

EAST BETHEL PLANNING COMMISSION MEETING
April 23, 2024

MEMBERS PRESENT: Chair Sharon Johnson, Vice Chair Gabriel Hanschen, Glenn Terry, Brian Downie, Corey Jorgensen, and Diana Saenger.

MEMBERS ABSENT: Tanner Balfany

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

1.0 Call to Order

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

2.0 Adopt Agenda

Commissioner Jorgensen moved and Commissioner Terry seconded to adopt the agenda as presented. 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.**

3.0 Approve March 26, 2024 meeting minutes

Johnson asked if there were any corrections to the March 26, 2024 Minutes.

Jorgensen stated on Line 414 should say he drove by this property every day and he did not think that he had not ever not seen a vehicle for sale.

Terry noted on line 416, it said Commissioner Downie moved and Commissioner Downie seconded. Berg stated he would get this corrected.

Terry stated on line 295, change “sent” to “sense.”

Johnson stated on line 434 the name of the company is Designing Earth Contracting.

Johnson stated on line 26 the wording was strange and she believed Jorgensen asked that his name be corrected in a couple of locations.

Commissioner Terry moved and Commissioner Downie seconded to adopt the March 26, 2024 regular meeting minutes as amended. Johnson asked any discussion? To the motion, all in favor say aye. **All Downie, Jorgensen, Terry, and Johnson.** Johnson asked any opposed? Hanschen abstained. That motion passes. **Motion passes 4-0-1.**

4.0 Oath of Office – Diana Saenger

Diana Saenger took the Oath of Office.

5.0 Public Hearing: Variance – Driveway Access Standards – 21333 Durant St NE

Berg reviewed staff’s report stating on March 15, 2024, the City of East Bethel received a Variance Application from Mariah Vangness, the property owner at 21333 Durant St NE, to obtain a variance to the paving standards as required in Sec. 10, Sub.15 (B2), the driveway access and standards.

Berg indicated a building permit for the construction of a new home on the applicant’s property was issued in October 2023 and the Certificate of Occupancy was issued in February 2024.

Berg noted Durant St NE is also Anoka County Hwy 15 which requires the applicant’s Right of Way access permit be applied for and issued by Anoka County Highway Department (ACHD).

Berg stated due to wetland impacts on the property the driveway and access required Anoka County Board of Soil and Water, as well as City Engineer approval. The access location, driveway base elevations and fill material required a City grading plan.

Berg noted the applicant has indicated that, “this variance request is not for financial reasons and that not one residential driveway on Durant St. is paved for the first 75 feet. Another reason is that it is off of a County road, and this is not a requirement of Anoka County, solely the City of East Bethel requirements.”

Berg reviewed Sec.10 – General Development Regulations Sub. 15 – Driveway access and standards. As was noted by the applicant, Durant St NE is also Anoka County Hwy 15 therefore the applicant’s Right of Way access permit was issued by the ACHD. Joe MacPherson, Anoka County Engineer, was contacted in an effort to determine the counties requirements. MacPherson indicated that Anoka County does not have the paving requirement however the individual cities ordinances can require improvement and have been applied throughout the county.

Berg indicated an inventory was made of each of East Bethels neighboring cities/ townships (Andover, Columbus, Ham Lake, Linwood Township, Oak Grove, and St. Francis) to determine how each jurisdiction applies the ordinances to County Highways that run through their jurisdictions, which he reviewed for the Commission.

Berg stated to hear requests for variances from the literal provisions of the ordinance in instances where their strict enforcement would cause practical difficulties because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance. Practical difficulties, as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

Berg noted the consideration of a variance requires the consideration of a three-factor test for practical difficulties (a test of reasonableness, that the landowner’s problem is due to circumstances unique to the property and not caused by the landowner, and a variance would not alter the essential character of the neighborhood.)

Berg stated with respect to the test of reasonableness, in this case the paving, as required by Ordinance, would not deny the landowner reasonable use of the property.

With respect that the landowner’s problem is due to circumstances unique to the property and not caused by the landowner, Berg indicated in this case, this property, although partially classified as a FEMA flood plain with multiple ditches throughout the parcel, is not more unique than many of the properties in the area.

With respect that a variance would not alter the essential character of the neighborhood, in this case, there are 47 parcels with driveways on Durant St NE between Wild Rice Drive and 229th Ave NE of which 31 are not paved.

Berg stated paving requirements for driveways in all residential zoning districts have been in East Bethel City Code since 2008. An alteration was made in 2010, at the request of the City Council, to delay the paving requirement by (1) one year for all new construction accesses, as well as limiting the paving requirement to those accesses/ driveways adjoining a paved right of way.

Berg noted the City cannot enforce ex post facto laws or ordinances. Meaning the City cannot obligate any property owner of a parcel, with a driveway constructed prior to 2008 meet the driveway access paving standard.

Berg requested the Planning Commission review the application, information and make a recommendation to approve or deny the variance request to the paving standards as required in Sec. 10, Sub.15 (B2), the driveway access and standards.

Johnson opened the public hearing at 7:12 p.m.

Zach Vangness, 21333 Grant Street, stated it “threw him for a loop” about paving the first 75 feet. He asked why was this required when most of neighborhood had a Class 5 driveways. He indicated paved driveways cost a lot of money. He stated he had also not completed his home yet, so paving his driveway 75 feet did not make any sense when construction trucks would be backing over it. He stated with farm equipment going over it, it would also crack up right away. He believed it was just throwing his money away.

Johnson closed the public hearing at 7:15 p.m.

Berg requested the Commission make a motion either approving or denying the variance request with a second and then proceed to discussion.

Commissioner Hanschen moved to approve the variance request. Motion died for lack of a second.

Commissioner Terry moved and Commissioner Jorgensen seconded a motion to discuss. Johnson asked any discussion?

Berg stated in response to the applicants concern that his home was not completed and the 75 feet was being required to be put in, which would get ruined by construction equipment, he noted in 2010 the Council agreed to delay the pavement by one year after the Certificate of Occupancy was issued to address similar concerns such as the applicant’s concerns.

With respect to neighborhood driveways not being paved, Berg believed those driveways were installed prior to 2008 and then the Ordinance was changed. However, he indicated the City could not require those residents to now pave their driveways.

Terry asked what was the logic of an apron for some length of driveway. Berg explained the apron was defined as the area between the edge of the paved surface and the property line or the end of the right-of-way. He noted the City chose 75 feet as that number, but he did not know why that number was chosen in 2008 when the City passed the Ordinance.

Jorgensen stated he wanted to see some type of an apron, but he did not know if 75 feet was the answer. He believed they could get by with less of an apron. He agreed the applicant should be given time to finish his home before the apron was put in. Berg stated the Certificate of Occupancy was issued in February of 2024, so the applicant had until February, 2025 to get the apron installed. He noted because this would be in the middle of winter and pavement could not be poured at that time of year, the City would allow the applicant to set up an escrow account to cover the costs.

Jorgensen stated he would like the 75 requirement to be less. Berg stated the variance did not allow for that as an opinion, so the variance would be for either pavement or no pavement. He indicated if they wanted to change the Ordinance, which was an entirely different avenue.

Johnson inquired as to how the escrow worked. Berg explained how the escrow was determined. He noted once the project was completed, the applicant would receive the escrow back. He noted the applicant did not need to pay the escrow immediately and there was plenty of time to pay it.

Saenger stated she drove through the neighborhood today and it was difficult to tell what was paved and not paved. She indicated what concerned her with the Code was that they were dealing with the State Fire Code also which required taking the load of fire trucks coming down the driveway. She stated if they gave the applicant a variance, then they were not following the City's Code which required that the City was applicable with the State Statute. She believed if this was granted, they might be in violation of Fire State Statute.

Berg stated 75 feet was required in any driveway across the entire City and Fire Code was a completely separate requirement that was touched on in the driveway access standard. He noted if they dug further into the Fire Code, they would see much more in-depth requirements. He indicated the aprons were done to an engineering standard that was approved by the City Engineer which would handle a fire truck, ambulance, etc.

Downie believed they needed to stick to the Ordinance the City had now, and if there were homes in the neighborhood that had been built prior to 2008, they were built under a difference Ordinance.

Terry stated the reason he wanted to discuss this was to find out if they could reduce the 75-foot requirement, but apparently that was not an option.

Johnson stated she was "hung up" on the test of uniqueness of the land and she did not believe this land was unique to the neighborhood.

Hanschen inquired about the 16 properties that were paved. He asked if there was a distinct cut-off between the 2008 Ordinance change and now. Berg responded he did not research when each property was built.

Johnson asked when the applicant started the building process, was it made clear to him that this was going to be a requirement. Berg responded that the driveway information and requirements were in the building permit application packet which the applicant had received.

By consensus, the discussion was closed.

Commissioner Downie moved and Commissioner Saenger seconded to deny the variance request to the pavement standards as required in Section 10. Subd. 15(b)(2) to the property owner at 2133 Durant Street NE. Johnson asked any discussion?

Jorgensen clarified that the applicant had until next spring to finish this. Berg responded staff would work with he applicant to ensure he had the one year. He noted the escrow would be held until the pavement was completed and then it would be returned to the applicant.

To the motion, all in favor say aye. **All in favor.** Johnson asked any opposed? That motion passes. **Motion passes unanimously.**

This item goes before City Council on May 13, 2024.

6.0 Updates

Council Liaison Smith updated the Commission on recent Council actions.

Johnson requested if staff had a lot of variances on one type of an issue and staff believed the Ordinance needed to be looked at, to bring it up to the Commission for review.

8.0 Adjournment

Commissioner Jorgensen moved and Commissioner Hanschen seconded to adjourn at 7:43 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:

April 23, 2024

Planning Commission Regular Meeting

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Kathy Altman

TimeSaver Off Site Secretarial, Inc.