

PLANNING COMMISSION
Wednesday, November 12, 2014

Chairman Angie Plantenberg called the meeting of the Brainerd Planning Commission to order at 6:00 p.m. in the City Hall Council Chambers.

Noted present were Commissioners Hayden Shaw, Matten, Plantenberg, Norwood, Straw and Cole. Commissioner Pritschet was noted absent. Also present was City Planner Ostgarden.

#2 Approval/Amendment of Agenda

MOTION AND SECONDED BY COMMISSIONERS NORWOOD AND STRAW, DULY CARRIED, TO APPROVE THE AGENDA AS PRESENTED.

#3 Approve minutes of the regular meeting of October 8, 2014

MOTION AND SECONDED BY COMMISSIONERS NORWOOD AND STRAW, DULY CARRIED, TO APPROVE THE MINUTES FOR THE REGULAR MEETING OF OCTOBER 8, 2014.

#4 NEW BUSINESS

a. Public Hearing – Variance for Garage Addition Height – 921 19th Street SE – John Stram

City Planner Ostgarden stated the property is located at the south end of 19th Street SE which is a remote area in Brainerd with wetlands to the south that impede the ability to extend the street for future development. There are three vacant lots that are buildable adjacent to the property with wetlands to the east, west and north.

City Planner Ostgarden stated the property is approximately two acres on which there are two accessory buildings. One building is 1960 square feet to which an addition of 1440 square feet is proposed making the total structure 2736 square feet. The height of the existing building is 14 feet with the proposed addition having a height of 18 feet. The principal building is approximately 17 feet and Zoning Ordinance language states a garage cannot exceed 15 feet requiring a three foot variance for the garage addition.

City Planner Ostgarden reviewed the staff report noting the criteria for granting a variance along with the practical difficulties used in connection with granting a variance.

The Public Hearing was opened at 6:08 p.m.

Mr. John Stram, 921 19th Street SE, stated he is requesting the additional three feet so he can fit a camper and a boat in the garage. He described what the existing garages are used for and how the addition will be built onto the existing garage.

The Public Hearing was closed at 6:12 p.m.

Commissioner Cole read the findings-of-fact for the variance into the record as follows:

1. The property is approximately two (2) acres in size and located in an R-1 (Single Family Residential) District.
2. The property is located on 19th Street SE which is a dead end street that cannot be extended due to wetlands.
3. The closest dwelling is approximately two hundred eighty (280) feet away.
4. Due to wetlands, there is limited residential potential in the vicinity of where the garage is located.
5. The new garage will be eighteen (18) feet tall and the dwelling is eighteen and one half (18 ½) feet tall. The Zoning Ordinance permits accessory buildings to be fifteen (15) feet tall or the height of the principal building whichever is less.
6. Due to parcel size and the distance the building is from the house, there should be no effect on light, air and access for the property owner.
7. The variance for the increased height will be in harmony with this objective because of development limitations due to wetlands and the site is located in a remote area of the city.
8. The property is unique due to its size and location in the community and restrictions on surrounding land that limit development.
9. The additional three (3) feet of height will not alter the essential character of the locality as the building is not visible from the road or from other dwellings.

Commission agreed to amend the following findings-of-fact:

5. The new garage will be eighteen (18) feet tall from the roof midpoint and the dwelling is eighteen and one half (18 ½) feet tall. The Zoning Ordinance permits accessory buildings to be fifteen (15) feet tall or the height of the principal building whichever is less.
7. The variance for the increased height will be in harmony with preventing overcrowding of land and undue concentration of regulated land, buildings, yards and density of population because of development limitations due to wetlands.
8. The site is located in a remote area of the city.

Commission agreed to add the following findings-of-fact:

11. The petitioner spoke and there was no opposition to the request.

MOTION AND SECONDED BY COMMISSIONERS HAYDEN SHAW AND STRAW, DULY CARRIED, TO RECOMMEND APPROVAL OF THE VARIANCE TO CONSTRUCT AN ACCESSORY BUILDING ADDITION THAT WILL BE THREE (3) FEET TALLER THAN PERMITTED BASED ON THE ELEVEN (11) FINDINGS-OF-FACT.

b. Public Hearing – Variance for Six and One Half (6-1/2) Foot Fence in a Street Side Yard – 1103 Quince Street – Janet Walters

City Planner Ostgarden stated the property is located on the northeast corner of Quince Street and 11th Street SE. The owner is proposing to construct a 6-1/2 foot tall chain link fence to be located four feet in front of the house between the house and the side street property line. The fence is planned for security and to establish a barrier for pets. The Zoning Ordinance specifies that a 6-1/2 foot tall fence is not permitted between the house and street side yard property line. There is approximately eight feet between the house and the side street property line noting there is brush that will be screening for the fence.

City Planner Ostgarden reviewed the staff report noting the criteria for granting a variance along with the practical difficulties used in connection with granting a variance.

The Public Hearing was opened at 6:24 p.m.

Ms. Janet Walters, 1895 W Gull River Rd, Pillager, stated the reason they requested the extra distance is because the lot is narrow and it will allow a little more room within the fence. She also stated the request for the six foot height is because her daughter, who lives at the house, has two german shepherds so the height would be better for them.

Commissioner Plantenberg asked about the slope of the yard. Ms. Walters stated that was another reason for the extra distance because the slope is less as you get closer to the street.

Commissioner Hayden Shaw asked if they have plans to remove the shrubs. Ms. Walters stated they do not have plans for removal.

The Public Hearing was closed at 6:26 p.m.

Commissioner Straw read the findings-of-fact into the record as follows:

1. The property is a one hundred forty (140) foot by fifty (50) foot lot in an R-2 (Medium Density Residential) District.
2. The owner desires to construct a six (6) foot tall chain link fence to be located four (4) feet in front of the house between the house and the side street property line.
3. There is approximately eight (8) feet between the house and the side street property line.
4. The fence is chain link which will not impede light nor should it negatively impede visibility for motorists exiting the alley on the north side of the lot.
5. Permitting the fence four (4) feet closer is reasonable because of its chain link style.
6. Because the fence is chain link, constructing it four (4) feet closer to the street than permitted it will not alter the essential character of the neighborhood because the chain link style will not create a visual obstruction and be as imposing as a privacy fence constructed so close to the street right-of-way.

The Commission agreed to add the following findings-of-fact:

7. The petitioner spoke and there was no opposition to the request.

MOTION AND SECONDED BY COMMISSIONERS COLE AND NORWOOD, DULY CARRIED, TO RECOMMEND APPROVAL OF THE VARIANCE TO CONSTRUCT A SIX (6) FOOT TALL FENCE IN A STREET SIDE YARD WHERE A FOUR (4) FOOT FENCE IS PERMITTED BASED ON THE SEVEN (7) FINDINGS-OF-FACT.

c. Public Hearing – Variance from Parking Requirements – Tyrol Hills Center – Kuepers Inc – 206 Washington Street

City Planner Ostgarden stated the property is a nonconforming use in that 102 off-street parking spaces are provided and the Zoning Ordinance requires 166 spaces. The property owner is planning building exterior improvements resulting in a request that eight off-street parking spaces be removed reducing the total off-street parking to 94 spaces.

City Planner Ostgarden reviewed the staff report noting the criteria for granting a variance along with the practical difficulties used in connection with granting a variance. He noted the Planning Department feels the removal of the eight spaces will still leave ample parking to meet the day to day commands on the site and should not affect off-street parking the neighborhood.

The Public Hearing was opened at 6:38 p.m.

Mr. Mark Cross, Kuepers Inc, reviewed the building façade plans and the parking calculations based off the type of businesses located in the building.

The Public Hearing was closed at 6:41 p.m.

Commissioner Norwood read the findings-of-fact into the record as follows:

1. The property is approximately two point one (2.1) acres in size and the building is approximately forty thousand (40,000) square feet in area.
2. The property is zoned B-4 (General Commercial) District
3. The property is a nonconforming use in that one hundred two (102) off-street parking spaces are provided and one hundred sixty-six (166) spaces are required by the City of Brainerd Zoning Ordinance.
4. The property owner is planning building exterior improvements resulting in a request that eight (8) off-street parking spaces be removed reducing the total off-street parking to ninety-four (94) spaces.
5. The neighborhood will remain protected as historical use has shown there is ample on-site parking to meet the day to day needs of the Center uses. Removing the spaces will still leave an ample supply of parking, sufficient to meet the day to day user needs without parking on the street or affecting street circulation.
6. The parking area has more than sufficient parking for typical day to day needs. Based upon the number of off-street parking spaces, removal of eight (8) spaces will still permit the property to be used in a reasonable manner without creating parking issues for surrounding property.
7. Removing eight (8) spaces from the one hundred two (102) parking space lot will not alter the essential character of the locality because historical use has proven that it should not result in more on-street parking.

The Commission agreed to add the following findings-of-fact:

8. Marc Cross representing Kuepers, Inc spoke and there was no opposition to the request.

MOTION AND SECONDED BY COMMISSIONERS HAYDEN SHAW AND MATTEN, DULY CARRIED, TO RECOMMEND APPROVAL OF THE VARIANCE TO REDUCE THE NUMBER OF OFF-STREET PARKING SPACES TO NINETY-FOUR (94) WHERE ONE HUNDRED SIXTY-SIX (166) SPACES ARE REQUIRED BASED ON THE EIGHT (8) FINDINGS-OF-FACT.

- d. **Public Hearing – Variances from Parking Requirements, Parking Stall Size, Drive Aisle Width, Drive-up and Stacking Lane Screening, and Front Yard Setback – 303 W Washington Street – Kimley Horn for the Proposed Dunkin Donuts**

City Planner Ostgarden stated Dunkin Donuts is planning a store at the southwest corner of W Washington Street (Hwy 210) and NW 3rd Street. The site currently has an auto glass repair shop and is across NW 3rd Street from Riverside Elementary School. Restaurants with drive-up windows are permitted uses in a B-4 District.

City Planner Ostgarden reviewed the site and proposed building in comparison with the Jimmy John's site. He noted the requested variances as follows:

- The building cooler will extend 2-7/10 feet into the required front yard along NW 3rd Street
- The site is proposed to have 11 off-street parking spaces where 26 off-street parking spaces are required
- The following parking stall sizes and drive aisle widths:

	Required	Proposed
45° Parking Space Width	10'	9'
Parallel Parking Stall Width	10'	8'
Parallel Parking Stall Length	22'	21'
One Way 45° Parking Aisle Width	15'	14'
One Way Drive Lane Aisle Width	12'	11'
Drive-up Window Lane Aisle Width	11'	9'

- The drive-up window and drive-up window lane will be visible from the residential zoning district across NW 3rd Street and the rights-of-way of NW 3rd Street and Washington Street. Zoning Ordinance requires that drive-up window and its stacking lanes shall be screened from view of adjoining residential districts and public street rights-of-way

City Planner Ostgarden continued to review the staff report noting the criteria for granting a variance along with the practical difficulties used in connection with granting a variance and consistency with the Comprehensive Plan.

The Public Hearing was opened at 7:05 p.m.

Mr. Brandon Elegert, Kimley Horn, stated they feel this a great opportunity to redevelop the site and thanked the Commission and Planning Department for considering the request.

Discussion was held regarding turning radiuses for a vehicle pulling a trailer or boat.

Mr. Rick Kummet, 1820 S 8th Street, stated he is representing the adjacent property to the south. He stated he has concerns with a right turn only out of the proposed parking lot and people possibly using their parking lot to drive through.

Ms. Alice Smith, 22609 Hole in the Day Dr, stated she owns the property on NW 4th Street and W Washington St. She stated she has concerns with the number of off-street parking spaces. She noted parking at the building she owns is in compliance but things still get tight with their parking.

The Public Hearing was closed at 7:15 p.m.

Commissioner Hayden Shaw read the findings-of-fact into the record as follows:

1. The site is 14,000 square feet (140' X 100') and the proposed building is (1,733) square feet not including an attached cooler.
2. The property is in a B-4 (General Commercial) District.
3. The parcel size limits the redevelopment potential for the property.
4. The store will have seating for seventeen (17) to nineteen (19) people and eleven (11) on-site parking spaces. Considering five (5) employees per shift, that will leave six (6) customer on-site parking spaces with one (1) of those spaces being handicapped parking.
5. Granting the variance would permit the property to be redeveloped, which would be consistent with Zoning Ordinance orderly development objectives and the property redevelopment would be compatible in the area as other area uses are commercial in nature.
6. MNDOT concerns for this type of traffic generator is that no left turn movement be allowed onto Hwy 210.
7. The variance supports the redevelopment of vacant and abandoned sites within the urban core.
8. A concern mentioned by the City Engineering Department is that there could be a tight aisle turning radius for a large vehicle or a vehicle with a trailer.
9. The site will be able to be used for commercial purposes and the site can be designed with a building consistent with the character of the locality

The Commission agreed to add the following findings-of-fact:

10. The City Engineer has stated there would be objections to left turn movement from the site onto NW 3rd Street.
11. The Dunkin Donuts owner and a representative from Kimley Horn spoke.
12. Two people spoke expressing concerns about granting the variances.

Discussion was held regarding off-street parking and possible conditions.

MOTION AND SECONDED BY COMMISSIONERS HAYDEN SHAW AND MATTEN, DULY CARRIED, TO RECOMMEND APPROVAL OF THE VARIANCES TO PERMIT OFF-STREET PARKING SPACE DIMENSIONS AND DRIVE LANES TO BE LESS WIDTH THAN REQUIRED, TO PERMIT A BUILDING ENCROACHMENT INTO A REQUIRED FRONT YARD SETBACK, AND TO NOT REQUIRE SCREENING THE DRIVE-UP WINDOW AND STACKING LANE BASED ON THE TWELVE (12) FINDINGS-OF-FACT.

MOTION AND SECONDED BY COMMISSIONERS HAYDEN SHAW AND NORWOOD TO RECOMMEND APPROVAL OF A VARIANCE TO PERMIT ELEVEN (11) OFF-STREET PARKING SPACES WHERE TWENTY-SIX (26) ARE REQUIRED BASED ON THE TWELVE (12) FINDINGS-OF-FACT AND ONE (1) CONDITION. COMMISSIONERS COLE AND STRAW OPPOSED.

Commissioner Cole stated he has many concerns with the limited amount of parking and noted we have parking requirements for a reason.

Commissioner Hayden Shaw stated she feels the owner of Dunkin Donuts would not be purchasing this property if they felt they could not efficiently operate their business with the

amount of parking they have. She stated if we want to see this lot redeveloped, there will have to compromises made.

Discussion was held regarding ways to help the off-street parking issue.

The Commission agreed on the following condition: No more than three (3) employees at any one time can park on-site.

e. Public Hearing – Conditional Use Permit to Operate an On-Sale Liquor Establishment in a B-2 District – 1107 Oak Street – Mike Cyrus

City Planner Ostgarden stated an on-sale liquor establishment operated at 1107 Oak Street for many years but has been vacant for a little over a year. The new owners have reopened the business which requires a Conditional Use Permit because of the length of vacancy. He stated a new liquor license was inadvertently issued before reviewing zoning requirements.

City Planner Ostgarden reviewed the staff report and criteria for granting a conditional use permit along with Comprehensive Plan Goals and Strategies. He noted the following concerns:

- There are off-street parking surface requirements and screening requirements that will need to be addressed.
- The driveway and gravel parking area is required to be asphalt or concrete.
- The property does not have a properly identified handicapped parking space. It appears that 20 off-street parking spaces will be required, a total of which requires one handicapped space to be provided which, due to the slope along the west side of the building is too steep, will probably be located down the hill behind the building.

He stated should the Commission recommend CUP approval, consideration should be given to permit the improvements to be completed in 2015.

The Public Hearing was opened at 7:59 p.m.

Ms. Debbie Cyrus, 36902 Bugle Rd, Motley, stated she waited to purchase the property until the liquor license went through with the City and there were no issues at that time. She stated it would be a big financial undertaking to create the twenty parking spaces and the screening. She stated she went through the procedure she needed to go through and now she's being asked to make changes because of the City's mistake.

Commissioner Hayden Shaw asked if they were planning to make improvements in the parking lot. Ms. Cyrus stated they would like to eliminate the neighbors using it to drive through and they would like to level it off with class 5 as asphalt is too expensive for them at this time.

Commissioner Matten asked how many off street parking spaces do they have at this time. Ms. Cyrus said approximately ten spaces.

The Public Hearing was closed at 8:08 p.m.

Discussion was held regarding the number of required off-street parking spaces.

Commissioner Matten read the findings-of-fact into the record as follows:

1. The property is in a B-2 (Neighborhood Business) District.
2. Because the use did not operate for more than one year, reestablishing the property for on-sale liquor establishment purposes, issuing a Conditional Use Permit is required.
3. The site is deficient in improved off-street parking and a properly identified handicapped parking space.
4. Reestablishing the property for on sale liquor sales will have no elements or conditions that will be dangerous, injurious, or noxious to any other property or persons.
5. The existing structure will be reused with no changes to seating, orientation or landscaping planned.
6. There have been no exterior changes to impact on the environment of the neighborhood.
7. The reuse complies with all the applicable Zoning Ordinance objectives, in particular the three (3) highlighted sections, because it:
 - a. Protects the neighborhood by preserving an existing structure.
 - b. Promotes orderly development as the structure will be returned to its intended use.
 - c. Provides for compatibility of different uses by using the existing structure and no additions are planned.
8. Support the redevelopment of vacant and abandoned sites within the urban core.
9. The reuse will not affect fire protection; create electrical disturbances, vibrations, odors, air pollution, glare, erosion or water pollution.

The Commission agreed to add the following findings-of-fact:

10. A liquor license for the property was issued in error prior to the approval of a conditional use permit for on-sale liquor establishment.
11. The property owner expressed concerns about the conditions and having the financial means to meet the requirements.

The Commission agreed to add the following condition: Require off-street parking area shall be paved, a handicapped parking space shall be identified, and required screening shall be installed by December 31, 2015.

MOTION AND SECONDED BY COMMISSIONERS NORWOOD AND HAYDEN SHAW, DULY CARRIED, TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT TO OPERATE AN ON-SALE LIQUOR ESTABLISHMENT WITH THE ELEVEN (11) FINDINGS-OF-FACT AND CONDITIONS.

f. South 6th Street Zoning – discussion of B-4 (General Commercial) Business District Zoning from Pine Street to south of Willow Street

City Planner Ostgarden reviewed the background of a property on South 6th Street that was destroyed in a fire in 2013 along with review of the community wide Zoning map review process in 2011 which created nonconforming uses along the South 6th Street corridor. He stated the property owner has tried selling the property, but has not been able to because of the size of the lot and zoning.

City Planner Ostgarden noted, based on the State Statute language regarding nonconformities, because the nonconforming use has been discontinued for more than one year, any subsequent use of the property must be in compliance with current zoning regulations.

City Planner Ostgarden reviewed possible options:

- Do nothing which means the parcel will remain vacant and taxes will need to continue to be paid possibly leading to a tax forfeit parcel.
- Continue to try selling the property with prospective owners knowing it cannot be used for residential purposes.
- Apply to rezone the property, however rezoning property in this manner is not a procedure that should be supported.
- Review the 2011 zoned area which would review the zoning of the property in context with the zoning of a larger area along South 6th Street.

City Planner Ostgarden reviewed the fourth option in more detail suggesting the following reasons for suggesting the reconsideration:

- Future Land Use Map which identifies the South 6th Street corridor as Low to Medium Density Residential Land Use.
- Existing Land Use which is predominately single family residential.
- The neighborhood does not appear to be in physical decline and appears to be a typical part of the community for having approximately a 50% rental rate.
- Timing of redevelopment.
- Location of commercial redevelopment.

City Planner Ostgarden reviewed the Future Land Use Map, Existing Land Use Map, current Zoning Map, previous Zoning Map, and rental properties in the area. He then reviewed two possible rezoning options with an R-1 or an R-2 zone. He stated the Planning Department does not suggest rezoning just this property, but to rezone a larger area.

Discussion was held regarding the nonconforming use and whether or not the property owner was aware of not being able to rebuild.

Discussion was held regarding how to proceed with the rezoning. Commissioner Hayden Shaw stated she does not feel the current Zoning Ordinance has the proper zoning classification for the South 6th Street corridor and feels the Commission should, in the near future, look at a bigger picture of what we want for this area.

Commissioner Cole stated the rezoning that was done in 2011 for this area was done looking at the Future Land Use Map and the hope there would be more commercial development in the future.

City Planner Ostgarden stated the B-1 (Residential Office) District may also be appropriate for this area.

MOTION AND SECONDED BY COMMISSIONER HAYDEN SHAW AND STRAW TO PROCEED WITH REZONING THE PROPERTY AT 705 SOUTH 6TH STREET FROM B-4 (GENERAL COMMERCIAL) TO R-1 (SINGLE FAMILY RESIDENTIAL) DISTRICT. COMMISSIONERS MATTEN AND NORWOOD OPPOSED.

#5 **PUBLIC FORUM** – Time allocated for citizens to bring matters not on the agenda to the attention of the Planning Commission – Time limits may be imposed.

#6 **OLD BUSINESS**

None

#7 **Commissioners' Questions/Comments**

Commissioner Plantenberg stated she would like to schedule a workshop to discuss complete streets, building codes, and parking requirements.

Commissioner Matten stated she would like to make some changes to the meetings, possibly dispensing with the reading of the findings-of-fact as long as they are displayed. She stated she would like to see the Commission and staff to be more proactive when things, such as the arson, happen to notify the property owner that they have a time limit because it's a nonconformity. She stated she would also like to see permit language on the workshop agenda.

Commissioner Plantenberg asked the Commissioners to come up with their ideas for an agenda for the workshop that would be held in January. She asked them to get the ideas to the City Planner before the December meeting.

#8 **City Planner's Report**

City Planner Ostgarden stated the City Council is still working on the budget and it doesn't look like any funding for the comprehensive plan review will be in the 2015 budget.

#9 **Adjournment**

As there was no further business the meeting adjourned at 9:02 p.m.

Respectfully submitted,

Mark Ostgarden AICP
City Planner

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