

EAST BETHEL PLANNING COMMISSION MEETING

May 28, 2024

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

MEMBERS ABSENT: None

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 Balfany moved and Commissioner Hanschen 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 April 23, 2024 meeting minutes

Balfany noted he would be abstaining as he was not at the last meeting.

Downie noted one page 1, line 25, his name was misspelled twice. He indicated on line 75, there was no ending parenthesis. One line 85, change has been to had been.

Johnson acknowledged the Minutes were a summary, but Jorgensen had made good comments regarding the aprons at the last meeting that were not included. Jorgensen stated he believed his comments had been covered sufficiently.

Commissioner Terry moved and Commissioner Downie seconded to adopt the April 23, 2024 regular meeting minutes as amended. Johnson asked any discussion? To the motion, all in favor say aye. **Jorgensen, Downie, Hanschen, Terry, Saenger, and Johnson.** Johnson asked any opposed? **Balfany abstained.** That motion passes. **Motion passes 6-1.**

4.0A Public Hearing – Setback Variance – 18116 Deerwood LN NE

Berg reviewed staff's report stating on January 30, 2024, Blake Robinson purchase 18116 Deerwood Ln NE. At the time of the sale the septic system, which was installed in 1978, failed an inspection and was declared non-compliant. He reviewed Sections 74-36 and 74-48.

Berg stated Boettcher Excavating and Septic was hired to replace the system. Due to the age of the existing system, the condition of the soils and lack of available space on the property, it was noted that a variance would be necessary to install a replacement system.

Berg noted on April 11, 2024, the City received an application from Mr. Robinson, for a variance to reduce the front yard setback standard from 10 feet to 2 feet for the placement of a Type III, raised pressure bed, septic box mound and a tank at 5 feet.

Berg indicated the proposed septic design calls for soil corrections (removal of all existing material and replacement) with additional soils, approximately three (3) feet above ground, contained within a landscape block retaining wall. The proposed placement requires the raised bed be placed two (2) feet from the City Right of Way (ROW) in the front yard setback in order to achieve the required 20-foot setback from the residence basement/ foundation wall.

Berg stated this proposed placement of the raised pressure bed is completely on the property and not in the city ROW however, due to the proximity of the City ROW the Public Works Manager was consulted. After a visual observation of the property, it is believed that if approved the placement would not interfere with maintenance operations or future street repairs.

Berg noted the proposed system meets setback requirements for all wells.

Berg reviewed the three-factor test for practical difficulties:

With respect to a test of reasonableness Berg stated, in this case septic systems are required for a home to be considered habitable. The approval of the variance would allow this property to continue to be used as a residential use.

With respect to a test of uniqueness, Berg stated in this case the property has limited space for a drain field due to the irregular shaped corner lot. A branch of Anoka County Ditch 28 runs through the property from the rear lot line to the front lot line dividing it into two land areas.

With respect to the test that the variance would not alter the essential character of the neighborhood, Berg stated in this case the property has an existing hedge running parallel to the front property line and in the city Right of Way. The proposed raised bed box mound will not exceed the height of the hedge.

Berg stated the City staff has requested that the Planning Commission hold a public hearing, review the application, and approve a variance to reduce the front yard setback standard of 10 feet to 2 feet, for the placement of a raised pressure bed septic box mound and a tank at 5 feet on a property at 18116 Deerwood Ln NE, with the following conditions:

1. A licensed septic designer must obtain all necessary building permits and complete all necessary inspections for the installation, as required by the Minnesota Septic Code.
2. A Monitor and Mitigation Plan must be submitted and approved.

Johnson opened the public hearing at 7:09 p.m.

There were no comments.

Johnson closed the public hearing at 7:09 p.m.

Commissioner Balfany moved and Commissioner Jorgensen seconded to open the discussion.

Balfany stated to him this made sense as there was a ditch on the other side of his property otherwise it would be a reasonable use of that area. He believed this met the three-factor test.

Johnson also believed this met the three-factor test as well.

Hanschen asked if the entire hedge would be eliminated leaving the block retaining wall that would contain the drainfield.

Blake Robinson, 18116 Deerwood Lane NE, responded he had told the builder that curb appeal was a very big aspect and requested they save as many bushes as possible and the ones that needed to be removed, he wanted to replant them later.

By consensus, the discussion was closed.

Commissioner Balfany moved and Commissioner Terry seconded to recommend to the City Council approval of a variance to reduce the front yard setback standard of 10 feet to 2 feet, for

the placement of a raised pressure bed septic box mound and a tank at 5 feet on a property at 18116 Deerwood Ln NE, PIN 33-33-23-34-0043, with conditions as noted in Resolution 2024-40. 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.**

4.0B Variance to lot and setback standards – 18164 Highway 65 NE Lots 17 and 125

Berg reviewed staff's report stating Cedarwood Estates, formerly Village Green North, is a 150 + unit Manufactured Home Park, located in an R2 Residential Zoning District, at the corner of Hwy 65 NE and 181st Ave NE. Continental Communities purchased the property in November 2021. Documentation showing that this property was given a Special Permit by the Village of East Bethel Council to be a Mobile Park as early as September 1969. Multiple zoning code and ordinance revisions (May 1979 & March 1987) have been occurred since 1969, to include a requirement that Manufactured Home Parks have Conditional Use Permits. City Staff and Continental Communities staff have searched and are unable to locate any Conditional Use Permit issuance for the property.

Berg reviewed Section 38-20. He indicated since 18164 Hwy 65 NE was rezoned to R2 Residential in 2008 and no Conditional Use Permit can be located this makes the entire property a potential non-conforming use. In addition to the non-conforming use, there are also potentially non-conforming placements, as a result of the changes in zoning standards.

Berg reviewed Section 05 Nonconformities and Minn. Stat. § 462.357, subd. 1e.

Berg noted the East Bethel City Council in 1987 recognized that there would be complications and impacts when enacting new citywide zoning standards.

Berg reviewed Section 38-44, Existing manufactured home parks, and Section 38-25 Lot standards.

Berg noted historical mapping shows that last time homes were placed on Lots 17 and Lot 125 was in 2008, prior to Continental Communities purchase. The lots remained empty until October 2022, when Continental Communities applied for a permits to place a new homes on the lots. Without a Conditional Use Permit, these non-conforming lots were lessened in conformity sometime after 2008, when the previous non-conforming homes were removed. They remained vacant all the way up to 2022, which is more than 1 year. The placement of new manufactured homes, with a larger footprints and square footage, would meet the definition of expansion.

Berg indicated since those lots were vacant and exceptions were codified for existing manufactured home parks city staff reviewed Ordinance No. 122 for prior lot standards. This was the regulatory ordinance for mobile homes and mobile home parks prior to March 4, 1987.

Berg reviewed subdivision 2. Lot Standards.

Berg noted in comparing the existing lot proposals to the standards of Ordinance No. 122 from 1979 shows that they did not, nor would not meet the standards making them Illegal Nonconformities without a Conditional Use Permit. Illegal nonconformities are defined as those that were not permitted when established. They may exist because a prior zoning ordinance was not enforced as written. A city's failure to enforce a prior zoning ordinance does not give a landowner the legal right to continue an illegal nonconformity. Illegal nonconformities do not have the rights associated with legal nonconformities. Municipalities should consider whether the nonconformity ever complied with existing ordinance or law before assuming a particular nonconformity is entitled to the statutory right to continue.

Berg reviewed Minn. Stat. § 462.357 Official Controls: Zoning Ordinance. He noted landowners may assert their continuance rights in response to city enforcement of a zoning ordinance. The burden is on the landowner to establish that their property qualifies for nonconforming rights. Continental Communities has not provided the city any documentation to establish the manufactured home park complied with existing requirements when constructed.

Berg stated Lot 17 is an interior lot with a reported width of 30 feet and a length of 80 feet. The newly proposed home is 16' X 76' home. The placement is 5'9" from the curb face, 21' from the home to the rear, 21' from the home to the right and 27' from the home to the left. In 2008, the home on Lot 17 was approximately a 14' x 65' home with a placement of approximately 10 feet from the curb face, 25' from the home to the rear, 20' from the home to the right and 25 feet from the home on the left.

Berg indicated Lot 125 is a corner lot at the intersection of Cedarwood Rd NE and Linden PL NE with the possible dimensions of 50 X 90, however lot lines cannot be established. The newly proposed home is a 16' x 76' home and was placed on the lot 6.5' off of the curb face of Cedarwood Drive NE. There is 29' of distance between the new home and the home to the east however there is 14.5' of distance between this and the home to the north. Additionally, this is a corner lot so the side yard placement off of the curb face of Linden PI NE is 30'.

Berg stated in 2008, the home on Lot 125 was approximately a 14' X 68' and it was placed 15' off of the curb face of Cedarwood Drive, 26' from the curb face of Linden PI NE and 28' from the neighboring home to the east and 15' from the home to the north.

Berg noted these placements do not meet the criteria set forth to allow for the structures to be placed on the lots, so variances would be required.

Berg stated consideration of a variance requires the Planning Commission to consider a three-factor test for practical difficulties.

With respect to a test of reasonableness, Berg stated in this case the placement of a new manufactured home on a lot in an existing manufactured home park is reasonable; placing a manufactured home with the dimensions larger than a previous non-conforming home is not reasonable; expansion of a non-conformity is prohibited by East Bethel Ordinance Sec 05. & Minn. Stat. § 462.357, subd. 1e.; and placing a manufactured home within 30' of another manufacture home may not be reasonable.

With respect to the landowner's problem is due to circumstances unique to the property and not caused by the landowner, Berg stated in this case Continental Communities purchased the property in its existing form and design, and due to the lack of CUP and non-conforming/ illegal non-conforming status of the entire property, the existing lot dimensions in Cedarwood Estate cannot be expanded to accommodate placements of manufactured homes within existing setbacks.

With respect that the variance would not alter the essential character of the neighborhood, Berg stated in this there are 150 + manufactured homes in the park of which all would not meet Sec. 38-25. - Lot standards; the encroachment in setbacks vary on each lot as a result of the inconsistent lot dimensions; and a variety of manufactured home dimensions have been placed on lots throughout the history of the park.

Berg stated the City staff was requesting the Planning Commission hold a public hearing and make a recommendation of approval or denial to the City Council to the variance requests to reduce the lot standards and setback distances to allow the existing placement of Manufactured Homes on Lot 17 and Lot 125.

Johnson opened the public hearing at 7:31 p.m.

Rusty Edmonds, 4018 Mapleton Drive NE, Ham Lake, indicated he was the Area Manager. He stated he understood the setbacks were not maintained which did not work for him. He indicated he had spoken with Berg several times regarding this. With respect to non-conformity were they saying going forward the only homes that could go on the existing sites were homes that were there physically as far as size went. He indicated they had some sites that were 12-foot homes, which they did not make any longer. Berg requested Mr. Edmonds speak to the current variance requests and then they could have a conversation outside of this about how moving forward would work.

Mr. Edmonds stated basically the homes were set and they were not meeting current Code. He noted if they looked down the line in either direction, the homes that were placed were in line with what else was there to aesthetically match what was already existing.

Johnson asked if the lots were vacant right now. Mr. Edmonds responded right now the homes were there and they were ready to go awaiting final approval. He noted they could not get occupancy until this was satisfied.

Johnson asked if Mr. Edmonds had managed other parks. Mr. Edmonds responded he had but he was getting close to retirement.

Johnson asked Mr. Edmonds if he had ever dealt with things like this before. Mr. Edmonds responded most of the previous parks he managed were fairly modern, but even with older parks the builder that built them left plenty of room. He noted the footprint did not have to remain the same, as long as the site was used in the same way. He stated his concern was that a 12-foot home had to be replaced with a 12-foot home, which made it difficult as those sites were smaller – narrower and shorter. He indicated they could possibly replace the homes with a 14-foot side home, but the problem was aesthetics. He stated it was not possible to match 12-foot homes as they were no longer made.

Johnson asked if there would be a lot of homes that would need to be replaced in the future. Mr. Edmonds responded he was not looking to move anyone out of their home, but if a home came in disrepair and it could not be remodeled or made livable it needed to be replaced. He noted his concern was for the residents. He stated there were several homes that needed to be taken away as they were vacant through Sheriff sales. He noted they would continue to run into setback issues.

Mr. Edmonds stated it was their job to make a nice-looking community for the residents and they wanted to create a home atmosphere and neighborhood. He indicated it was in the best interest to clean the place up, but that took time and money. He stated they were not afraid to spend the money or do the improvements. He noted so far they had replaced one-third of the roads and had done tree maintenance on diseased or damaged trees.

Mr. Edmonds stated so far they had put in 23 new homes, but according to the City they probably should not have done that. However, he noted they did get approval and occupancy on 21 of the homes within the last three years.

Johnson asked if this were to be denied, what would happen to the two homes in lots 17 and 125. Mr. Edmonds responded they would probably be moved to another park. He noted they would probably not put other homes on those sites as there was nothing that would fit on them.

Jorgensen asked where the water came from. Mr. Edmonds responded they were on well water but there had been talk about hooking up to City water and sewer at some point.

Jorgensen inquired about fire protection and did they have a hydrant. Mr. Edmonds responded he did not believe there were any fire hydrants in the park so they would need to bring in water by tanker trucks.

Johnson closed the public hearing at 7:43 p.m.

Berg noted guidance said that municipalities should consider whether the nonconformity ever complied with the existing Ordinance or law before assuming a particular nonconformity was entitled to statutory rights to continue. He indicated there was a potential here with this property whether it meets standards or doesn't meet standards. He noted he had spent hours going through the old City Council Minutes attempting to find any information about Village Green North and whether anything was issued during the Ordinance change. He indicated there were conversations from a Council meeting advising the previous owner of Village Green North that they would be grandfathered in so there was no reason for them to seek anything else. He stated the only permit issued was a special permit which was issued in 1969.

Berg stated in 1969 mobile home parks were allowed to be used for six-months at a time as seasonal living, so the original application was given permission to have the park under the seasonal establishment. He noted a lot of research had been done to determine if this was an illegal nonconformity or a nonconforming situation. He stated it would take a lot more research and a legal opinion to make that determination. However, he noted it did not meet today's standards and it was not the City's obligation to prove that they met the standards, but rather the owner's obligation to bring proof that they met the standard at the time.

Commissioner Hanschen moved and Commissioner Downie seconded to open the discussion.

Hanschen asked if there was a CUP and would a CUP transfer to new owners. Berg responded that was a civil agreement between two private parties and the City did not get involved in that conversation.

Hanschen asked if Continental Communities had been informed that they needed a CUP. Berg responded they had been. He noted that occurred in 2022, but that was before he was the Community Development Director. He believed the people who were in his position at that time most likely ignored the zoning stipulations because of how difficult of a conformity situation this was. He noted all of the zoning changes were under the same ownership, so he assumed they had no reason to comply if the City was ignoring the Zoning Code and allowing things to continue. He indicated as he was a letter of the law person, this is a potential issue that should be addressed and should not be ignored.

Johnson agreed it needed to be addressed because it seemed as if the Certificates of Occupancy had been granted over and over again.

Berg stated the exceptions listed have to do with street and sidewalk with amount of park space.

Terry stated this did not address setbacks. Berg responded it did address setbacks for the existing homes as they were not required to pick up those homes and then push them back to meet the standards, but anything moving forward should have met the standards. He indicated the legal non-conforming standardization made it difficult without a CUP because if a CUP had been issued years ago they might not be having this discussion tonight as those would have all been defined in a CUP.

Terry asked what was allowed to be built before they got to the point of reviewing this. Berg responded he believed the City staff had just ignored the Zoning Code to allow for replacement of manufactured homes.

Mr. Edmonds stated Berg has previously said this was zoned incorrectly. Berg responded current City Ordinance stated that manufactured home parks could not be placed in any zone other than B3.

Mr. Edmonds asked if the zoning were changed, what would change with respect to the setbacks. Berg responded the setbacks would remain the same regardless of what the zoning district was.

Hanschen asked if that meant they would be required to have a CUP. Berg responded he had spoken with both Council and the City Administrator about this and the issue was that when you pull off one layer, now they exposed another layer and until you got to the core of the problem, you might not solve the problem. He explained as the park sat right now, the amount of land that was there for the number of homes that was on the land and the size of the homes they could not meet the standards because there was just not enough area there. He indicated they might end up losing half of the park if they tried to meet the standards.

Berg reminded the Commissioners that this was about the variance requests for Lot 17 and Lot 25. He indicated simultaneously to this conversation, Continental Communities also submitted a sketch plan for an expansion to the north of the park. He indicated it took staff some time to do the research and work with the City Attorney on the non-conforming aspect of things to make a determination on the expansion portion. He indicated due to staff changes things got extended out to where they were today. He noted the Council did not necessarily want to expand the park, but rather help the park create a cleaner community by individual replacements in the existing park but that did not mean they could not come in with an expansion plan for a different community. He stated what the Commissioners had in front of them right now was the variance request for the two individual lots and the applicant's desire to improve the two lots. He indicated he did not want the Commission to get lost in the bigger picture of why it took so long.

Johnson asked if this variance were approved by both the Planning Commission and the Council would this set a precedent. Berg responded unless they take the existing home on a lot that was there that wasn't removed more than a year ago, and they remove that one and they put back exactly the same size in the exact same place with the same footprint, he would not be enforcing the Zoning Code. He indicated if they were replacing an existing nonconformity with the exact same nonconformity, they have recently approved on of those because the footprint was identical to what was coming off of a lot.

Balfany asked what happened if the square footage was the same, but the length and width were different. Berg responded the setback distances would be changed.

Balfany asked what would occur if they went from a 14-foot to a 16-foot and it still met the setback requirements. Berg responded there was a standard set in there and they should be 30-feet between each manufactured home. He acknowledged this was not a possibility.

Balfany stated it would be nice if the Fire Department could inform them of the importance of the distance between the homes. Downie indicated that was one of his concerns also. He did not believe this was passing the three-factor test and he did not see how they could recommend approval to the City Council.

Berg noted there were nonconformities everywhere in the park and he while he knew how that could be solved, it would be a very expensive proposition.

Jorgensen asked if the Planning Commission could approve these, but say they were not going to approve any more unless there was a CUP. Saenger believed that was what had been occurring.

Berg responded they could do that and noted they could bring in more units as long as they were equal to what was being replaced. He indicated it was his interpretation that a \$300 variance for the lots that

they want to correct was a lot cheaper than the cost to get a CUP passed as they would need to have a professional surveyor survey the entire property.

Jorgensen pointed out that having new units were good for the community and the residents and he would like to see it and support this, but he acknowledged there were some issues with the City in the way they handled this in the past. He noted for campgrounds they had to have 10-feet between campers for fire safety and he would like to see 10-feet between units there moving forward. Berg responded they might be able to achieve a 10-foot distance on the backside, but not on the front side as they are 2-feet off of the curb. He indicated there was no easy answer.

Johnson requested the Commissioners bring the conversation back to the two lots requested in the variance.

Saenger stated she had a concern about the infrastructure that was in place to support those homes. She indicated if they brought in larger homes with more people, would they have the water to sustain it and would they be drinking good water. She asked what would happen if there was a fire and how did they solve that issue. She asked if anyone was inspecting the sewer. She expressed concern that they did not have current information. She expressed concern that by approving the variance, they would be setting a standard that they would have a hard time getting out of later. She did not think she could make a decision to consider approval of the variance when they did not have enough information to ensure the people moving in would be safe with respect to good water and sewer.

Saenger indicated she wanted to see this be successful and maybe they needed the City to work with them in rearranging the park to meet setback standards to make a nice area for people going forward. Berg pointed out that the City staff would not inspect the sewage plant and that would be the MPCA. He stated the City would also not inspect the well and they would need to get a well certification from the MN Department of Health.

Jorgensen stated he was not worried about the well as a trailer park had to have somebody with a water license and he was sure this was being checked by the MN Department of Health.

Saenger stated she still had an issue of setting precedence.

Balfany agreed this would set precedence. He indicated just because this was allowed to happen in the past did not mean it was okay to happen moving forward. He acknowledged that the Commissioners cared about everybody, but it was not the job of the Commission to produce alternative solutions for the property owners. He also did not think this was on the City either. He believed it was the property owners responsibility to make their properties a success in whatever manner they could while following the rules.

Balfany stated he could not support the variance as by definition this was an expansion which was not allowed.

Johnson stated she was hearing a lot of the Commissioners not supporting the variance. She asked if any Commissioner wanted to support the variance.

Jorgensen stated he wanted to support the variance, but he did not think they had enough information. He noted the owners were clearly making improvement to the community and they are heading in the right direction and he did not want to tell them to now stop. He indicated this was disappointing to him.

Johnson indicated this was a necessary part of the community.

Hanschen pointed out if the old home were removed and an exact same size home was put in there would be no need for a variance. Berg noted the other consideration was if there was a larger lot and they put in a smaller home, they would not be able to go back up to a larger home.

Saenger noted the Zoning Code had not changed since 2022 and the property owners knew they were going to be placing in different sized homes which would change the setback. She asked why this was not brought to the City before they were put in. Mr. Edmonds responded every home had value.

Berg stated an individual could not change an Ordinance if they ignored a violation and approved something anyway. He indicated by ignoring an Ordinance and approving a permit did not change the Ordinance and it did not change the conformity either – it was still a nonconformity.

Mr. Edmonds noted every home had a different set and type of problems. Balfany stated the public hearing had been closed and the Commission understood the permits had been applied for. He indicated they needed to be compliant with the law. He called the question.

Commissioner Balfany moved and Commissioner Hanschen seconded to recommend denial of the variance to City Council. Johnson asked any discussion?

Hanschen agreed with the improvement and he wanted to see that happen. He noted that without expansion it would be harder to get a hold of the size of manufactured homes required, but it might be possible.

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

5.0 Updates

Council Liaison Smith updated the Commission on recent Council actions.

6.0 Adjournment

Commissioner Balfany moved and Commissioner Jorgensen seconded to adjourn at 8:27 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.