

EAST BETHEL PLANNING COMMISSION MEETING
July 23, 2024

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

MEMBERS ABSENT: Brian Downie

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 June 25, 2024 meeting minutes

Commissioner Terry moved and Commissioner Saenger seconded to adopt the June 25, 2024 regular meeting minutes. Johnson asked any discussion?

Saenger requested a correction on page 7, line 267 to change: ‘She stated ~~he~~ liked...’ to ‘She stated she liked...’

Johnson stated she had two minor changes that she would email to Berg.

To the motion with changes made, all in favor say aye. **All in favor.** Johnson asked any opposed? **Hanschen abstained.** That motion passes 5-0-1. **Motion passes 5-0-1.**

4.0 A Public Hearing – 20738 Tyler Street NE – Rear Yard Setback Variance

Berg reviewed staff’s report stating on June 12, 2024, the City received an application for a variance to reduce the rear yard setback from 10 feet to 5 feet, for the placement of a detached accessory building.

Berg stated the applicant’s property, 20738 Tyler St NE, is located in a Single-Family R-1 Zoning District and in the Hidden Haven Country Club Estates Development. Accessory structures are an approved accessory use in an R-1 Zoning District. The property is recorded as .87 Acres and would be permitted one (1) Detached Accessory Structure at a maximum square footage of 1,100 square feet in size by East Bethel Zoning Code. Well placement and SSTS locations do not interfere with the placement of a detached accessory structure in other locations on the property.

Berg noted that all properties in the Hidden Haven Country Club Estates have a platted drainage and utility easement on all lot lines of the perimeter of their property. The city does not permit the placement of structures in drainage and utility easements. This property has a ten (10) foot easement along the rear property line.

Berg indicated 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 reviewed the three-factor tests for practical difficulties.

With respect to the first factor, a test of reasonableness, Berg stated that meant that the landowner would like to use the property in a practical way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance.

Berg indicated in this case: Accessory structures are an approved accessory use in an R-1 Zoning District; placing the Accessory Building, as required by ordinance, would not deny the landowner reasonable use of their property; there is 85 feet of rear yard on this property; well placement and SSTS locations do not interfere with the placement of a detached accessory structure in other locations on the property.

With respect to the second factor is that the landowner's problem is due to circumstances unique to the property and not caused by the landowner, Berg noted the uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner.

Berg stated in this case: This property is 182 feet in depth and the house was placed 48 feet from the ROW, leaving 85 feet of rear yard; a majority of the lots in the development are .75 to 1 acre in size; there is a small grove of trees stretching across the rear property line;

Berg stated the third factor was that a variance would not alter the essential character of the neighborhood. This factor is used to consider whether the resulting structure would be out of scale, out of place, or otherwise inconsistent with the surrounding area.

Berg noted in this case: Every lot in the Hidden Haven Country Club Estates has a 10-foot drainage and utility easement following the perimeter of their property; there are other accessory buildings in rear yards throughout the development however none required a variance for placement; the proposed accessory building placement is to the rear of the house and in combination of the tree cover the Accessory Building would not be visible from ROW.

Berg recommended the Planning Commission should review the application information, hold a public hearing, and make a recommendation to the City Council to approve or deny the variance request, to reduce the rear yard setback from 10 feet to 5 feet, for the placement of an Accessory Structure.

Johnson opened the public hearing at 7:10 p.m.

There were no comments made.

Johnson closed the public hearing at 7:10 p.m.

Balfany stated he did not see any practical difficulty and he did not see why the applicant needed to go into the five feet. He noted the applicant could move five feet closer to the house and be within the utility and not need a variance.

Johnson asked why did the applicant want it that far back. Berg responded the applicant would like the five extra feet of his rear yard and stated by moving it five feet deeper, it could be hidden better.

Saenger agreed with Balfany and believed there was no hardship involved.

Commissioner Balfany moved and Commissioner Terry seconded to recommend denial to City Council of Resolution No. 2024-XX, A Resolution Denying a Variance for the Reduction of the Rear Yard Setback from 10 Feet to 5 Feet for the Placement of an Accessory Structure on the

property located at 20738 Tylers St NE, PIN: 18-33-23-31-0030. 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.**

This item goes before City Council on August 12, 2024.

4.0 B Public Hearing – 21125 Highway 65 NE – Conditional Use Permit – Exterior Storage

Berg reviewed staff's report stating on June 12, 2024, the City received an application from Randy Crumpler, owner of Crumpler Properties, LLC and Boatworld, for a Conditional Use Permit for Exterior Storage on a parcel, 21125 Highway 65 NE, which he had recently purchased. The parcel is adjacent to the Boatworld parcel at 21155 Highway 65 NE. Crumpler wanted to extend the exterior storage of boats and pontoons from the Boatworld business onto the adjacent parcel.

Berg indicated both parcels are in a Central Business (B-2) Zoning District, whereby the City ordinance, Exterior Storage and Exterior Display of Merchandise associated with retail sales and services is identified as a Conditional Use, requiring a permit. After reviewing the zoning code staff have identified that Boat Sales are called out specifically as a Conditional Use in a B-3 Highway Commercial Zone only and not as a Permitted Use in a B-2 Zone. Retail Sales and Services conducted completely within the structure is permitted in a B-2 Zone, however.

Berg stated staff have determined that Boatworld's use of 21155 Highway 65 NE is a Legal Nonconforming Use and has been continued through transfers of ownership prior to the rezoning.

Berg noted the newly purchased parcel, 21125 Highway 65 NE, has no legal nonconforming designation and should conform to the current zoning code. Crumpler is proposing a new retail operation occurring inside the building on the parcel however it is not boat or pontoon sales but wants to extend the storage of Boatworld's Exterior Storage onto the new lot.

Berg stated under the current proposal, the Exterior Storage and Display of Boats and/or Pontoons would not meet the conditions of city ordinance and the expansion of the non-conformity is not allowed by city ordinance or MN State Statute without variance. Crumpler has advised city staff that he does not want to combine the two lots which would necessitate a variance due to the nonconformity classification.

Berg noted Section 46 – 4.O. does however identify other uses similar to those permitted in this section as determined by the City Council as a Conditional Use.

Berg recommended the Planning Commission review the information, hold a public hearing, and recommend to the City Council approval with current Exterior Storage requirements, approval with alternative conditions or denial of the CUP for Exterior Storage.

Johnson opened the public hearing at 7:18 p.m.

Randy Crumpler, applicant, shared a drawing he had brought to the meeting. He noted he would lose his current property in 1.5 years and he needed that amount of space to maintain the current business size and employment that they had. He indicated his proposal would make it easier for them and would eliminate them having to drive six miles back and forth.

Hanschen asked if Mr. Crumpler was interested in combining the two lots but wanted to have his own driveway connecting the two. Mr. Crumpler responded he would combine the two lots, but he was hoping if something happened he could sell one of the lots if he needed to.

Hanschen asked how high was the proposed fence. Mr. Crumpler responded the current fence was six-foot high with barbed wire coming off of it, so he planned to continue that or re-use it and move it around.

Johnson asked what would happen to the property if this was denied. Mr. Crumpler responded it would be the same thing without storage, but he would lose a lot of money. He noted this was a gamble he was willing to take and he hoped it would work.

Jorgensen inquired about the septic system. Mr. Crumpler pointed out where the septic system was located, which was a new septic system.

Jorgensen asked if the drain area was going to be removed towards the road. Mr. Crumpler responded he wanted to leave that there for runoff and snow, but not for storage.

Hanschen inquired about the landscaping. Mr. Crumpler responded they would need to remove the sprinkler system and put down class five, or whatever was allowed by City Code.

Saenger noted basically Mr. Crumpler was running out of space to store boats based on the demand that they were seeing in his business. She asked if Mr. Crumpler were not able to have the expansion, would it cause him to have to turn away business. Mr. Crumpler responded that was what would occur.

Johnson closed the public hearing at 7:25 p.m.

Berg pointed out this was a CUP and not a variance request. He indicated if that is the direction the City would like to go, the applicant was going to need to apply for a variance in order to expand his business onto the other lot. He noted there were questions and hurdles that would need to be looked at and he would need to do additional research on this. He noted the Council would decide whatever they wanted and the Planning Commission could provide any conditions.

Terry stated to him it seemed like this was the most sensible solution for the business and it was only technicalities which were important. He noted he wanted to encourage successful businesses in the City and he thought this was a great idea. He indicated the only thing he would recommend is that the fence separate the storage from what was currently the Thistle and Ivory building and have some kind of better screening than just the chain link fence as well as having a visual barrier like some kind of plantings. He hoped the City could make this work.

Johnson noted on Page 27 of the packet, it talked about non-conformities which said only exceptional cases of expansion or intensification of a non-conforming use would be permitted, and only after City approval of a variance. She believed this was an exception case, and in her opinion, this was a really good business that had been there a long time and she would like to accommodate them if possible, but indicated it appeared staff was saying it was not possible. Berg responded he was not saying it was not possible, but he did not know if requiring the applicant to apply to get a variance for this expansion onto the other lot was the right direction or not.

Berg stated the issue was that in B2, exterior storage could only be associated with the operation happening on that parcel, and if these were kept as separate parcels, then the retail operation happening in the building was not associated with the exterior storage. He believed the Council would need to answer this.

Berg indicated staff has had conversations with Mr. Crumpler over other lots that there was not a structure on and they would not allow strictly storage to happen on those lots either without some sort of sales, hut, lot sales, etc. He noted hypothetically if this structure did not exist on this lot and it was an empty lot, although it was right next to his property, it was no different than the one they said no to for the last three years. He indicated while this made sense, they just need to figure out what was the proper procedure to make it happen.

Balfany stated with respect to insurance, they always have to have some sort of financial tie to it, otherwise you can't insure something that was not insurable at its core.

Berg stated the real question was what was the Council and the citizens' palatability to allow for exterior storage for something that was not happening on the parcel of property based on how the Zoning Code was written. He indicated if they were okay with that, then maybe a CUP for exterior storage on this parcel, although not associated with the business, made sense. He noted if that made sense that a variance should be required because it was connected to the business, then they could make that a condition of the Conditional Use Permit – that in order to expand the non-conformity onto another lot, it should have a variance.

Johnson stated she would like to see that happen if they could. Saenger noted the City had grown quite a bit with more residents and more people wanting to use the lake. She indicated they had a need for boat storage in the City.

Balfany believed this was not for boat storage as much as it was for the inventory already purchased and ready delivery storage. Saenger noted she had misunderstood, but there are more people moving to the City and wanting to buy boats to utilize the lakes. She stated she also wanted to see this happen.

Johnson stated the only negative she saw was that this was someday going to be prime property and do they want to be expanding that business there. Hanschen stated that might be the benefit of not pushing to combine the two lots that it would be easy to sell and pull out of it to allow it to be its own lot.

Saenger asked if they could set a term on a conditional use. Berg responded they could not set a timeframe as that would be an interim use.

Terry asked if they could have a condition that it was only good until the lot was sold. Berg responded they could not. He noted once they assign a CUP to a parcel of property, that CUP authority remains with the parcel of property forever.

Berg stated now that the City was growing, there were a number of legal non-conforming properties and this scenario would not be going away. He noted this had a lot of benefits, but it also had a lot of hurdles also, and they needed to figure it out in the overall landscape. He asked would it be of benefit to put language in that if this was approved under a CUP, it was as a result of knowing that it was bringing another lot into a conforming standard.

Berg suggested the Commissioners recommend to the City Council a CUP for exterior storage on a parcel with a retail operation that does not match what the storage was. However, if they want the variance to satisfy that expansion then he would recommend a variance.

Balfany stated he did not want a variance because he did not want to create precedence for something down the road and have something that was there. He liked the earlier proposal of subletting the land and then leasing it back to himself or one company to answer. He noted he was trying to draw the line and not tie it to the neighboring property. However, he did not know if this could be done.

Johnson expressed concern that they were telling Mr. Crumpler how to run his business. Balfany noted he was not trying to tell Mr. Crumpler how to run his business but was trying to create the difference.

Mr. Crumpler stated Crumpler Properties did not own BoatWorld and it was a different company, so he could lease Crumpler Properties to BoatWorld and Crumpler Properties could be in the business of storage. Saenger noted that would resolve the B2 district allowing them to have exterior storage because Crumpler properties would then be the same business.

Berg stated exterior storage in a B2 district had to be associated with the business happening inside the principal structure.

Commissioner Terry moved and Commissioner Jorgensen seconded to recommend approval to City Council of the CUP, Exterior Storage, 21125 Highway 65 NE that differs from the business

that would be occurring on that property in recognition of the unique and special circumstances pertaining to both properties. Johnson asked any discussion?

Balfany stated he had a hard time talking about the other property because that directly tied it back together and that was where he believed they might get into trouble in the future with other properties. Terry stated he was open to an amendment.

Balfany requested Terry withdraw his motion.

Terry withdrew his motion.

Commissioner Saenger moved and Commissioner Terry seconded to approve the CUP with alternative conditions, provided by the applicant, that replace the exterior storage fencing and screening requirements. Johnson asked any discussion?

Jorgensen stated one condition that concerned him from the public service side, was that the drainage pond did not creep into the boat storage. Berg noted he would look at the recorded plat to see if there was an identified drainage and utility easement. He noted the City did not permit the placement of fences in drainage utility easements, or the City would need to take the fence down when performing maintenance but would not be responsible for replacing the fence.

Balfany asked if they could invert the fence. Mr. Crumpler noted he had originally had the fence on that side of the drainage pond, but then realized the snowplow would end up ramming that fence. He noted that area was going to be too soft for a forklift to drive on, so that was why he drew up his plans the way he had.

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

4.0 C Public Hearing – 20063 University Ext NE – Variance – Detached Accessory Structure nearer front lot line

Berg reviewed staff's report stating this property is located in the RR Rural Residential Zoning District. The property owner is requesting a variance for the placement of a detached accessory structure closer to the street than the primary structure due to wetland restrictions on the property.

Berg stated under Zoning Appendix A. General Regulations – Section 14-2.F states, "No accessory building or detached private garage shall be located nearer the front lot line than the principal building except when the lot is three acres or greater and the existing principal building is located a minimum of 200 feet from the lot line. Then the accessory building or detached private garage may be located closer to the front lot line than the principal dwelling, but not closer than 50 percent of the principal dwelling's setback. This property is 5.37 acres, with the primary structure set back approximately 125 feet from the front lot line. This request does not meet the criteria set forth to allow the structure to be placed closer to the road, so a variance would be required for the placement of a detached accessory structure.

Berg indicated the applicant's property is over 5 acres in size however nearly two (2) acres are wetlands/lowlands that extend from the Northeast corner of the lot diagonally to the South Property line.

Berg stated additionally, since this variance request is for a placement in front of the primary residence according to Section 42-7 B (2) the Front Yard Setback distance for structural placement is 40 feet. Therefore, if a variance for this placement is approved the detached accessory structure would need to meet the 40-foot setback.

Berg reviewed the three-factor test for practical difficulties.

With respect to the first factor, a test of reasonableness, Berg noted that meant that the landowner would like to use the property in a practical way but cannot do so under the rules of the ordinance. It does not

mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

In this case, Berg stated accessory structures are a permitted accessory use in the RR Single Family Residential Zoning District, and the SSTS (Septic System) is located on the North side of the property.

Berg stated the second factor is that the landowner's problem is due to circumstances unique to the property and not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands.

In this case, Berg indicated that this property is over 5 acres in size however nearly 2 acres are wetlands that extend from the Northeast corner of the lot diagonally to the South Property line, and wetland Setbacks as defined in Article IX, Sec. 66-255 require a 25-foot setback from the delineated Wetland Edge.

Berg stated the third factor is that a variance would not alter the essential character of the neighborhood. This factor is used to consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

In this case, Berg noted standing tree growth between the proposed detached accessory structure and the front property line will screen it from view from the public roadway.

Berg recommended that the Planning Commission review the request, hold a public hearing, and recommend approving the variance to the City Council as presented in Resolution 2024-49.

Johnson opened the public hearing at 8:00 p.m.

There were no comments made.

Johnson closed the public hearing at 8:00 p.m.

Hanschen stated he did not see any other place for exterior storage other than what was proposed. Berg noted the applicant would not be permitted to build something bigger than the Zoning Code would allow. He indicated that this property was five acres or larger, and at five acres they get 3,000 square feet plus an additional 240 square feet for every increment thereof.

Hanschen stated this was over what was allowed then. Berg responded that what was proposed did not mean that was what was going to get approved. The applicant just needed to know that he could have the location there and then once the City received the application, they could work on the allowables and architectural requirements. He noted the proposed Resolution would obligate the applicant to meet all other zoning code requirements, which would be size, height, shape, etc.

Berg believed the real question was could it be in front of the house or not. Balfany stated that based on past variances, this did fit all three factors in the test, and in the past they had approved similar requests.

Terry asked if the applicant intended to run a home business. Berg responded that the applicant did not indicate he would run a home business, but the question for the Planning Commission was if the building could be in front of the house.

Commissioner Saenger moved and Commissioner Hanschen seconded to recommend approval to City Council of Resolution 2024-49, A Resolution Granting a Variance for the Placement of a

Structure Nearer to the Front Property Line than the Principal Structure for the Construction of a Residential Detached Accessory Structure on property located at 20063 University Avenue NE (PIN: 19-33-23-32-0002). 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.**

4.0 D Public Hearing – 23785 Marmon St NE – Side Yard Setback Variance

Berg reviewed staff's report stating the property owner, Carl Mitchell, is requesting a variance from the side yard setback standard from 25 feet to 10 feet on the South property line of his residence at 23785 Marmon St NE for the placement of a Detached Accessory Structure.

Berg indicated the applicant's property is 1.45 acres in size, located in the Meadows of Fish Lake Subdivision and in an RR-Rural Residential zoning district. According to Section 42-7 B (1) c the side yard setback in the RR - Rural Residential zoning districts is 25 feet.

Berg stated this request for a reduction to the setback is due to the grade and existing elevations on the property. When the Meadows of Fish Lake Subdivision was graded by the Developer in 2005, each home site was raised in order to achieve walk out basement elevations. The applicant's property has an eight (8) foot elevation difference between the front of the house and the rear yard. Due to the elevation changes, a terraced boulder wall was constructed to support a driveway and parking pad which limit the buildable area available in the side yard.

Berg noted additionally, that the SSTS (Septic) is located in the Southeast corner of the rear yard limiting the depth of the lot area available for detached accessory structure placement. In order to meet the required SSTS setbacks of 10 feet as well as the zoning requirements of Section 14-2. F which states, No accessory building or detached private garage shall be located nearer the front lot line than the principal building, a side yard setback reduction would be necessary.

Berg stated the Meadows of Fish Lake Subdivision has a platted 10 foot Draining and Utility Easement (D&U) on the side yard property lines of all lots. The city does not approve the placement of any structures in any D & U.

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

With respect to the first factor, a test of reasonableness, Berg noted that meant that the landowner would like to use the property in a practical way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

In this case, Berg stated detached accessory structures are an approved accessory use in the RR - Rural Residential zoning district per the City Ordinance.

With respect to the second factor, Berg noted that the landowner's problem is due to circumstances unique to the property and not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

In this case, Berg stated that the elevations of the property limit area for the construction of an accessory structure; there are zoning regulations restricting placement of accessory structures in the front yard; and the rear yard location of SSTS limits the depth of the lots available buildable area.

Berg stated the third factor is that a variance would not alter the essential character of the neighborhood. This factor is used to consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

In this case, Berg noted there are multiple detached accessory structures throughout the Meadows of Fish Lake Development; the accessory structure will be used for general storage, allowing for personal property to not be visible to adjoining property and the city Right of Way, as required by Section 24-3A; and by maintaining the 10-foot Draining and Utility Easement distance throughout the development, the proposed structure would not alter the character of the neighborhood.

Berg recommended the Planning Commission review the request, hold a public hearing and recommend approve the variance to the City Council as presented in Resolution 2024-50.

Johnson opened the public hearing at 8:11 p.m.

Carl Mitchell, 23785 Marmon Street NE, explained his reasoning for putting the structure where he was planning and noted his neighbors were okay with the proposed location.

Berg noted Mr. Mitchell was requesting to bring his structure from 25 feet to the 10-foot drainage and utility easement line in order to be able to get around the boulder wall, maintain the proper setback distance from his subsurface sewage treatment system, as well as still be able to access the building from the front side. He noted the applicants were dealing with an elevation difference on their lot. He indicated the neighbor's property alongside his proposed structure was not usable for anything other than the septic system.

Johnson asked how many feet was the structure to the wall. Mr. Mitchell responded the proposed location was about 25 feet, so it would move into about 10 feet.

Berg stated the other problem this area had was because it was built after 1997, it was required to maintain a secondary septic drain field and Mr. Mitchell's building was going to where the secondary drain field was proposed. However, he noted Mr. Mitchell did have another secondary site on the other side on the north side of the house.

Balfany stated one of the hardships was that the land was too low to want to put in a large structure.

Johnson closed the public hearing at 8:16 p.m.

Jorgensen stated he did not have a problem with this as there was enough space.

Berg noted that was a development requirement now in all new developments, so that would be maintained through any new development through the City to have at least a 10-foot drainage and utility easement on either side of the property line if the City should need to do maintenance, or cables needed to be moved.

Jorgensen asked if they needed to write in a second new location for the future drainfield. Berg responded the variance would get recorded to the property, which would then document that the secondary site was no longer what was approved as a secondary site or designed as a secondary site. He indicated hopefully the next person coming along would realize they need to relocate the drainfield to another side.

Balfany stated part of his issue was that the applicant would not need a variance if he was building a smaller garage, so the practicality issue was not related to the land at this point, but instead becomes related to the size of the garage the applicant wanted. He noted the applicant was creating the issue at

that point. He pointed out a different way the applicant could do this. He indicated he did not want to set a precedent.

Berg stated public hearing notices had been sent out to the entire neighborhood and beyond, and he had not received any calls and there were no comments made at the public hearing tonight speaking against the variance so that was another consideration.

Johnson stated this was a normal-sized building within that neighborhood also.

Saenger stated it was her opinion that it was the responsibility of the Commission to make sure that they were following Ordinances and Codes and they were doing what was recommended by the staff. She indicated she did not want to infringe upon a resident's ability to put on their property what they wanted to if it does not violate a City Ordinance. She stated it was the applicant's property and they should have the ability to put in an accessory structure as long as it met the City Code.

Balfany stated he agreed that it fits the City parameters up to the point of wanting the variance to be closer to the setback, and if the request for a variance was practical difficulties not brought on by the property owner but does the size of the garage the applicant was requesting not a difficulty created by the landowner. He indicated the applicant would not need a variance if he built a smaller structure.

Saenger stated she felt comfortable with staff's recommendation. She indicated she was confident that the building size was fine, and there would be no necessity for it to be any smaller or relocated. She believed this was a simple request and she wanted to keep the residents happy. She noted every property was unique and sometimes variances were necessary.

Balfany stated he did not have any issue with that, but he his issue was if this a practical difficulty created by the landowner by choosing a size of the structure that they want. Berg reminded the Commission that while variances are reviewed case-by-case, the Commission had recommended approval on Fourth Street where a resident asked to place an even much larger, detached accessory structure in the front of his house because he did not want to put it in the side yard, which the Commission believed was very thin on practical difficulty or reasonableness.

Hanschen stated when it came to variances, he did not necessarily see that as creating a new precedent. He indicated that was why they had Ordinances and if they went and started changing Ordinances, they were setting precedent. He noted the Commission did not know the applicant's needs specifically and he had no problem recommending approval of the variance.

Johnson stated she understood what Balfany was saying because they started this year questioning whether they really had to adhere to those three tests, and she believed they understood now that they really do have to do it.

Balfany stated he was not trying to challenge anyone or to say that the applicant should not get the variance; he was trying to say which way he was going to vote on this as this was something he had questioned over the years.

Berg pointed out that this variance request was to reduce the setback and staff still needed to review the building permit and everything else to make a determination. He indicated just because the applicant was proposing something, did not mean that they were going to get it. He noted the application was asking for placement and that was what the question was before them.

Saenger requested they close the discussion.

Commissioner Saenger moved and Commissioner Terry seconded to recommend approval to City Council of Resolution No. 2024-50, A Resolution Granting a Variance for the Reduction of a Side Yard Setback Standard from Twenty-Five Feet to Ten Feet on the South Property Line for the

Construction of a Detached Accessory Structure on Property Located at 23785 Marmon St NE (PIN-25-34-23-43-0012). Johnson asked any discussion? To the motion, all in favor say aye. **Jorgensen, Terry, Hanschen, Saenger, and Johnson.** Johnson asked any opposed? **Balfany.** That motion passes 5-1. **Motion passes 5-1.**

This item goes before the City Council on August 12, 2024.

5.0 Updates

Council Liaison Smith updated the Commission on recent Council actions.

6.0 Adjournment

Commissioner Terry moved and Commissioner Jorgensen seconded to adjourn at 8:32 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.