

PLANNING COMMISSION
Wednesday, September 21, 2016

City Planner Ostgarden 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 Parks, Plantenberg, Straw, Headley, Turner, Antolak and Pritschet. Also present were City Planner Ostgarden, City Administrator Thoreen, and 11 others.

#2 Approval/Amendment of Agenda

MOTIONED AND SECONDED BY COMMISSIONERS PRITSCHET AND PARKS, DULY CARRIED, TO APPROVE THE AGENDA AS PRESENTED.

#3 Approval of minutes of the regular meeting of August 17, 2016 and the Special Meeting held on August 17, 2016

MOVED AND SECONDED BY COMMISSIONERS PARKS AND STRAW, DULY CARRIED, TO APPROVE THE MINUTES OF THE AUGUST 17, 2016 REGULAR PLANNING COMMISSION MEETING AS PRESENTED AND TO APPROVE THE MINUTES OF THE AUGUST 17, 2016 SPECIAL PLANNING COMMISSION MEETING WITH COMMISSIONER ANGIE PLANTENBERG BEING ADDED TO THE ROLL CALL.

#4 NEW BUSINESS

- a) **Essentia Health – St. Joseph’s Medical Center, 523 N 3rd Street, Brainerd, MN 56401, has applied for a variance to modify the screening requirements for the parking lot it owns at 501 N. 4th Street**

City Planner Ostgarden reviewed the process leading to this petition which was also included in the Staff Report of the Packet. He stated that when the parking lot was built the hospital installed landscaping which provided a significant barrier between the lot and the neighborhood residents; however, earlier this year the hospital removed all the existing landscaping which required them to meet current screening requirement for new landscaping. He reviewed a timeline in which the hospital installed new landscaping which does not meet screening requirements followed by neighborhood concerns received by the City. He reported that these events have led to meetings between City and hospital staff and eventually the request for a Variance received by the hospital. Illustrations of the past and current landscaping were shown and the height and opacity requirements were reviewed.

The Chair opened the Public Hearing at 6:12 P.M.

City Planner Ostgarden stated that he had forwarded to the Commission 2 emails received earlier in the week from two separate properties on North 4th Street.

The Chair recognized Kevin Yaeger, 325 Bluff Avenue, Brainerd, 2 blocks from the hospital, who expressed his opposition to the variance,. He referred to a documented strong opposition to the original parking lots in 1984. To illustrate his disagreement with the hospital using “safety” as a reason to be allowed this variance he compared police reports for the hospital parking lot and the Gregory Park location showing very little reported for the hospital vs. a significant number of calls for Gregory Park.

He stated that his concern is that the hospital's solution to this safety problem which "they created by installing a parking lot in a residential urban environment" is that the onus is now on the people in the neighborhood to provide security for their lot. He asked the Commission to consider that this request may be fiscally related and asked them to deny the variance request, stating that the ordinance only works if it is upheld and that allowing it could create a slippery slope toward allowing further variances by other properties in Brainerd in the same situation.

The Chair recognized Mike Larson, Chief Operating Officer for Essentia Health, who apologized to the City and neighborhood for making the mistake of changing the landscape of the parking lot without following proper procedure. He stated that 1 out of 3 people he's talked to has had issues with the changes. They are interested in mitigating what they've done to come within the ordinance requirements with the goal of safety for their staff and visitors as well as the safety and concerns of neighbors such as light and sound disturbance. He stated that security staff has been increased at the hospital.

The Chair recognized Kurtis Busman, Essentia Health Facilities Director, who presented pictures of the current and proposed landscaping. He stated that the hospital is trying to address safety, security and light/noise concerns rather than getting toward an "overgrowth" of fill-ins. He answered questions of the Commission about security cameras, height of bushes, shrubs and plants and perceptions of safety.

Mr. Larson stated that the hospital would like to focus on preventing incidents and that cameras are a tool for investigation rather than prevention.

The Chair recognized Steve Frasl, 524 N. 4th Street, Brainerd, who stated that his main concerns as a neighbor are the lights from the hospital and cars in the lot as well as noise. He stated that another concern is the type of barrier used based on plants and trees being bare 7 months out of the year.

The Chair recognized Anne Nelson Fisher, 517 N 5th Street, Brainerd, speaking against the variance. She stated that she is disappointed that the hospital did not address light and noise pollution issues when made aware of the violation of the ordinance in June. She discussed her concern with excessive water use for sprinkling natural berms and recommended further security options such as escort-to-parking lot availability and cameras.

The Chair recognized Melissa Yaeger, 325 Bluff, Brainerd, who feels the changes by the hospital have made the parking lot a very visible part of the landscape, whereas prior to the changes it was not as noticeable. She stated that although the flowers and shrubs are attractive they do not do the job of a proper barrier.

Mr. Busman stated that there has been an increase in security staff and that security staff recently assisted in the arrest of a neighborhood home intruder.

The Chair closed the Public Hearing at 6:45 P.M.

The following Findings-of-Fact were read into the record:

1. The property is located in an (R-1) Single Family Residential District.
2. The parking lot is the block bounded by bounded by N. 3rd Street, Holly Street, N. 4th Street and Ivy Street.
3. There are residential uses across Holly Street, N. 4th Street and Ivy Street,

4. The parking lot was constructed in 1984.
5. As of May 1, 2016, and for an indefinite but multi-year period prior, the parking lot for St. Joseph's hospital conformed to the Brainerd City Code. Specifically:
515-20-9: Parking Lots.
A. All exposed parking areas of ten (10) or more required spaces in a front and side street yard shall be screened with landscaping not less than three (3) feet or more than four (4) feet in height. The landscaping shall maintain a year round fifty (50) percent opacity.
B. When a parking lot is adjacent to or across an alley from a residential use or zone, the required screen height shall be increased to six (6) feet.
6. Based on the Zoning Ordinance definition the properties across the streets are not adjacent properties.
7. As of May 1, 2016, the screening in place for the parking met the obscuration and opacity requirements of 5.A. above.
8. In June 2016, the required screening was completely removed. Currently the screening does not meet the City's Zoning Code. A permit is not required to landscape non-residential property.
9. New landscaping was installed consisting of perennials and deciduous shrubs which do not meet the obscuration and opacity requirements of 5.A. above.
10. Zoning Ordinance Section 515-15-3 A. 2: Non-Conforming Uses. reads:
A lawful, nonconforming use of a structure, building or parcel of land may be changed to lessen the nonconformity of the use. Once a nonconforming structure or parcel of land has been changed, it shall not thereafter be so altered to increase the nonconformity.
11. Two representatives from Essentia Health were present and spoke in favor.
12. Four Citizens were present and spoke in opposition.
13. Two letters were received from citizens in opposition.

MOVED AND SECONDED BY COMMISSIONERS PARKS AND PRITSCHET, DULY CARRIED, TO ACCEPT THE FINDINGS-OF-FACT.

MOVED AND SECONDED BY COMMISSIONERS PRITSCHET AND STRAW, DULY CARRIED, TO RECOMMEND THE DENIAL OF THE REQUEST FOR A VARIANCE AS APPLIED FOR BY ESSENTIA HEALTH

Commissioner Pritschet stated that he feels the variance might provide further safety but the concern lies in the relation to the neighborhood, particularly the issues of light and noise, and is not congruent with compatible land use.

The relation to the City's Comprehensive Plan and Practical Difficulties were discussed. Commissioners expressed concern over setting precedence and upholding the City Zoning Ordinance.

The Chair recognized City Administrator Thoreen who stated that hospitals these days are usually far removed from local neighborhoods; whereas the Essentia Health building is a long-established facility that happens to be "in a neighborhood" so he wants all parties to consider being neighborly and consider the challenges faced by the hospital including financial.

b) Joe Hess, 310 N 6th Street, Brainerd, MN 56401, has applied to rezone the property from R-1 (Single Family) Residential to R3 (High Density Residential)

City Planner Ostgarden reported that the lot is part of an R-1 District in a generally single family existing area. He stated that the dwelling is a grandfathered duplex which had a 3rd unit added. A recent rental

inspection identified that the 3rd unit was added without permit. History is that in 2011 the property was removed from the R-3 zoning that fronts on Kingwood Street and placed into the R-1 District. The petitioner is seeking a rezoning to zone it back to the R-3 to permit the 3rd unit.

As a separate but related concern, City Planner Ostgarden stated that another factor to consider in this case is whether the City erred in changing the zoning line. Did it have insufficient information when the property was removed? Information that would have changed the decision if they'd had it in 2011? It was known that the property was a duplex and if the zoning changed it was going to be able to continue as a duplex meaning the rezoning was not going to adversely affect the ability of the legal known use at the time to continue. Arguably the R-3 zoning along Kingwood Street is appropriate; however, the change was made to limit multi-family use to Kingwood Street frontage on this block.

The Chair opened the Public Hearing at 7:12 P.M.

The Chair recognized Joe Hess, 310 ½ N 6th Street; who stated that if he wouldn't have made a mistake on some paperwork this wouldn't even be an issue. He was out of town for six years and came back to town to find out the home is being used as three apartments even though it's been zoned as a duplex for years. He completed the paperwork last year for the first time and staff told him he should choose duplex because it's homesteaded but he stated he lived in the basement and that started a very big issue. He stated that he can't afford to kick out a renter.

The Chair recognized John Erickson, 230 Chippewa Street, Brainerd, who owns the property at 323 N 7th Street which is single family and presently empty. He stated that he does not understand where the only issue being addressed is that the property is/was zoned improperly; he stated that there are many other issues which he relayed in a letter to the City. He stated that Mr. Hess is requesting to rezone a home to R-3 in a single family zoning district; a change that would possibly lead to other uses for the property and brings up the fear of "zoning creep" in the area. Stating that the definition of an R-1 is single family, he remarked that this is ad hoc attempt to rezone; an illegal use which has in this case been going on for several years and can be prosecuted. He stated that what is being requested is to use the police power to award a benefit that is an expansion of a previously existing non-conforming use and that it is perverse, illogical and irrational.

The Chair closed the Public Hearing at 7:32 P.M.

The following Findings-of-Fact were read into the record:

1. The property is a 50' x 150' lot on which is located a 3 unit dwelling, with the property owner living in the basement unit.
2. The area is predominantly single family dwellings.
3. The Future Land use Map identifies the area as low density residential land use.
4. Adding another unit will not have effect on city streets, city utilities, or services such as parks or schools.
5. Prior to 2011 the property was zoned R-3 (High Density Residential) District but was zoned R-1 (Single Family Residential District as part of the 2011 City wide Zoning Map review.
6. The petitioner was present and spoke in favor.
7. One property owner was present and spoke in opposition.
8. Two letters and 1 e-mail were received from citizens in opposition.

MOTIONED AND SECONDED BY COMMISSIONERS PRITSCHET AND ANTOLAK, DULY CARRIED, TO ACCEPT THE FINDINGS-OF-FACT.

Commissioner Plantenberg asked why the rental inspection did not reveal the multiple family use both 3 years ago and 6 years ago if this has been used for rental for over six years.

Commissioner Pritschet asked why this was not rezoned to R-3 when it was grandfathered in and suggested alternative options.

In a response to a statement by Mr. Erickson about why the application is being considered, City Planner Ostgarden stated that every property owner has the option to apply for a variance when found in non-compliance.

MOVED AND SECONDED BY COMMISSIONERS ANTOLAK AND PARKS TO RECOMMEND THE DENIAL OF THE REZONING APPLIED FOR BY MR. JOE HESS FOR HIS PROPERTY AT 310 N 6th STREET, BRAINERD, MN 56401, FROM R-1 (SINGLE FAMILY) RESIDENTIAL TO R-3 (HIGH DENSITY RESIDENTIAL).

Chair Plantenberg stated that City Planner Ostgarden has questioned whether there was an error made in the 2011 city-wide rezoning. She stated that this may a chance to correct it rather than it being considered “spot zoning.”

Commissioner Headley asked if the property might have been zoned R-3 during the 2011 rezone if the City had been made aware that it was being used as a triplex.

Reasons for denial included illegal use as a triplex and justification of the current zoning as determined by the Planning Commission during the rezoning of 2011.

Commissioners Parks, Headley and Antolak voted “aye.” Commissioners Pritschet, Turner, Straw and Plantenberg voted “nay.” The Chair declared the motion failed.

No further action was made by the Commission.

#5 PUBLIC FORUM – None

#6 OLD BUSINESS

City Planner Ostgarden listed the changes to the draft Zoning Ordinance language for VRBOs as requested at the August 17, 2016 Planning Commission Special Meeting.

Chair Plantenberg requested that item #5 have “carbon monoxide detectors” listed as a requirement.

City Planner Ostgarden stated that the Commission would need to determine what zoning district this should apply to.

The Commission discussed the information included in the Packet and determined to call for a Public Hearing to discuss the Vacation Rentals By Owner (VRBO) Draft Zoning Ordinance Language at their October Planning Commission Meeting.

#7 COMMISSIONERS' QUESTIONS/COMMENTS - None

#8 CITY PLANNER'S REPORT

City Planner Ostgarden stated that he would be at a Conference next week.

#9 ADJOURN

As there was no further business the meeting adjourned at 8:04pm.

Respectfully submitted,

Mark Ostgarden AICP
City Planner