

EAST BETHEL PLANNING COMMISSION MEETING
February 27, 2024

MEMBERS PRESENT: Sharon Johnson, Tanner Balfany, Glenn Terry, Brian Downie, and Corey Jorgensen.

MEMBERS ABSENT: Gabriel Hanschen

ALSO PRESENT: Aaron Berg, Community Development Director
Jim Smith, City Council Liaison

1.0 Call to Order

Chair Balfany called the Planning Commission regular meeting to order at 7:00 pm.

2.0 Adopt Agenda

Commissioner Johnson moved and Commissioner Terry seconded to adopt the agenda as presented. Balfany asked any discussion? To the motion, all in favor say aye. **All in favor.** Balfany asked any opposed? That motion passes. **Motion passes unanimously.**

3.0 Approve January 23, 2024 meeting minutes

Commissioner Terry moved and Commissioner Johnson seconded to adopt the January 23, 2024 regular meeting minutes as written. Balfany asked any discussion? To the motion, all in favor say aye. **All in favor.** Balfany asked any opposed? That motion passes. **Motion passes unanimously.**

4.0 Oath of Office for Kory Jorgenson and Brian Downie

Berg administered the Oath of Office to Jorgenson and Downie.

5.0 Planning Commission Appointment of Chairperson and Vice Chairperson

Berg stated the Planning Commission was being required to appoint a Chairperson and Vice Chairperson to serve a one-year term ending January 31, 2025.

Commissioner Balfany moved and Commissioner Johnson seconded to appoint Commissioner Hanschen as the Vice Chairperson. Balfany asked any discussion? To the motion, all in favor say aye. **All in favor.** Balfany asked any opposed? That motion passes. **Motion passes unanimously.**

Commissioner Balfany moved and Commissioner Terry seconded to appoint Commissioner Johnson as the Chairperson. Balfany asked any discussion? To the motion, all in favor say aye. **All in favor.** Balfany asked any opposed? That motion passes. **Motion passes unanimously.**

6.0A Public Hearing: IUP – Commercial Kennel – 625 221st Avenue NE – Andrew Benik

Berg reviewed staff's report stating on or about December 20, 2023, Andrew Benik dropped off an application for a Kennel IUP at City Hall. City Staff researched the information provided in the application, City Code, and the process for getting a Commercial Kennel operation approval. Since Mr. Benik intended on kenneling other individual's dogs beside his own this met the definition of a Commercial Kennel.

Berg stated Mr. Benik's property is 4.35 Acres and is located in a Rural Residential zoning district of the City. He was advised that due to the location of his property he could not be issued an IUP for a Commercial Kennel. Mr. Benik agreed to withdraw his application and asked for a map of the Commercial and Industrial Zones of the City.

Berg indicated on or about January 18, 2024, the City started to receive calls about social media advertising by Mr. Benik for Dog Bathing, Dog Day Care, and Boarding under the business name Court's Camp Dog Care, with an accompanying website. Although the website use the location of "East Bethel" it did not provide a specific address for the facility. City Staff confirmed with the MN Secretary of State Business Filings that the Business's registered office was in fact Mr. Benik's residence on

January 8, 2024.

Berg stated contact was made with Mr. Benik on January 19, 2024, advising him that a commercial kennel was not permitted in a residential zone. Mr. Benik responded by asking what steps he could take to attempt to get approval. He was advised that administratively City Staff could not authorize a Commercial Kennel; however, the City Council could hear his request and make a determination.

Berg noted on January 24, 2024, Mr. Benik delivered an application and associated fees for an IUP – Commercial Kennel, located at 625 221st Ave NE. Berg stated if approved, a Private Kennel – IUP, Mr. Benik’s property would be permitted four dogs belonging to him and not customers or the general public.

Berg requested the Planning Commission hold a Public Hearing, discuss the IUP Request and consider a recommendation to deny the request to the City Council.

Johnson opened the Public Hearing.

Ronald Snodie, 22277 Washington Street NE, indicated he was a dog owner and he had nothing against someone who wanted dogs. However, he requested that people who own dogs watch their dogs and make sure they do not bark and interrupt people’s lives. He stated in the 8 years they have lived in the City, which had become a problem in their neighborhood. He noted he lived around 300 yards from Mr. Benik and he was against the kennel due to barking and disturbing his peace and quiet. He acknowledged he felt bad for Mr. Benik and he understood why he wanted to do this.

Johnson asked if the kennel was located on commercial property or was it as Mr. Benik’s residence. Berg responded it was at Mr. Benik’s residence.

Kristen Smith, 711 221st Avenue, stated her property surrounds Mr. Benik’s property. She indicated Mr. Benik was a great neighbor and he was very responsible. She believed Mr. Benik would be a good kennel owner, the City needed that, and if there would be a problem that Mr. Benik would respond to it. She stated Mr. Benik’s dogs were quiet and he took care of them. She indicated she did not have any problem being Mr. Benik’s neighbor. She stated in the country there were noises such as four wheelers and snowmobiles. She noted if there was a problem then neighbors should talk to each other. She was in support of this proposal

Scott Snider, 22394 7th St NE, stated he was concerned about “creep” including the industrial “creep” going on in the City with people opening up home based businesses. He noted in his neighborhood there was an industrial equipment repair business, an automotive repair business, and a sign business. He indicated some of these businesses had employees and had flatbed trucking coming into them. He stated 7th Street was not built for that. He asked what was the Planning Commission looking at doing and would they continue to allow businesses to open in residential neighborhoods. He asked what was the definition of a residential neighborhood. He stated there were many people who invested hundreds of thousands of dollars into their property and nobody wanted a business to open up next door to them as their property values would go down anywhere from 5 to 7 percent which was a large sum of money. Johnson responded at public hearings, the Commissioners usually listened to the questions and answer them all with similar questions. She noted his comments were off topic, but the Commission could address this at the end of the public hearing.

Andy Benik, 625 221st Avenue NE, stated he was the property owner. He summarized his background in the City as being a lifelong resident since he was a child. He noted he had received a degree in zoology where he studied animal behavior and veterinary medicine. He indicated he wanted to get into the type of work that he loved and was passionate about. He stated his entire five-acre property was fenced for the safety and security of the dogs that would be staying with him. He indicated he had a cold storage outbuilding with separate kennels where the dogs would be fed, but otherwise the dogs

were free to roam on the property and would be sleeping in his house at night. He agreed that huge issues with kennels was noise complaints, but that occurred when the dogs were in separate kennels which would not be the case at his facility.

Johnson asked what breed of dogs would be at Mr. Benik's facility. Mr. Benik responded he personally had 3 mixed breed dogs, but he would take any breed. He indicated he had studied animal behavior and it was not the breed of the dog that determined how they would act. He stated it was important to study the dog's body language and determine if there was going to be an aggressive dog or a bad interaction dog, which were all preventable if you know what to look for. He noted he planned on spending all of the hours outside or inside with the dogs and they would never be left unattended. He acknowledged there were barking dogs in the neighborhood, but that occurred when the owners left them outside alone while the owners were sitting inside. He indicated it was important for owners to be physically outside with their dogs to entertain them.

Jorgensen asked what would happen with the dogs when Mr. Benik was on vacation or ill. Mr. Benik responded if he were ill, he would still be able to take care of the dogs so he would not need anyone else to watch them.

Balfany noted Mr. Benik had originally applied, then retracted the application knowing it was not going to be approved. Mr. Benik responded it was different than when he came to the City in the summer of 2023. He noted the staff member he spoke with had informed him that he had never gone through the kennel license process. He then spoke with Berg who informed him what was needed in order for him to get a 2024 license. However, it was then discovered that where he lived he could not have a commercial kennel license.

Downie asked how many dogs maximum would Mr. Benik have at his facility. Mr. Benik responded that would depend on the IUP which he had not received yet. He noted there were a lot of people who watched dogs inside their homes and did not apply for a kennel license, but he wanted to do everything correctly and follow the rules.

Johnson asked how many dogs would he have. Mr. Benik responded ideally he wanted between 6 and 10 dogs.

Downie stated in the event of approval, he saw the presence of dogs as adding more barking. He asked if there were processes or plans in place to contain or minimize the amount of barking. Mr. Benik responded in his experience that when dogs were separated they barked continuously because they want to exercise and be out in a pack; they want to be outside. He indicated that was going to be the difference with his facility that they were going to be only kenneled during feeding time but otherwise they would be outside interacting with other dogs. He noted he would also be outside with the dogs. He stated dogs were simple – they needed attention, exercise, and love and if those needs were met then barking would not be an issue.

Johnson asked what did Mr. Benik see could go wrong with this. Mr. Benik responded he has not experienced that anything could go wrong. He indicated he did not consider himself an animal expert, but he has watched dogs. Balfany agreed it appeared Mr. Benik had studied this.

Balfany asked how many dogs had Mr. Benik personally watched. Mr. Benik responded he had personally watched 18 dogs by himself in one location. He indicated he was not sure how many dogs he had watched at his location though, but he has had a lot of friends and family dogs over to "hang out." He believed he might have had 13 dogs at the most around.

Johnson asked Mr. Benik if any dogs have jumped his fence. Mr. Benik responded his fence was just under 6 feet, but he also had different sections of the yard that was fenced in so if a dog were to get over a fence, they would need to get over 2 or 3 other fences to escape. He indicated he had not had any dogs

that wanted to leave his property once they arrived though. He invited the Commissioners to his property to see everything.

Bob Knight stated Mr. Benik was a “great guy” who he had known for a long time. He indicated Mr. Benik was responsible and if someone believed his animals were noisy and disturbing them, Mr. Benik would respond and address it. He welcomed Mr. Benik’s business backing right up to his home.

Tammi Gimpl, 22359 Baton Street, stated she supported Mr. Benik and he was trying to do this right. She indicated people in the City wanted to have a place to board their dogs where they would be safe. She stated she had been in the City for over 20 years and has a kennel and they did not hear the dogs barking at her place. She noted Mr. Benik appeared to know what he was doing and he had a lot of support. She requested the Commissioners to consider Mr. Benik’s request.

Pam Kolodziej, 485 224 Lane NE, stated she was sure Mr. Benik was a responsible person and she was not questioning whether he was qualified and he would take care of the dogs to the best of his abilities. She indicated she believed in kennels and she wanted to have her dog in a safe place. She stated she had no objection to this request at all. She indicated her objection was the way this was coming down. She noted she lived in the neighborhood and this felt like it was coming in the backdoor. She was concerned other people in the area would want their license now also.

John Lynch, 2218 Quincy Street, stated he respected what Mr. Benik was trying to do. He indicated he had recently moved to the East Bethel to find a bit of quiet and now something that was zoned residential had the potential for a commercial business. He stated it seemed like this was going backwards. He noted residential areas had families, working families, and they needed their sleep. He indicated he did not know what would happen if this got out of control and the Police could only do so much.

Jillian Fisher, stated she was not a resident of East Bethel, but had grown up in the community. She stated she supported Mr. Benik. She indicated her dog was her child and Mr. Benik watched her dog when she was not able to care for him or when she was on vacation. She indicated she knew her dog was safe there. She stated Mr. Benik was trying to create a special place for the dogs and what he offered was not available anywhere else. She noted when Mr. Benik has watched her dog, he sent her videos and no dogs were barking in them.

Pastor Caroline Holmes stated she walked in this neighborhood and almost everybody in the area had dogs. She stated she would bring her dog to Mr. Benik’s property as it sounded like a nice home environment. She noted there were other kennels in residential areas also. She stated she “love” the idea of having this business in the neighborhood.

Johnson closed the Public Hearing.

Commissioner Balfany moved and Commissioner Terry seconded to open the discussion. Johnson asked any discussion?

Balfany stated he would like to support this, but he could not because he believed this would set a precedent which would make bigger issues down the road. He expressed concerns about an IUP without proper language changes to address precedent and ensure consistency in future decisions. He highlighted the need for careful consideration of commercial and industrial zoning issues to avoid creating unnecessary precedents. He expressed concern about the language in the proposal, finding it too broad and potentially creating a precedent for future issues.

Jorgenson stated he was struggling with the idea that this was a residential area and even though the neighbors supported this now, people moved and things changed.

Terry believed this was an ideal location for Mr. Benik’s kennel as opposed to an industrial space. He

noted the neighbors supported Mr. Benik. He indicated the issue was the Ordinance and not what Mr. Benik had presented. He noted he was torn on this as this was not a variance, but an IUP, which went against the Ordinance. He indicated he did not know what they could do other than to revisit the Ordinance and change it. He indicated he would like to see this work, but he was not sure if they could make it work. He noted he liked this idea, but he was not sure if they would get beyond the Ordinance language.

Downie agreed this was a great idea, but the Ordinance specifically did not allow it. He also expressed concern about setting precedent. He asked if the wording of the Ordinance could be changed.

Balfany reminded them that the Commission was also not the final say and they were only an advisory body and there was still an opportunity for Mr. Benik to go to the Council.

Johnson noted when this went to the Council there would be no public hearing, so all of this input stopped with the Commission's recommendation. Balfany pointed out that comments could be made at the Public Forum at the Council meeting also.

Berg addressed the questions that had come up during the public hearing.

Johnson reopened the Public Hearing.

Mr. Benik noted the commercial zoning started one-half mile on the west side of Highway 65 and on the east side of Highway 65. He indicated he could see the commercial area from his driveway. He stated the City already had a commercial kennel in a residential zone approved miles away from a commercial zone. He noted research had to be done as to how that kennel got through the Ordinance wording. Berg responded that was granted by a City Council at another time and place before he was with the City.

Balfany stated that was the reason he was concerned about setting precedent. Mr. Benik responded the City had already set a precedent by allowing the other kennel into a residential area. He noted he was not looking to move and he wanted to stay in the community as he has spent his entire life in the City. He indicated he wanted to bring a business into the City.

Johnson closed the public hearing at 8:03 p.m.

Johnson noted when she first saw this she did not think it sounded very good, but now she had been swayed the other way as she believed Mr. Benik did know how to handle animals much better than most people.

Balfany recommended to Mr. Benik that he push for an Ordinance change.

Terry stated he wanted to know how the other kennel was approved for a residential area, and could it be replicated in this case. Berg reminded the Commission that Ordinances changed over time and while he didn't know the history, it was possible in 2009, a kennel in a residential area was allowed.

Terry recommended this be tabled to determine if there is a precedent based on the other kennel being approved and what the background was. He believed for Mr. Benik to move to a commercial location defeated the point of what he was doing, which was different than a commercial kennel.

Balfany stated if the wording were different he would have no issue with this request, but he was still concerned about setting precedent.

Jorgenson stated he liked the idea of tabling this to get additional information.

Downie indicated he would like to review the previous Ordinance revisions also.

Balfany indicated he would rather see this request continue so it was not a delay to the application and didn't add more to future agendas.

Downie stated he wanted to make a motion based on the current Ordinance but bring it to the Council's attention that there might be existing documents when it was approved that might want consideration before they make their final decision.

Terry noted he would want any motion to also state that they would like to see this happen. He did not think denying it was a good idea though.

By consensus, the discussion was closed.

Commissioner Downie moved and Commissioner Balfany seconded to recommend denial per the current Ordinance as written but request the City Council consider the approval and 2009 when making their final decision. Johnson asked any discussion?

Terry recommended the applicant decide if this should be denied to tabled to allow time for additional research.

Johnson asked Mr. Benik what he would prefer. Mr. Benik responded he would prefer it be approved the same way it was done in 2009, but he would be okay with this being tabled.

Downie withdrew his motion. Balfany withdrew his second.

Commissioner Terry moved and Commissioner Johnson seconded to table pending further research. Johnson asked any discussion? To the motion, all in favor say aye. **All in favor.** Johnson asked any opposed? That motion passes. **Motion passes unanimously.**

6.0B Variance – Detached Accessory Structure Placement – 19455 4th St NE – Geno Brese

Berg reviewed staff's report stating this property is located in the RR Rural Residential Zoning District and is located within the Norseland Manor Subdivision. The property owner is requesting a variance for the placement of a detached accessory structure closer to the street than the primary structure, on the South side of the lot. Berg reviewed Zoning Appendix A.

Berg stated consideration of a variance required the Planning Commission consider a three-factor test for practical difficulties which he reviewed for the Commission.

Berg indicated with respect to the test of reasonableness, in this case accessory structures were a permitted accessory use in the RR Single Family Residential Zoning District.

Berg noted with respect to the landowners problem was due to circumstances unique to the property and not caused by the landowner, in this case: The property is relatively flat with a 2 foot change in elevation across the 1 + acre lot; the primary residence was constructed in 1986 and built in the center of the lot; The well and septic are located on the North side of the residence; there are 25 foot side yard setbacks in the RR Single Family Residential Zoning District. The house is located approximately 88 feet from the side yard property line; there are 25-foot rear yard setbacks in the RR Single Family Residential Zoning District. There is 125 feet between the front foundation and the rear property line; Zoning Code allows for a 1,240 sq. foot detached accessory building (30' X 40') maximum for a property this size; the adjacent property has a significant stand of evergreen trees which straddle the property line; there is a 10-foot concrete slab on the South side of the attached garage; and there is a row of arborvitae bushes/trees (5) adjacent to the slab.

Berg stated with respect to the third factor being that a variance would not alter the essential character of the neighborhood, in this case: Thirty seven of the 74 parcels in Norseland Manor have detached accessory structures; three of the thirty seven are nearer the front line than the primary structure were constructed prior to 2008; Section 14 - Detached Accessory Structure Ordinance was amended on March 9, 2020; and standing tree growth between the proposed detached accessory structure and the front

property line may screen it from view from the public roadway.

Berg requesting the Planning Commission hold a public hearing and recommend denial or approval of the variance request to the City Council for the placement of a detached accessory structure nearer to the front lot line than the primary structure with conditions as written in Resolution 2024-XX.

Johnson opened the public hearing.

Gino Brese, 19455 4th St NE, stated that he and his wife have lived in the house since 2000, they were getting ready to retire, and the last thing they wanted to do before they retired was to build a garage. He explained the reason why they wanted to build a garage where proposed and indicated they had redone their driveway to accommodate that location, and it was only after they applied for a permit to build the garage that they found out they were not allowed to have it in that location. He stated they did not want to lose their 100-year-old trees or landscaping, which is what would happen if they put the garage where the City wanted it. He noted their proposal also matched several homes in their neighborhood. He requested the Commission allow him to build the garage where he proposed to build it.

Johnson asked what hardship did Mr. Brese have. Mr. Brese responded the trees provided shade and they were 100 years old and they would like to keep them standing as long as possible. He noted they would also have to remove their existing driveway because they were not allowed to have two driveways.

Balfany believed it would be possible to build the garage in the correct location without losing trees. Mr. Brese stated cost was an issue for them and a 60-foot driveway would be prohibited for them.

Johnson closed the public hearing.

Terry noted Mr. Brese's home was set far back and it was understandable to him if they had a shorter setback to not extend the accessory structure in front of it, so that is one thing that was in favor of what Mr. Brese proposed. Terry also noted trees act as very good screening in terms of the effect on the neighborhood. He believed the Ordinance was so that a neighborhood was not full of garages as the first thing that would be seen. He wanted to "let the guy do what he wants on his property, because he's not harming anybody." And he indicated it was reasonable to him and noted that the Ordinances are to protect the community and not to keep people from being able to do what was reasonable to enjoy their properties.

Jorgensen asked if the garage would be a pole barn or a stick building. Berg responded he had not seen the building permit, but that would be an architectural standard regardless of whether it was a pole barn or a stick build as it would have to resemble the existing structure.

Downie believed this was a reasonable request and the lot would not look scattered or disarray. He believed it would look very nice and it would not be an eyesore in the neighborhood. He noted there were also other lots that had similar structures.

Balfany stated he was concerned about setting a precedent if this were granted. He did not believe the second factor had been met. He indicated he would not vote for this variance.

Terry stated one unique feature was having 100-year-old trees, which would be negatively affected by the garage located elsewhere.

Downie stated the way he read the appendix was specific to a lot that was 3 acres or greater and this was a third of what the regulation was addressing. He indicated the main structure was also in the center of the lot.

Balfany stated it was his opinion that if they changed the Ordinance to specifically address this to prevent that from being the case, they were circumventing the Ordinance. He indicated this did not meet

all three factors.

Johnson did not believe this structure would stick out any further than the house going to the south.

Johnson reopened the public hearing.

Mr. Brese stated if the garage were placed in another location it would be cost prohibitive for him to pave it. He indicated they had just had their existing driveway replaced and widened. He noted it would also only be able to have one narrow door at the edge of the wall, which did not leave much room.

Johnson closed the public hearing.

Commissioner Balfany moved to recommend denial based on not meeting the three-factor variance test. Motion failed for lack of a second.

Commissioner Terry moved and Commissioner Downie seconded to recommend approval of the variance request. Johnson asked any discussion? To the motion, all in favor say aye. **Terry, Downie, Jorgensen, and Johnson.** Johnson asked any opposed? **Balfany.** That motion passes. **Motion passes 4-1.**

7.0 Updates

Council Liaison Smith updated the Commission on recent Council actions.

The next Planning and Zoning Commission meeting is scheduled for March 26, 2024.

8.0 Adjournment

Commissioner Balfany moved and Commissioner Terry seconded to adjourn at 9:00 pm. Johnson asked any discussion? To the motion, all in favor say aye. **All in favor.** Johnson asked any opposed? That motion passes. **Motion passes unanimously.**

Submitted by:

Kathy Altman

TimeSaver Off Site Secretarial, Inc.