

EAST BETHEL PLANNING COMMISSION MEETING
July 23, 2019

MEMBERS PRESENT: Chair Tanner Balfany Glenn Terry Sharon Johnson
 Sherry Allenspach Tom Eich Lou Cornicelli

ABSENT: Wanda McLaurin

ALSO PRESENT: Jack Davis, City Administrator
 Erin McDermott, Zoning Administrator
 Suzanne Erkel, City Council Liaison

1.0 – Call to Order

The July 23, 2019, Planning Commission meeting was called to order by Chair Balfany at 7:00 p.m.

2.0 – Adopt Agenda

Commissioner Terry moved and Commissioner Johnson seconded to approve the agenda as presented. Motion passed unanimously.

3.0 – Approve meeting minutes

Commissioner Johnson moved and Commissioner Cornicelli seconded to adopt the June 25, 2019 regular meeting minutes as written. Motion passed unanimously.

4.0 – Public Hearing for Setback Variance in R1– 156 Collen St NE

Requested Action: Consider approval of a side yard setback variance for Darren Leidall.

Background Information:

Mr. Leidall applied for and received a building permit on November 15, 2018 to build a single-family home at 156 Collen St. As part of the process of issuance of the permit, City Staff reviews the application to ensure that all the requirements of the development regulations in City Code, Appendix A, Zoning, Section 43 -7 are satisfied.

As a requirement of the application, the applicant is required to submit a certified survey of the property, prepared by a duly licensed land surveyor under the law of the State of Minnesota. This survey shows the property corners and lines, proposed improvements and their location on the site relative to the property lines, OHWM, wetlands, soil boring locations, setbacks, contours and grading and other information as required.

Kurth Surveying Inc., 4002 Jefferson St, Columbia Heights, MN 55421 prepared the survey for Mr. Leidall. Russel Kurth, L.L.S. No. 16113 was the surveyor.

Upon on receipt of the survey, the City verifies that the document was prepared by a licensed land surveyor and accepts the survey as an accurate representation of the lot and the required information necessary for a zoning review.

The City reviewed the certificate of survey and, based on that document, found that the side yard setback standard of 10' was satisfied for the R-1 zoning requirements.

The following is an order of events that led to the variance request for 156 Collen Street issue:

- Mr. Robert DeRoche, the owner of 158 Collen St (the adjoining neighbor to the west), questioned the survey for 156 Collen St and stated that the survey of that property was incorrect and notified Darren Leidall of his opinion.
- Mr. DeRoche also notified City Hall of his opinion of the 156 Collen St. survey and was informed that any disputes over property lines were civil matters and not covered under City Ordinances. Mr. DeRoche was also advised that an updated survey of his property was recommended as evidence needed to verify any potential errors that may be in the 156 Collen St survey.

- The City issued a building permit to Darren Leidall based on the certified lot survey for this property by Kurth Surveying, Inc in November 2018. The Certificate of Survey for the building permit for the 156 Collen St property showed the required 10' side yard setback.
- Approximately 8 months after the construction on the 156 Collen St home began (Fall of 2018), Mr. DeRoche commissioned a certified survey of the common boundary. This survey did confirm his claim that the 156 Collen St Certificate of Survey may be in error. The surveyor for the 156 Collen St survey was provided this information from Mr. DeRoche. Kurth Surveying, Inc. checked the new 158 Collen St survey and verified that his survey of the common boundary line was in error and the error was to the detriment of Mr. DeRoche.
- Kurth Surveying Inc. notified Darren Leidall of the error and Mr. Leidall applied for a variance for a side yard setback to address this issue. The required side yard setback is 10' and the building setback dimension requested due to the survey error is requested at 9.7'.

A variance is a means that allows certain exceptions to the zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a standard such as setbacks or height limits. A variance allows the landowner exemptions or reductions in a dimensional zoning rule that would otherwise apply.

Consideration of a variance requires the Planning Commission to consider 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 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:
 - o The request for a reduction for the side yard setback in this matter is reasonable. It would be unreasonable to consider removal or alteration of the structure for the dimensional variation as this was not the intent of the owner and the setback error was caused by the action of others. The reduction of the setback distance does not inhibit the grading and drainage plan for the property, does not interfere with any existing drainage and utility easements or fire access. Side and front yard setbacks less than the R-1 standards are common on this street and in this neighborhood.
- 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 or trees. In this case:
 - o The request for the variance is due to an error of the applicant's surveyor. The request to reduce setback was not the preference of the owner as the side yard setback distance submitted on the Certificate of Survey was 10.5'. There have been no documented cases in the City of a previous circumstance of this nature.
 - o Most variance issues are identified and resolved before the fact. This situation is unique in that the proof of the non-compliant setback was not confirmed until after the structure was substantially complete.
- 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:
 - o The difference between the required 10' setback and the actual 9.7' setback is not enough to affect the scale of the project or the proportions of the building relative to its surroundings and would not

alter the essential character of the neighborhood. Side and front yard setbacks less than the R-1 standards are common on this street and in this neighborhood.

The intent of the East Bethel Zoning Ordinance is to provide guidelines and standards that promote the orderly development of the City. The variance process, Appendix A, Zoning, Section – 4, provides a means for variations from the provisions of this section where their strict enforcement would be unreasonable because of circumstances unique to the individual property under consideration. In this case, the consideration of this variance meets the intent of the Ordinance.

As the variance does not involve land use and does not alter the essential character of or deviate from the density or single-family pattern of the R-1 zoning classification it is consistent with the current and proposed City Comprehensive Plan.

There may be other disputes relating to these two properties but they are separate from and unrelated to the variance request. These issues would fall under civil matters and outside the East Bethel City Code of Ordinances.

Based on conversations with the City Attorney, the City is within their rights to approve the variance request. The argument that could possibly support a denial was the information provided to Mr. Leidall and his surveyor by Mr. DeRoche regarding a potential discrepancy relative to the accuracy of the survey. However, up to and until the time of the updated survey provided by Mr. DeRoche, the information conveyed to Mr. Leidall and Mr. Kurth was non-binding in terms of any legal requirements compelling the owner to consider the complainants statements.

Prior to opening the public hearing, Chair Balfany reminded all audience members to please sign-in on the sheet at the podium and to state their name and address for the record before speaking.

Due to possible other disputable information for this variance request, Chair Balfany also asked that all comments and conversation stay on the specific matter of the side yard setback variance request of 3.6” for Darren Leidall.

Chair Balfany opened the public hearing at 7:09 pm.

Robert DeRoche, 158 Collen St NE, East Bethel stated this issue has turned into more of a battle between neighbors and that that is not the premise of this matter. Initially, his first contact with Kurth Surveying was on Oct. 10, 2017 when Mr. Kurth put stakes in the ground and returned the next day and moved the road stake over two feet. In doing so, this precipitated this matter. In further conversations with Kurth Surveying, Mr. DeRoche explained to him that he had two certified surveys from two different surveyors stating Kurth’s survey lines were wrong. No change was made to the survey stakes. November 23, 2018 the surveying was still being done. When Mr. Leidall was issued the permit on November 18, 2018 the survey wasn’t completed. Mr. DeRoche shared time-stamped pictures showing different occasions and what was going on. In September 2018 the City had two emails with Mr. DeRoche’s current surveys attached explaining what was going on; this was prior to the project being started. Mr. Leidall told Mr. DeRoche that his two surveys were not any good per the City and that his was good and that Mr. DeRoche needed to get another survey. On April 4, 2018 Mr. DeRoche obtained another survey and asked Mr. Leidall to not damage any more of his property. A police report was filed for property damage to Mr. DeRoche’s property. The house was demolished on January 22, 2019 and the lot was cleared on January 26, 2019. Mr. DeRoche’s surveyor called Kurth Surveying to notify them of the possible incorrect survey. There was a difference of 2.4’ on the road-side with the pin in the front being agreed upon. It was not a detriment to Mr. DeRoche, but rather in his favor. Mr. DeRoche believes that as soon as the City was aware there were three surveys for the same property, it should have waited to receive verification of the two other surveys. Mr. DeRoche shared pictures of where Mr. Leidall crossed the erosion net and ignored two of Mr. DeRoche’s existing survey pins which were inline with Mr. DeRoche’s pins, but were 1.5’ feet over, which is what was off on the Kurth survey. With regard to

the first factor test for practical difficulties, Mr. Leidall could have used the property any way he wanted as he clear-cut the whole lot. Rather than place the house at what Mr. Leidall believed was the 10' mark or where his surveyor said it was, he could have moved the house over. Twice city inspectors measured. Mr. DeRoche suggested the inspectors measure from where his stakes were because there could be a problem down the road. The inspectors did not measure from Mr. DeRoche's stakes. Mr. DeRoche believes the land could have been used without having to request a variance. It is the landowner's responsibility; the landowner is paying the surveyor. This is not a unique situation, a unique situation is topography, lay of the land, too many trees; the lot was cleared with nothing there. There was plenty of room to move the house to the east, rather than locate it on the side-yard line. This variance is needed because the landowner accepted his surveyor's work and did not take into consideration Mr. DeRoche's surveys. Mr. DeRoche does not believe it is appropriate to issue a variance, as it is going to set a precedence for the next person. Mr. DeRoche thinks his neighbor's house is a big improvement over what was previously there. However, based on the way it was done and the things that were ignored he questions whether it was a matter of doing it anyway and then asking for forgiveness after-the-fact. To the statement "Most variance issues are identified and resolved before the fact. This situation is unique in that the proof of the non-compliant setback was not confirmed until after the structure was substantially complete." Mr. DeRoche stated Mr. Leidall knew there was an issue early on before the footings were put in the ground or the poured walls. Because from the start they knew there were two outstanding surveys and the stakes were in the ground marked. Mr. DeRoche did not think it was appropriate for the City to suggest he get another survey due to the dispute with Kurth Surveying Inc.'s survey. Upon the advice of his attorney, Mr. DeRoche had a third survey done.

Darren Leidall, 156 Collen St. NE, East Bethel said he hired the surveyor to do the job and later found the survey was off. There was a change made in 1999 – one survey that was never stamped by a Court so it is two surveyors saying two different things. It's a matter of inches and he does not want to be any closer to his neighbor.

Mr. DeRoche shared copies of his surveys with the commissioners showing both are certified.

Mr. Leidall said yes, the surveys are certified but not dated.

Chair Balfany closed the public hearing at 7:22 pm.

Chair Balfany read Commissioner McLaurin's comments on her behalf. *"I have read and looked at everything. I personally believe this is a neighbor dispute with lots of elements involved. 3.6 inches does not alter the usability of either property and though I appreciate the technicality of the situation - is 3.6 inches going to devalue or change anything? All of the surveys were done without prejudice and the home was built according to a valid survey at the time. I would have to vote to approve the variance."*

Commissioner Eich asked what would happen if the variance is denied. Ms. McDermott said typically the City would have to take the property owner to court to request the building be removed. However, because the property line is outside of where the residence is it is unlikely that a judge would require removal of the house, but misdemeanor charges would be filed.

Commissioner Cornicelli asked where the City was on the discrepancies in the surveys at the time. If Mr. DeRoche presented a survey that was incongruent with the survey that the landowner submitted, how does the City decide which survey to use? Ms. McDermott was not employed at that time, however, in conversations with Jack Davis, City Administrator it was determined that they had mentioned to him that an additional survey from his surveyor would need to be done as the most recent survey submitted was done in 1988.

Mr. Davis said the City accepts the Certificate of Surveyor from the applicant. If it is stamped and done by a licensed land surveyor in the State of Minnesota the City accepts it as accurate. The discussion tonight shows why the City does not check surveys. If the City did check surveys it would likely add

\$3,000-5,000 to the cost of the building permit. Mr. Davis was not aware of any previous history with Kurth Surveying, Inc. Mr. Davis first met Mr. Kurth about 5-6 weeks ago. Commissioner Terry stated he has heard of Kurth Surveying, Inc. in his 20+ years on the Planning Commission. Mr. Davis noted that Coon Lake Beach is a surveyors' nightmare. Mr. Cornicelli believes that Coon Lake Beach properties are not being used in the manner of which they were originally intended and the City is trying to work seasonal properties into what are now year-round residencies.

Commissioner Allenspach said for a couple of inches, people waste too much money. The City accepted what it knew to be true. Commissioner Terry believes the issue needs to be taken up with the surveyor; Commissioner Cornicelli agreed, as this was an honest mistake and no property was taken. This is for a 4" variance on the side-yard setback that would likely be granted if the neighbor had come forward saying they were fine with the variance; this would not be a discussion item for the Commission. Chair Balfany said he believes this was an honest mistake and trying to prove otherwise goes beyond the scope of the Planning Commission. Commissioner Johnson does not see any damage to the other party [Mr. DeRoche] if the variance is granted it is 3.6", where the damages would be much more if the variance were denied. Chair Balfany noted that setting a precedent is always taken into consideration when granting or denying variance requests.

Commissioner Allenspach moved and Commissioner Johnson seconded to recommend to City Council approval of a variance for a reduction from 10' to 9.7' for a side yard setback for the common boundary of 156 and 158 Collen St., PIN 22-33-23-44-0020. Motion carried with Commissioner Eich opposed.

This item will go before the City Council on August 12, 2019.

5.0 – Public Hearing for Setback Variance in R1 – 21733 Tyler St NE

Requested Action: Recommend approval of a variance to reduce the R-1 Single Family Residential side yard setback on a city street from 25 feet to 10 feet, and primary structure setback from 10 feet to 4 feet for a detached accessory building.

Background Information:

Location:

21733 Tyler St NE

East Bethel, MN 55011

PIN: 07-33-23-31-40-0013

Legal: LOT 1 BLOCK 2 CEDAR TRAILS EAST

Zoning: R-1 Single Family Residential

Fee Owner/ Applicant:

Lynne Ogg

The property owners are wishing to build a detached accessory building on 07-33-23-31-40-0013, and due to the location of a drainage and utility easement, as well as their septic system location and secondary location for a drainfield, they are requesting a variance of 15 feet from the setback on 217th Ln NE, so the new structure will have a setback of 10 ft from the property line, as well as a variance from the primary structure setback of 10 feet to 4 feet, which is allowed by the Minnesota Building Code provided adequate fire walls are in place.

Consideration of a variance requires the Planning Commission to consider 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 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:

- o Of the available land to build on, it would be reasonable to construct this size accessory structure to the north of the primary home so the 1,200 sq. ft. accessory structure may have driveway access to the street, as only one driveway is permitted in an R-1 Single Family Residential district. This size structure would not fit to the south of the primary home due to the septic location, and due to the large drainage and utility easement on the west portion of the property, the structure cannot be placed on that side of the primary structure.
- 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 or trees. In this case:
 - o The property does have geographic constraints due to the drainage and utility easement, illustrated in Attachment 4. It is also impacted by the current drainfield location, and the required secondary drainfield site.
- 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:
 - o The allowance of a variance on this property would not change the character of the neighborhood as many of the neighbors also have detached accessory buildings.

Chair Balfany opened the public hearing at 7:34pm. Hearing no comments, the public hearing was closed at 7:34 pm.

Chair Balfany read Commissioner McLaurin's comments on her behalf. *"Very nice property. I have no issues with this variance."*

Commissioner Johnson said she is not comfortable having a building 10' from the easement. Ms. McDermott pointed out that it is approximately 18' from the property line to the paved road, so the building would be 28' from the road. Commissioner Johnson requested the owner answer questions.

Donnie Ogg, 21733 Tyler St. NE, East Bethel said the garage doors will face the driveway. The reason he is asking for a 4' variance is he is trying to build the building as far away from Tyler St. as possible. He could build closer to the corner/street but would need a larger setback. Commissioner Terry thought it was a large variance of setback. Why not build a smaller structure? Ms. McDermott said this size building is allowed per the acreage of the property. Mr. Ogg said he is planning to store his boat, vehicles and other items currently located outside in the building. Commissioner Terry asked what the general reason is for a 25' setback. Ms. McDermott said from the street the issue is typically visibility. Maintaining the 30' setback on Tyler St. allows for the visibility as the northern corner is very heavily wooded and it would not change the visibility much by having the building there. Chair Balfany noted that at the last meeting a variance was granted for a property to encroach on the setback from Viking Blvd. On the granted variance noted, the setback went from 100' to the standard 30'; percentage wise, that was much greater. Commissioner Terry added that was due to the lot itself. Ms. McDermott also noted that another reason for this placement, rather than closer to the drainfield, is that the City does not want to encourage property owners to place driveways and/or buildings that close to drainfields.

Commissioner Cornicelli moved and Commissioner Allenspach seconded to recommend to City Council approval to reduce the R-1 Single Family Residential side yard setback on a city street from 25 feet to 10 feet, and primary structure setback from 10 feet to 4 feet for a detached accessory building. Motion carried unanimously.

This item goes before City Council on August 12, 2019.

6.0 – Public Hearing for Setback Variance in RR– 18816 Greenbrook Dr NE

Requested Action: Recommend approval of a Variance from the 25-foot setback from a side yard property line to a 10 foot in an area zoned RR for the construction of a detached accessory building on the property.

Background Information:

Location:

18816 Greenbrook Dr NE

East Bethel, MN 55011

PIN: 33-33-23-12-0010

Legal: THAT PRT OF NW1/4 OF NE1/4 OF SEC 33

TWP 33 RGE 23 DESC AS FOL: COM AT NW COR

OF SD 1/4 1/4, TH N 89 DEG 52 MIN 20 SEC E,

ASSD BRG, ALG N LINE OF SD 1/4 1/4 534.42 FT

TO C/L OF GREENBROOK DR NE, TH S 09 DEG 40

MIN 20 SEC E ALG SD C/L 375.26 FT TO INTER/*

Zoning: RR Rural Residential

Fee Owner/ Applicant:

Randy Johnson

Mr. Johnson is wishing to build a new pole building on 33-33-23-12-0010 and will then remove the existing detached accessory structures. Due to the location of wetlands as well as variations in elevation, he is requesting a variance of 15 feet from the setbacks, so the new structure will have a setback of 10 ft from the property line.

Consideration of a variance requires the Planning Commission to consider 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 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:
 - o The request of the reduction of the side yard setback for the placement of a detached accessory building is reasonable for this residential neighborhood, many neighboring properties have detached accessory structures.
- 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 or trees. In this case:
 - o The property does have geographic constraints due to wetlands and elevation, the southern portion of the property is covered in wetlands, and the entire property is relatively bowl shaped.
- 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:
 - o The allowance of a variance on this property would not change the character of the neighborhood as many of the neighbors have similar structures that are more visible, as this location will largely be screened by an existing stand of trees.

Chair Balfany opened the public hearing at 7:44pm. Hearing no comments, the public hearing was closed at 7:44 pm.

Chair Balfany read Commissioner McLaurin's comments on her behalf. *"The property needs some TLC. Adding the new building and destroying the existing will help with the visual appeal of the property. I might consider putting a time frame on demolishing the old building instead of "after completion" and then approve."*

Commissioner Cornicelli requested the property owner answer questions.

Randy Johnson, 18816 Greenbrook Dr. NE, East Bethel plans to demolish both existing detached accessory structures in the fall or winter in order to preserve the yard. On the aerial photo of his property, Mr. Johnson pointed out the existing structures to be demolished. Commissioner Cornicelli asked why not take down the existing building and build the new one on the same site. Mr. Johnson pointed out a section that is bowl-shaped and gathers water. What assurances are there that the existing buildings will be demolished? It can be included in the motion. Ms. McDermott noted neighbors within 1,250' of this property were notified and that no concerns were voiced.

Commissioner Allenspach moved and Commissioner Johnson seconded to recommend City Council approve the variance of 15 feet, leaving a setback of 10 feet from the northern property line, to allow for the building of detached accessory building with the condition that the two (2) existing detached accessory buildings be removed within 180 days of the completion of the new accessory building. Motion carried unanimously.

This item goes before City Council on August 12, 2019.

7.0 – Public Hearing for Setback Variance in RR – 23030 Erskine St NE

Requested Action: Recommend approval of a Variance from the 25-foot setback from a side yard property line, as well as primary structure setback to a 10 foot in an area zoned RR for the construction of a detached accessory building on the property.

Background Information:

Location:

23030 Erskine St NE
East Bethel, MN 55005
PIN: 36-34-23-33-0009

Fee Owner/ Applicant:
Tomy Cummings

Legal: UNPLATTED VILLAGE OF EAST BETHEL
THE N 200 FT OF THE S 1046 FT OF THE E 233 FT
OF THE W 456 FT OF THE W1/2 OF SW1/4 OF
SEC 36-34-23 IN ANOKA CNTY, MN AS MEAS
ALONG THE W & S LINES OF SAID W1/2 OF
SW1/ 4 TOG WITH AN EASE OF RECORD

Zoning: RR Rural Residential

Mr. Cummings is looking to build a residential garage, per City of East Bethel zoning requirements, however, due to set back requirements from the property line, septic drainfield and wetland, he is unable to fit one on his property without a variance from the side yard and primary structure setbacks.

The variance requires the Planning Commission to consider a three-factor test:

- 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 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:

- o The property owner is looking to build a residential garage, which is currently a requirement under the Zoning Ordinance for the building of new residences. This request is reasonable not only due to the fact that a residential garage is common on the majority of properties throughout the city, but also because it would bring a property that would be considered a legal nonconformity into compliance.
- 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 or trees. In this case:
 - o The property does have geographic constraints due to wetlands and placement of the septic system. The required setbacks from the wetland are 25 feet, and the septic setbacks required are 20 feet from the drainfield and 10 feet from the septic tanks.
- 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:
 - o The allowance of a variance on this property would not change the character of the neighborhood as detached garages are common in this neighborhood.

As the variance does not involve land use and does not alter the essential character of or deviate from the density or single-family pattern of the RR zoning classification it is consistent with the current and proposed City Comprehensive Plan.

Chair Balfany opened the public hearing at 7:51pm. Hearing no comments, the public hearing was closed at 7:51 pm.

Chair Balfany read Commissioner McLaurin's comments on her behalf." *This addition will add value and bring the house up to code as it currently does not have a garage. Based on the placement of the house this area is the best placement for the building would have my vote for approval.*"

Commissioner Terry moved and Commissioner Cornicelli seconded to recommend City Council approve the variance of 15 feet, leaving a setback of 10 feet from the north property line and the primary structure, to allow for the building of detached accessory building. Motion carried unanimously.

This item goes before City Council on August 23, 2019.

8.0 – Public Hearing for Fence Variance in RR– 4320 217th Ave NE

Requested Action: Recommend approval of a Variance from the 4-foot front yard requirement in the front yard of a residence to allow a 6-foot chain link fence at 4320 217th Ave NE.

Background Information:

Location:

4320 217th Ave NE

East Bethel, MN 55011

PIN: 12-33-23-32-0003

Legal: THAT PRT OF N1/2 OF SW1/4 OF SEC 12

TWP 33 RGE 23 DESC AS FOL: BEG AT A PT ON

N LINE OF SD N1/2 800 FT E OF NW COR

THEREOF, TH E ALG SD N LINE 200 FT, TH S AT

RT ANG 220 FT, TH W AT A RT ANG 200 FT, TH

Fee Owner/ Applicant:

Cody Grambart

N AT A RT ANG 220 FT TO POB, EX RD, SUBJ TO
EASE OF RECORD
Zoning: RR Rural Residential

Mr. Grambart would like to install a 6-foot chain link fence in the front and side yard of his property and needs a variance for the front yard portion to be 6 feet.

The variance requires the Planning Commission to consider a three-factor test:

- 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 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:
 - o Of the available land to build on, it would be reasonable to construct the fence as proposed, the applicant recently purchased the property and wants to put a chain link fence to protect his dogs, as a chain link fence will not obstruct the view of the residence it is a reasonable use as it would protect drivers on 217th Ave NE, which is also County Road 74, as well as his dogs. City Ordinance allows for fences to be placed up to a property line, so the property owner would be able to construct a fence of 4 feet on the front property line presently, however, that would not fit the intended purpose of keeping the dogs in the yard.
- 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 or trees. In this case:
 - o The property is situated in a heavily wooded area, most of the yard in which a fence could be installed is situated on the side and in front of the residence.
- 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:
 - o The allowance of a variance on this property would not change the character of the neighborhood as the chain link fence would not impede view of the front of the residence, and requiring a fence be put into the back yard would cause more of a change to the area if the trees needed to be removed to place a fence in the rear yard.

Chair Balfany opened the public hearing at 7:55pm. Hearing no comments, the public hearing was closed at 7:55 pm.

Chair Balfany read Commissioner McLaurin's comments on her behalf. *"Other properties in the area do not have fencing BUT most are setback much further from the road than this property and have tree lines in the front of the properties. There is a split rail fence on either side of the driveway and adding a visually non evasive fence such as colored chain link on the side and front would not deter from the rest of the neighborhood. My only question: Is a 6' fence required because of the type of dog or for continuity with the side and back fence? I would vote to approve."*

Ms. McDermott said the 6' fence is due to the type of dogs. The reason for a 4' ordinance for a front yard is so emergency personnel can see the front of the house and house number. Chair Balfany said the fence could not block or use slotted plastic in the chain link. The applicant is open to suggestions for fence material; however, his intention is chain link. Commissioner Allenspach said the homeowner could also put the house number on the fence.

Commissioner Johnson moved and Commissioner Cornicelli seconded to recommend City Council approve the variance of allowing the placement of a 6-foot chain link fence in the front yard, instead of a 4-foot fence. Motion carried unanimously.

This item goes before City Council on August 12, 2019.

9.0 – City Council Report

Council liaison Suzanne Erkel reported the following City Council actions:

- Approved HRA budgetary transfer.
- Hired Stephanie Hanson as the Community Development Director with a start date of August 6, 2019.
- Approved recognition for Constitution Week.
- Approved the Booster East warming house new siding.
- Eliminated the gopher feet bounty.
- Approved the variances for Channel Lane and home occupation for 3rd Street.
- Approved a labor agreement
- Rejected the Ham Lake request for departure from the Upper Rum River Water Management Organization.
- Approved Ghost Plat Sterns metes and bounds.
- Approved the septic on Forest Road.
- Approved a holding tank variance.
- Approved the Carlson metes and bounds.
- Approved the Conditional Use Permit for 241st Ave.
- Approved administrative citations. This will allow the City to handle citations in lieu of going to court.
- Eliminated the fall recycling day.
- The next Townhall meeting is November 5, 2019.

10.0 – Other Business

No other business was presented.

11.0 - Adjournment

Commissioner Johnson moved and Commissioner Cornicelli seconded to adjourn at 8:01 pm. Motion carried unanimously.

Submitted by:

Gail Gessner

Recording Secretary