenced two locator numbered lots as one whole lot.

The building permit information satisfied verification that this is one lot and that the posts are not sitting on a separate vacant/unimproved property.

In review, the placement of the posts do not necessarily reflect that the post constitute an accessory use or an accessory building. While they are embedded into the ground and are considered structures, permits for sport post, such as a basketball backboard, or a flagpole, have been exempt from permitting.

Permitted Accessory Structures in Residentially Zoned District.

The appeal first questions the four posts from being considered as an accessory structure given that they are not subordinate to the property (that being not for use beyond the occupants of the property) AND are on the same lot as the principle structure of the site.

The second component of the appeal then states that if the four post do meet the definition to be considered an accessory structure and thus are subject to review and approval through the City’s Planning and Community Design Commission (Sec. 400.1592 (C)).

RECOMMENDED ACTION:

Preliminary Determination

Staff's determination that the disconnected posts do not constitute an accessory structure differs fundamentally from the appeal's assumption that the batting practice facility is an accessory structure. Before addressing the merits of the appeal, staff recommends that the Board consider a motion to resolve that discrepancy. Since the appeal seeks the reversal of staff's determination, the Board should consider the following motion:

"To reverse staff's determination that the disconnected posts do not constitute an accessory structure".

If the Board fails to reverse staff's determination, then staff's determination is necessarily affirmed, and the Board should then entertain a motion to deny the appeal.

If the Board reverses staff's determination, then the posts must be considered an accessory structure subject to the requirements of the zoning code, in which case the merits of the appeal should be decided.

Note that the concurring vote of four Board members is necessary to reverse staff's determination.

Merits of Appeal

If staff's determination on the existence of an accessory structure is reversed, the Board should then consider the merits of plaintiff's appeal and the evidence presented. The issues and recommended motions are addressed below. Again, in that the appeal seeks a reversal of the building permit as it pertains to the posts, the motions should be couched in those terms.

1. Is the batting practice facility subordinate to the principal residential use of 508 North Warson as required by Section 400.020.1?

"Move to reverse the building permit's approval of post construction because the batting practice facility is not subordinate to the principal residential use of 508 North Warson as required by Section 400.020.1."

2. Is the batting practice facility located on the same lot as the principal structure (508 North Warson) as required by Section 400.020.4?

"Move to reverse the building permit's approval of post construction because the batting practice facility is not located on the same lot as the principal structure (508 North Warson) as required by Section 400.020.1."

3. Is the batting practice facility enumerated in Section 400.1592 as an accessory structure that is permitted in the city's SR District?

"Move to reverse the building permit's approval of post construction because the batting practice facility is not enumerated in Section 400.1592 as an accessory structure that is permitted in the city's SR District."

4. If the batting practice facility is considered either as a permitted accessory structure under Section 400.1592.B.5 ("Open accessory structures") or Section 400.1592.B.9 ("Play structures"), does it still violate the applicable setback, height, and/or area limitations?

"Move to reverse the building permit's approval of post construction because the batting practice facility does not meet the applicable setback, height, and/or area limitations of Sections 400.1592.B.5 and/or 400.1592.B.9."

NB—This issue need not be addressed if the Board finds that the batting practice facility is not an enumerated use under Section 400.1592 as addressed above.

5. Does the batting practice facility otherwise qualify as a permissible non-enumerated accessory structure under Section 400.1592.C?

"Move to reverse the building permit's approval of post construction because the batting practice facility has not been subject to Site Plan and Community Design Review as required by Section 400.1592.C."

LOCATION MAP

