

PLANNING COMMISSION
Wednesday, November 15, 2017

#1 Call to Order

Planning Commission Chair Headley 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 Burslie, Gorham, Headley, Marohn and Wussow; and Council Liaison Lambert. Also present were City Planner Ostgarden and Administrative Specialist Bestul. Noted absent was Commissioner Antolak.

#2 Approval of Agenda

MOTION AND SECONDED BY COMMISSIONERS WUSSOW AND GORHAM, DULY CARRIED, TO APPROVE THE AGENDA AS PRESENTED.

#3 Approval of minutes of the regular meeting held on October 18, 2017

MOTION AND SECONDED BY COMMISSIONERS WUSSOW AND LAMBERT, DULY CARRIED, TO APPROVE THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 18, 2017 WITH THE FOLLOWING CORRECTIONS:

- Under #7 Commissioners Questions/Comments - Page 9; Add to line 3: *Mr. Wussow indicated the ordinance should be enforced **or change the ordinance**.*

#4 NEW BUSINESS

A. Public Hearing - Variance Request - Brainerd Laestadian Church (Manor) - 1501 S. 8th St.

City Planner Ostgarden indicated the property is a repurposed school which was converted into a church and an apartment building. The church is located closest to south 8th street and the apartments are on the east side. There are 14 senior living apartments on the site. The existing accessory building on the south side is a 150' x 22' building approximately 3' from the property line which consists of 11 garages. The proposal is to add a 22' x 36' addition on the east end and match the existing 3' setback. The intent is to add another 3 garages for the apartment building so each resident would have a garage. In 2009, the Zoning Ordinance was rewritten and it was established for multiple family dwellings that an accessory building side yard would have a setback of 15'. The church would like to construct the garage addition to match the existing setback at that location which results in a variance request of 12'.

City Planner Ostgarden went through the maps and photos of the property explaining the location of the proposed addition as well as the building plan for the proposed structure. Several of the criteria for granting variances have been read and highlighted in the staff report that would potentially pertain to the variance request.

Commissioner Wussow stated that since the zoning ordinance was rewritten in 2009, when did this use take over the parcel? City Planner Ostgarden indicated it was prior to 2005 for sure. (1983) Mr. Wussow indicated there are numerous locations to construct the garage without a variance. One option is a parking area to the south that could be converted. Mr. Wussow questioned if there is a limit to the amount of accessory structures allowed on the property. City Planner Ostgarden replied that for multiple family dwellings, there is no limit.

The Chair opened the public hearing at 6:12 p.m.

The Chair recognized Mr. Steve Collette, 1126 Poplar Drive, East Gull Lake petitioning on behalf of the Laestadian Church. Mr. Collette confirmed that there is other property on the site that could be

used for separate garages. However, it is a convenience for the residents to have the garage in the proposed location as it is already paved and there are parking spaces in that area. The school used to be Edison school and the apartments were put in in 1984. When the newest addition of a six-plex apartment building was built, there were no extra garages available.

Commissioner Marohn asked if the petitioner has discussed the proposed addition with the area neighbors. Mr. Collette indicated he has not. The property is about 200' - 300' back to the trail from the edge of the existing garage. Mr. Marohn stated from the edge of the property is about 140' as indicated from the Crow Wing County GIS website.

The Chair closed the public hearing at 6:16 p.m.

Commissioner Marohn indicated that based on the GIS website plat map, it shows property owners all through the area, but there is a gap that appears to be right-of-way. City Planner Ostgarden explained that is un-platted right-of-way extending up to the south property line. The encroachment will be into the setback in the right-of-way.

City Planner Ostgarden suggested paraphrasing the findings of fact rather than verbatim. The commission agrees. Commissioner Marohn asked if the findings of fact be sited rather than reading through all of them.

MOTION AND SECONDED BY COMMISSIONERS MAROHN AND LAMBERT, DULY CARRIED, TO APPROVE THE VARIANCE BASED ON THE TEN (10) FINDINGS OF FACT MODIFYING #6 AND ADDING THE FOUR (4) VARIANCE CRITERIA AS SHOWN BELOW:

- Page 4, #6. *The addition will be adjacent to the platted right of way and the non-residential use. ~~The addition would affect one residential property to the south where the dwelling on that property is close to 100' from the addition. It will be visible to the non-residential use to the south.~~*
- *The property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance.*
- *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*
- *The variance, if granted, will not alter the essential character of the locality.*
- *Economic considerations alone do not constitute practical difficulties.*

Commissioner Burslie questioned if the property owner built the existing garage. It was constructed when the apartment building was built. Mr. Burslie suggested including the variance criteria in the findings of fact and the motion. Due to the ordinance changing in 2009, the non-conformity is not created by the landowner.

Commissioner Wussow asked the petitioner to speak about the history of the property.

Mr. Collette stated the church purchased the school from the school district. They remodeled the building into a church and an apartment building. There was such a demand for more apartments they added the six-plex to the property. There are a total of 14 apartments with the 11 garages for the residents. There is an additional garage structure on the property that is essentially a storage building for use of the residents for crafts or workshop use. When the garages were built, the side yard setback was 3'.

B. Public Hearing - Variance Request - Mr. Kelly Bevans - 523 Holly St.

City Planner Ostgarden stated the property is located north of Gregory Park in a neighborhood that has a mix of single family, duplex and multiple family dwellings. The area consists of many homes of different styles, ages, sizes, setbacks, materials and colors. Earlier this year, the property owner was planning to do work to the property. He came to City Hall to obtain a building permit for windows, doors and siding and what was perceived to be the ability to construct a deck as well. In reviewing the permits, it was determined that he was not issued a deck permit. The work on the deck was progressing all summer to the point it is at today. The property owner was alerted to the fact that a deck permit had not been issued and construction was halted. The minimum lot size in an R-1 district is 7,000 square feet. The petitioner's lot size is 5,000 square feet which is a non-conforming lot size. The attached garage is encroached into the required side street setback along north 6th street by 12' 9", as the required setback is 15'. The non-conformity means that the deck may remain and proceed if the variance is granted. If the variance is denied, the entire deck would have to be removed per the City Attorney.

City Planner Ostgarden read through a summary of the variance criteria that pertain to this request. The impervious area on the lot which includes the house footprint, driveway, walkways and other hard surfaces is approximately 60%. Maximum lot coverage in this district is 60%, leaving little or perhaps no lot area for additional impervious lot coverage. Decks are not considered impervious coverage and there are other locations for a deck to possibly be constructed along North 6th Street or in the front yard along Holly Street. Will the variance alter the essential character of the locality? Although there may be some question about the deck's visual appearance and its proportion to the dwelling, there are more plans to enclose the area under the deck floor to provide a more finished look.

Commissioner Marohn asked for the process taken for issuing building permits and how it was discovered that there was not one issued. City Planner Ostgarden indicated that is irrelevant to the variance request. Commissioner Marohn was merely interested in how it happened. City Planner Ostgarden indicated there is not a representative from the Building Department here to provide the facts of what took place, however the property owner came in for a building permit and he perceived the permit to include the deck. If the Building Department would have known about the plans to construct a deck, that would be an immediate time-out because of the need for the Engineering Department to review the weight, support needed and the placement the deck above the garage roof. There was no information submitted for the approval of a deck permit. The property owner apparently thought he did apply for the deck permit.

Commissioner Marohn asked how the setback is defined - the code states the minimum horizontal distance between the building and the lot line. Since the deck is defined as a non-building, how is the setback measured? Since the beginning, it is measuring the distance from the property line back to the foundation of the building.

Commissioner Marohn questioned the result if the variance is denied. Why would the petitioner have to remove the entire deck, and not just be able to modify the size back to the allowed setback? City Planner Ostgarden stated the question was sent to the City Attorney and based on his response that no additions at all will be allowed on the non-conformity.

Commissioner Marohn indicated that did not make sense to him that it is all or nothing. City Planner Ostgarden stated that it is a choice and opinion to defy the City Attorney's recommendation and for the Planning Commission to be able to make its determination tonight, the issue is not how the City Attorney comes to the conclusion - the conclusion has been made.

Commissioner Burslie asked if plans need to be submitted in order to obtain a deck permit. City Planner Ostgarden answered yes the plans are needed prior to issuance. Mr. Bevans did not submit plans because the Building Department did not approve a deck. Commissioner Burslie asked if the variance is approved, if there is an extra fee or penalty for building the deck without a permit. City Planner Ostgarden stated no; only a deck building permit fee.

The Chair opened the public hearing at 6:49 p.m.

The Chair recognized Mr. Kelly Bevans, 523 Holly Street. Mr. Bevans indicated he paid double on his building permit and claims he does have a permit to construct a deck, which is in process and currently in the hands of the Building Department but has not yet been issued due to the variance. The reason there was no variance request at the time of the initial permit request is that there was no increased footprint to the property. The Building Department never received the message that a deck was going to be built. Now, there is a plan in the building office waiting for the result of the Planning Commission recommendation and the City Council decision on Monday, November 20, 2017. Mr. Bevans indicated he conceivably could argue the fact that double permit fees were paid, but that is not the matter at hand. Council Lambert questioned if he paid double due because of the fact that it was in hindsight. Mr. Bevans answered yes because he stated he had permits issued to him until Mr. James Thoreen, City Administrator called and asked for his permits. The other part of this applies to altering the essential character of the locality. In the picture provided, Mr. Bevans asked to look at this conceptually as this is showing a half completed project. Mr. Bevans has owned the house since 1989. In 1973, a garage was constructed on the front of the house. Mr. Bevans stated he has had to look at this structure on his beautifully constructed 1911 home historic to the neighborhood. But he stated he cannot tear the garage down. Mr. Bevans indicated that inside the garage there is a beautiful door that enters into the house and at one time there was a wraparound porch. Mr. Bevans stated he has worked with several architects over the years to try and figure out how to blend the garage with the beauty of the house. The work he has done was new windows, siding, garage door and new front door. The intent was not to build a deck for the purposes of having a deck - It was in order to blend the garage front to make it look more like the house including the ornate woodworking that was used. Mr. Bevans explained he loves the neighborhood, the house, the lot he lives on and Gregory Park. He indicated the garage roof is the original red color and it was not updated when the house roof was because the intent was always to construct something over the garage that would blend the two together. The building plans that are now in the possession of the Building Department include building up to the new wood at the bottom of the deck. Mr. Bevans indicated he never knew he would need the variance as he was not told this when he asked for the deck permit that he did not receive.

Commission Chair Headley indicated in the packet is a letter that Mr. Bevans submitted, but it did not go into the depth of detail as indicated above. Mr. Bevans stated the letter was submitted with the variance application. City Planner Ostgarden explained that it would have assisted the Commission if the information stated above was submitted previously for review of the application. Mr. Bevans indicated he was planning on appearing at the hearing to speak.

Commissioner Marohn stated it does seem to be an oversight that the petitioner failed to obtain a permit as a structure this size could not possibly be inconspicuous to others. Mr. Bevans indicated in July he received a 60 page booklet via email from the Building Department with the instructions of how to meet building codes on how to construct a deck.

The Chair recognized Mr. Mark Filkins, 603 Holly Street. Mr. Filkins is a neighbor of Mr. Bevans and spoke in favor of the variance request with the belief that the construction plan is reasonable. Mr. Filkins thinks it will help the appearance of the garage as intended.

The Chair recognized Ms. Margaret Tiplady, 509 Holly Street. Ms. Tiplady is also a neighbor in favor of the variance request. Ms. Tiplady firmly believes that Mr. Bevans thought he did have all the necessary permits required to build. Since the garage was already constructed, Ms. Tiplady believes it must have been a misunderstanding between the Building Department and Mr. Bevans. Ms. Tiplady does not object to the construction and anything that is done to improve the neighborhood is a big plus.

The Chair recognized Ms. Allison Potvin, 521 Holly Street. Ms. Potvin is a neighbor to Mr. Bevans is speaking in full support of Mr. and Mrs. Bevans and the plans they have and will be a great addition to their home.

The Chair recognized Mrs. Sue Bevans, 523 Holly Street. Ms. Bevans received and read an email from a neighbor that could not be present at the meeting tonight. The letter is from Ms. Natalie Potvin, 609 N. 6th Street. Ms. Potvin is fully supporting the variance request and stated there is nothing negative about the plans and does not see it affecting anyone else in the neighborhood.

The Chair closed the public hearing at 7:05 p.m.

MOTION AND SECONDED BY COMMISSIONERS BURSLIE AND LAMBERT, DULY CARRIED, TO APPROVE THE VARIANCE REQUEST BASED ON THE FIFTEEN (15) FINDINGS OF FACT AND THE ADDITIONAL FINDINGS OF FACT AS FOLLOWS:

- *This is an after the fact variance request on a structure that has already been partially constructed.*
- *The property owner does propose to use the property in a reasonable manner. The deck is being built on top of an existing structure and is not expanding the footprint of the structure.*
- *The plight of the landowner is due to circumstances unique to the property as the garage was constructed by a previous property owner.*
- *The essential character of the locality will not be affected with the condition of approval.*
- *Economic considerations alone do not constitute practical difficulties as this the request is not solely based on economic considerations.*

Conditional Approval Item

- *The area between the roof of the garage and the base of the deck shall be enclosed and finished in a way that blends with the structure.*

#5 PUBLIC FORUM

None

#6 OLD BUSINESS

Off Street Parking Requirements for Schools

City Planner Ostgarden indicated there is nothing in the packet as far as documentation relating to this topic. Mr. Ostgarden was not sure where the Planning Commission was headed in the terms of making a final decision. Various members of the Commission want to move forward with a public hearing and others expressed wanting more information and discussion beforehand.

Commissioner Marohn stated he wanted to show some photos of an area by a school that he took on a weekday. Mr. Marohn had planned on gathering more information about this concern but was not able to prior to the meeting. Mr. Marohn stated the regulations in the City Code should not be the cause for the school district to build excessive parking. The proposals from the district show changes to each neighborhood to increase the amount of parking. Mr. Marohn suggests that we modify the code to eliminate the city parking requirements for schools. Mr. Marohn visited the Harrison School site on a weekday at 1:00 p.m. Some of the concerns voiced earlier were that there is not enough parking and that it is not fair to the neighborhood residents. The photos presented showed very few cars parked along the streets within a block around the school. Many of the residents are served by an alley with a driveway and/or garage and are not using the on street parking.

City Planner Ostgarden indicated that the school district may argue the point that the size of the school will increase which means more staffing and more parents resulting in the need for more parking. This may be the consensus now but what about after the schools enlarge.

Commission Chair Headley mentioned the need for more parking for events held at the school and school programs may be a concern.

Commissioner Burslie stated to let the school district determine what they will need for parking and where it is being located. The city code should not be the determining factor in the decision.

Commissioner Marohn stated that this will be a topic of conversation with the district. It should be up to the district and should not be the city code that is the reason for the need for extra parking.

Commissioner Wussow requested more documentation and information about the requirements prior to holding a public hearing. Mr. Wussow would like to obtain the slides from the school district's presentation at the October 18, 2017 meeting. Commissioner Burslie responded that this information is not relevant to this potential ordinance amendment. The school will be making the decision about how much parking they have. There is no need to see the plans as what this would do is simply amend the ordinance to remove the requirements for minimum parking for schools.

Commission discussion took place regarding the need for additional information prior to a public hearing.

Commissioner Gorham suggested the need to notify the neighboring residents of the schools prior to holding a public hearing.

City Planner Ostgarden questioned Commissioner Wussow on what information he needs beforehand. The parking requirements are listed in the City Code section 515-22-8 as follows:

- *Schools, Elementary and Junior High. One (1) space for each classroom plus one (1) additional space for each three hundred (300) students, plus one (1) space for each employee, plus one (1) space for each four (4) seats in auditorium.*
- *Schools, High Schools, Colleges and Universities. At least one (1) parking space for each two (2) students based on the design capacity plus one (1) space for each classroom. Auditorium or event space shall be subject to separate, additional calculations.*

MOTION AND SECONDED BY COMMISSIONER MAROHN AND BURLIE TO DIRECT STAFF TO HOLD A PUBLIC HEARING IN DECEMBER TO INITIATE THE ORDINANCE AMENDMENT PROCESS OF ELIMINATING THE PARKING MINIMUM FOR SCHOOLS IN OUR CITY CODE ALONG WITH NOTIFYING THE NEIGHBORING RESIDENTS OF THE PUBLIC HEARING.

Members Burslie, Gorham, Headley, Marohn and Lambert voted "aye". Member Wussow voted "nay". The Chair declared the motion carried.

Special Meetings, Special Meeting Fees and Tracking / Estimating Time Spent on Applications

City Planner Ostgarden explained the concerns have been heard from the Commission in regards to the special meeting fees and the informal process to hold them. Mr. Ostgarden indicates these concerns as well as the time spent on applications will be presented to the Council for their direction.

Report on Steering Committee Appointment Process and Upcoming Meetings

City Planner Ostgarden announced the Steering Committee is now complete. An email was sent out to all appointed members for availability for upcoming meetings. The goal is to schedule the first meeting in December. The committee members are as follows:

	Sector	Candidate Name
Councilman Pritschet	School District Member	Aaron Sinclair - Asst Superintendent
Councilwoman Lambert	Healthcare Representative	Mike Larson - Essentia
Mayor Menk	Local Industry Representative	Mike Higgins and Jeff Grunenwald
Councilman Bevans	Small Business Owner	Brian Moon - Easy Riders
Councilman Pritschet	Resident	Staci Headley
Councilman Badeaux	Park Board Member	Timothy Boeder
	City Council	Jan Lambert
	Planning Commission	Chuck Marohn
Councilman Johnson	Real Estate	Rick Fargo
Councilwoman Hilgart	BLAEDC Board Member	Pam O'Rourke
Councilman Stunek	Resident	Emily MacDonald

#7 COMMISSIONERS ' QUESTIONS/COMMENTS

None

#8 CITY PLANNER 'S REPORT

None

#9 ADJOURNED AT 7:52 P.M

Respectfully submitted,

Mark Ostgarden AICP
City Planner