

EAST BETHEL PLANNING COMMISSION MEETING
November 26, 2024

MEMBERS PRESENT: Chair Sharon Johnson, Vice Chair Gabriel Hanschen, Tanner Balfany, Brian Downie, and Kory Jorgensen.

MEMBERS ABSENT: Glenn Terry and Diana Saenger.

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 Updates

Council Liaison Smith updated the Commission on recent Council actions.

4.0 Approve October 22, 2024 meeting minutes

Berg requested a correction on page 1, under members present, Kory Jorgensen was listed as Vice Chair instead of Gabriel Hanschen.

Commissioner Jorgensen moved and Commissioner Balfany seconded to adopt the October 22, 2024 regular meeting minutes as written. 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.**

5.0 Planning Commission Reappointment Recommendations

Berg reviewed staff's report, noting the recommendation is to re-appoint Sharon Johnson and Brian Downie to the Planning Commission.

Berg noted that Sharon Johnson has served on the East Bethel Planning Commission multiple terms. Her most recent appointments started in January 2022 and her current appointment expires on January 31, 2025. Commissioner Johnson has submitted a letter of interest seeking to serve another term that would expire on January 31, 2028.

Berg added that Brian Downie was appointed to serve a partial term on the East Bethel Planning Commission which began on February 27, 2024, and is scheduled to expire on January 31, 2025. Commissioner Downie has submitted a letter of interest seeking to serve another term that would expire on January 31, 2028.

Berg stated that the Planning Commission is requested to consider the approval of a recommendation to City Council to re-appoint Sharon Johnson and Brian Downie to the Planning Commission for an additional term to commence on February 1, 2025, and expire on January 31, 2028.

Commissioner Balfany moved and Commissioner Hanschen seconded to recommend approval to City Council to reappoint Sharon Johnson and Brian Downie to the Commission. 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.**

Hanschen discussed that he will not be requesting reappointment after his term ends in January, 2025. He noted that due to starting his own business and spending time with family, he does not have enough time to commit to the Commission. He shared that he has really enjoyed his time on the Commission.

This item goes before City Council on December 9, 2024.

6.0A Public Hearing – Setback Variance - 3564 Edmar LN NE – Sharper Homes

Berg reviewed staff's report stating on October 3, 2024, the City received an application from Sharper Homes, Inc. to reduce the standard setback from 10 feet to 8 feet, in the front yard for the installation of a septic drainfield and a setback reduction from the Ordinary High Water Level (OHWL), of 75 feet to 61.5 feet, for the construction of an attached patio cement slab, at the property located at 3564 Edmar LN NE, Wyoming, MN 55092.

Berg added that this .64 acre lot is in the Coon Lake Zoning District and covered by a Shoreland Overlay Zone. Not only does this lot have shoreland but it also includes a section of wetlands. In addition, the land immediately adjacent to the east is City owned and it contains lowland with an open drainage ditch that runs parallel to the lot line. These features create a list of setbacks that must be met.

Berg stated that Sharper Homes, Inc. is proposing a slab-on-grade home with placement that takes all setbacks into consideration; however, to place the septic system and well on the property, an encroachment into a property line setback is necessary. A setback reduction from the required 10 feet to 8 feet will be required for the installation of a drainfield on this property. Setbacks for drainfields are established in City Code, which identifies Minnesota State Statute. Under Minnesota State rules, it is noted that infringement on a property line must be made through accepted local procedures (variance process).

Berg mentioned that Sec. 57-5 has a list of definitions including setback and structure. A setback is a minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high-water level, top of a bluff, road, highway, property line, or other facility. This definition is clear that the setback is between the OHWL and a structure. He added that a structure is defined as any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles, and other supporting facilities. This definition is clear as to what is and what is not a structure. An appurtenance, which is also not defined in East Bethel City Code has a general definition as accessory to and permanent.

Berg also stated that Sec. 57 requires a 75 foot setback from the OHWL. The proposed house placement has the back wall of the house at or near the setback line. The proposed construction also includes a 14 by 20-foot concrete patio slab, which is attached to the back of the house protruding toward the lake into the OHWL setback. Sharper Homes, Inc. is requesting a reduction of the 75-foot setback to 61.5 feet. The opinion of City staff is that the proposed concrete patio slab, attached to the house, is an appurtenance.

Berg noted 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. Economic considerations alone do not constitute practical difficulties.

Berg added that a consideration of a variance requires the following three-factor test for practical difficulties. The first factor, a test of reasonableness, means that the landowner would like to use the property in a practical way but cannot do so under the rules of the ordinance. He added in this case septic systems are required for a home to be considered habitable. The approval of the variance would allow this property to be used as a residence. The second factor is a test of uniqueness. In this case, the

issue for the variance 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 property. He mentioned that in this case, current setback requirements for sewage treatment systems are 50 feet from the OHWL, 50 feet from any well, 20 feet from any structure, and 10 feet from any property line. Tanks are required to be placed 10 feet from any structure and 10 feet from property lines. The adjacent property contains wetlands and a ditch which require a 25-foot setback. Shoreland setback for structures is 75 feet from the OHWL, 25 feet from the front lot line, and 7 feet from the side yard lot lines. Finally, 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 or improvement will be out of scale, out of place, or otherwise inconsistent with the surrounding area. In this case, there are nine other properties on Edmar Lane NE that have septic mounds in the front or side yards visible from the right-of-way. The adjacent property to the west has a box mound in the side yard that is visible from the right-of-way.

Berg stated that a patio slab is not a minimum building requirement of a new single-family home in the East Bethel Building Code. The amenity is a personal preference of the landowner. The elevation at the OHWL is 904.8 feet above sea level while the elevation at the proposed slab extension is 909.0 feet. This is over a 4-foot elevation drop over a 75-foot distance. The risk of damage by changing lake water levels is minimal. For additional consideration, the Shoreland Overlay District permits property owners 25% impervious surface lot coverage. The total square footage of this proposal including the patio is 21%.

Berg noted that staff recommends the Planning Commission hold a public hearing and make a recommendation regarding the variance request for the reduction of the property line setback for the installation of a sewage treatment system and a reduction of the OHWL setback for the construction of an attached cement patio slab, at the property located at 3564 Edmar Lane NE.

Johnson opened the public hearing at 7:15 pm

Johnson closed the public hearing at 7:16 pm

Downie noted that they would need to approve this for the property use to be considered residential. He added that since surrounding properties have visible septic mounds, the property needs the second septic system to be considered residential. In regard to the patio, he does not feel that it is necessary for the property. He added that he feels there is reasoning to recommend approval.

Johnson noted that she has no issue with the septic system, but also does not see the patio as necessary.

Hanschen asked if the patio was not permanent, would it change the need for a variance.

Berg explained that if it wasn't a permanent concrete patio slab it would not need a variance or need discussion.

Balfany noted that it all sounds reasonable. He feels that septic is necessary and he could go either way in regard to the patio slab.

Hanschen noted that he does not see an issue with either request.

Commissioner Jorgensen moved and Commissioner Hanschen seconded to recommend to City Council approval of both setback variances at 3564 Edmar LN NE, for Sharper Homes with the conditions set forth in the provided resolution. 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 December 9, 2024.

6.0B Public Hearing – Variance - Driveway and access standards - 19408 E. Front Blvd. NE

Balfany noted he will abstain from voting due to his relation to the case.

Berg reviewed staff's report, stating on October 29, 2024, the City of East Bethel received a variance application from Josh Balfany, the property owner at 19408 E. Front Blvd. NE, for the construction of a second driveway/access to his parcel off E. Front Blvd. NE, in Coon Lake zoning district.

Berg stated that Mr. Balfany and his brother, who owns 19356 E. Front Blvd. NE, acquired a vacant parcel from family, which was located between their two parcels. In a private land transaction, they divided the lot and adjoined each portion to their respective lots. Balfany subsequently applied for an accessory structure which was permitted, and the project was completed. During the final inspection, Balfany was informed he would need to obtain a permit for a second driveway/access. Balfany indicated on his September 28, 2023, building application that there are no plans for a driveway. City Code does not permit more than one driveway/access in certain zoning districts of the City.

Berg referenced Section 10. - General Development Regulations, Sub.15. - Driveway Access and Standards. He stated that the access requirements are: Properties in the R1, R2, and CL districts are allowed one access point from a public street. Properties in the RR and A districts are allowed two access points from a public street; however, properties located on Municipal State Aid (MSA) streets, major thoroughfares, and major streets are allowed one access point from a public street. He added that in all residential zoning districts, driveways located on an improved street require a bituminous or concrete driveway extending from the street a minimum of 75 feet or to the garage apron, whichever is less.

Berg noted that on this property the septic drainfield is located on the north side of the house. The well is located in the front yard forcing the placement of the detached accessory structure on the opposite side of Balfany's existing driveway and therefore he is unable to access the new building from the existing access.

Berg added that in addition to the request for a second driveway, Balfany is requesting a variance to the (improvement requirements) paving standards, as required in Sec. 10, Sub.15 (B2), under (B3), which states that parking spaces for heavy equipment that would damage bituminous or concrete surfaces are exempt from the paving requirement. Balfany owns a skid steer/loader he intends to park on the driveway and believes its parking would be damaging to a paved surface. City ordinance does not define heavy equipment.

Berg stated that there are three parcels on E. Front Blvd. NE that appear to have second driveways. A historical review of the GIS aerials provides information that all three of those existed prior to 2008 when the ordinance revision occurred that prohibited second driveways from CL, R-1, and R-2 zoned parcels.

Berg mentioned that Staff advised Balfany that the second access/driveway and pavement standard requirements would be denied if applied for and a variance would be required before either could be applied for or approved.

Berg added that 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 stated that the consideration of a variance requires a three-factor test for practical difficulties. The first factor, a test of reasonableness, means 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 way without the variance. He added that in this case, the property owner is requesting a second driveway to access a detached accessory structure is reasonable as adequate ingress and egress are necessary for a structure intended to store vehicles and equipment. Or alternatively, the denial of a variance to place a second driveway on a property does not deny the landowner reasonable use of the property, as detached accessory structure and subsequent access are not a requirement of development standards of a primary residence. 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. In this case, the property is triangular shaped limiting buildable areas for construction. The septic drainfield is located on the north side of the lot. The well is located in the front yard. The layout of the home placed the attached garage and existing access/driveway on the north side of the house, away from the newly constructed detached accessory structure. Finally, 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. In this case, there are three other parcels with existing non-conforming second driveways on E. Front Blvd. NE. Or alternatively, properties in the R1, R2, and CL districts are only allowed one access point from a public street.

Berg stated that in this case, it is the opinion of City staff that this variance request partially meets the standards under the practical difficulties test.

Berg added that for additional consideration, Balfany's lot is in a Shoreland Overlay District which has a maximum allowable impervious surface percentage of 25%. Balfany's lot based on acreage would be permitted to cover 5,445 square feet. The existing coverage on the lot including the newly constructed accessory building is 4,335 square feet providing for an additional 1,110 of allowable coverage. Driveways are required to be a minimum of 12 feet wide but cannot exceed 24 feet in width at the union of the right-of-way pavement. Based on the minimum paving length standards, a 12-foot wide driveway would add an additional 650 square feet. A 24-foot wide driveway would add an additional 1,300 square feet, which would exceed the impervious surface coverage allowed.

Berg noted that the Shoreland Overlay District definition of an impervious surface is the area of a lot (above the Ordinary High Water Level) covered with buildings including all appurtenances, driveways and sidewalks, and similar impervious materials. For the purpose of this section, driveways that have a gravel base shall be considered impervious. Decks that allow drainage through the decking and that do not have a plastic weed barrier or some other material that would impede drainage into the ground and swimming pool water surface area shall not be considered impervious.

Berg noted that City staff is requesting the Planning Commission hold a public hearing and make a recommendation to the City Council for the placement of a second driveway and to the driveway access and standards of paving, as required in Sec. 10, Sub.15 (B2), on a parcel located at 19408 E. Front Blvd. NE, Wyoming, Minnesota.

Johnson opened the public hearing at 7:33

Josh Balfany explained that the second driveway does not really affect the neighborhood since three other properties already have second driveways. He mentioned that in regard to the hard surface, since he has a bobcat it would crush the existing pavement.

Johnson asked if it would be considered impervious if he had the millings. Berg noted that yes, if he put in a gravel base, it would be considered impervious.

Johnson asked what he was thinking of when he applied back in 2023. Mr. Balfany explained that before the grass area was used as the access point and after driving on it, it turned to dirt. He noted that upon final inspection, he put boards there and it looked like he was creating his own driveway. Due to this, he felt he should apply for a formal driveway. He mentioned he will use it as everyday use.

Johnson closed the public hearing at 7:43 pm

Downie noted that the addition of the structure seems very close to the road. He added that he is unfamiliar with the milling variance.

Jorgensen noted that he is in favor of the second access, but he feels a minimum of 20 feet of impervious should be required.

Hanschen mentioned a previous driveway the Planning Commission considered. He added that he may not be entirely opposed to the second access point since it is located on a road with slower speeds.

Berg added some history of access points in the area.

Commissioner Hanschen moved and Commissioner Downie seconded to recommend to City Council approval of variance for driveway and access standards at 19408 E. Front Blvd. NE, for Josh Balfany, with the surface to be up to the discretion of the owner. Johnson asked any discussion? To the motion, all in favor say aye. Johnson asked any opposed? Hanschen, Downie, Johnson - Aye; Jorgensen - Nay, Balfany – Abstain. Motion passes.

This item goes before City Council on December 9, 2024.

7.0 Adjournment

Commissioner Hanschen moved and Commissioner Downie seconded to adjourn at 7:55 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:

Sylvia Rokosz

TimeSaver Off Site Secretarial, Inc.