

EAST BETHEL PLANNING COMMISSION MEETING

January 26, 2021

Pursuant to Minnesota Statutes Section 13D.021 and the declared public health emergency due to COVID-19, this meeting was held remotely.

MEMBERS PRESENT: Wanda McLaurin, Sherry Allenspach, Glenn Terry, Tom Eich, Jim Smith, Daryl Lawrence, Sharon Johnson

MEMBERS ABSENT: None

ALSO PRESENT: Jack Davis, City Administrator
Stephanie Hanson, Community Development Director
Erin McDermott, Zoning Administrator
Suzanne Erkel, City Council Liaison

1.0 Call to Order

Chair Wanda McLaurin called the Planning Commission regular meeting to order at 7:00 pm. and the Oaths of Office were taken.

2.0 Adopt Agenda

Commissioner Johnson moved and Commissioner Allenspach seconded to adopt the agenda as presented. Roll call vote was taken. McLaurin yes, Allenspach yes, Terry yes, Eich yes, Smith yes, Lawrence yes, Johnson yes. Motion passed unanimously.

3.0 Approve November 24, 2020 meeting minutes

Commissioner Lawrence moved and Commissioner Terry seconded to adopt the November 24, 2020 regular meeting minutes as written. Roll call vote was taken. McLaurin yes, Allenspach yes, Terry yes, Eich yes, Smith yes, Lawrence yes, Johnson abstain. Motion passed.

4.0 Public Hearing – Variance Request, 341 218th Ave NE, Placement of Detached Accessory Structure

McDermott reviewed staff's report stating this property is located in the RR- Rural Residential zoning district and is located within the Brywood Acres subdivision. The property owner is planning for retirement and is requesting a variance for the placement of a detached accessory structure closer to the street than the primary structure.

McDermott indicated Zoning Appendix A – 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. In the case of a corner lot, the front line shall be located on the side on which the principal building is addressed. The remaining lot side with street frontage shall meet the minimum front yard setback.” This property is 4.64 acres, with the primary structure set back approximately 120 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.

McDermott stated this lot is heavily wooded in the rear yard, with a significant portion of the rear yard also being classified as a freshwater emergent wetland. (Attachment 2). The septic system for this

residence is due north of the eastern protrusion of the garage, impeding placement of the structure behind the house.

McDermott indicated 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:
 - The property owner is requesting looking to build a detached accessory structure in which he may have a hobby shop and residential storage, this is listed as an accessory use in the RR- Rural Residential zoning district.
- 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:
 - This property is unique in that topography challenges consisting of a significant portion of the lot being covered large stand of trees, this property is very limited in where the new construction could take place.
 - The placement of the septic system also prevents the placement of this detached accessory structure in the rear yard.
- 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:
 - There are a significant number of properties in this subdivision with detached garages, three of the twenty-four lots have garages that are closer to the front lot line of the property than the principal structure, including the neighboring property to the south.
 - The proposed detached accessory structure will not encroach on required setbacks, it will be located further from the road than both structures on the easterly neighbor's property.
 - The construction of a new detached accessory structure will also maintain the character of the neighborhood by providing an enclosed structure in which the property owner can store recreational vehicles, screening them from all adjacent properties.

Recommendation:

McDermott stated staff is requesting the Planning Commission hold a public hearing and recommend approval to the City Council for the placement of a detached accessory structure closer to the road than the primary structure on a RR - Rural Residential property.

McLaurin opened the public hearing at 7:07 p.m.

The owner was available for questions. There were no comments made at the public hearing.

McLaurin closed the public hearing at 7:08 p.m.

Commissioner Terry moved and Commissioner Johnson seconded to recommend approval to City Council the Variance Request, 341 218th Ave NE, Placement of Detached Accessory Structure with recommendations. Roll call vote was taken. McLaurin yes, Allenspach yes, Terry yes, Eich yes, Smith yes, Lawrence yes, Johnson yes. Motion passed unanimously.

This item goes before City Council on February 8, 2021.

5.0 Public Hearing – Variance Request, 23214 Baltimore St NE, Second Driveway

McDermott reviewed staff's report stating Appendix A, Section 10-15 A. 1 Access requirements state "Properties in the R1 and R2 districts are allowed one access point from a public street."

McDermott noted this property is located in the R-1 Single Family Residential zoning district and is located within the Baltimore Cedar Creek Addition subdivision. The residence was built in 2014, after the approval of the subdivision. The property owner recently applied for a detached accessory structure permit to construct a 40 by 60-foot pole barn on the south portion of the property. At this time it was noted that there are compliance issues on this property, several of which were noted by the Building Department as health and safety violations.

McDermott stated when these compliance issues were noted, staff met with the property owner to discuss compliance before the issuance of the permit, which also required the approval of a Variance for the illegal second driveway by City Council, or removal of the driveway. Presently the Zoning Ordinance, and Building Code violations on the property are as follows:

- There was no permit obtained for the pool, nor inspections completed. This is a Federal, as well as State and City requirement.
- The garage located on the driveway measures approximately 344sq. ft. and the Building Code, and Zoning Ordinance require a permit for all structures over 200sq. ft. At the time of meeting with the resident he stated that it was an icehouse, however, the Building Code only allows for the use of temporary structures if permitted by the Building Official for a maximum of 180 days and they cannot be utilized for storage. The City of East Bethel does not allow for temporary structures that are used for storage purposes, as listed in Zoning Appendix A – Section 14-5. A.
- The second driveway is being used to park commercial vehicles, including trailers. This property is zoned R-1 Single Family Residential, in which the parking of commercial vehicles has been prohibited by City Ordinance since the adoption of the Zoning Ordinance in 1971. Through amendments of the ordinances, the property owner would be required to qualify for a Home Occupation Interim Use Permit to be approved by City Council.
- There is a shipping container on the second driveway. Shipping containers are a prohibited use in the City of East Bethel, as noted in Zoning Appendix A, Section 10-4 Accessory Storage Containers, and defined in Zoning Appendix A, Section 1-9 Definitions.

McDermott indicated staff supports the recommendation of approval of this Variance with the conditions as stated in the attached Resolution of Approval to ensure compliance with the Minnesota Uniform Building Code, as well as the City of East Bethel Zoning Ordinance. Below you will find the Findings of Fact presented to Staff by the Property Owner. These findings of fact are not adequate to the standard required by Minnesota Statute, so staff is requesting that the Planning Commission recommend the amendment of the Resolution to include more detailed Findings of Fact for the approval of this Variance. Staff included a Resolution of Denial as Attachment 2 to the Planning Commissioner's packet

if the Planning Commission feels it is not reasonable to recommend approval of this Variance. The Findings of Fact to support the Resolution of Denial are noted as Staff Notes in each of the three factors.

McDermott stated 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:
 - The request for a second driveway to access the proposed detached accessory structure is reasonable as the primary driveway is too short to establish to build additional driveway space from.
 - Staff Note: Staff agrees with the submitted Finding of Fact, and also feels this would be reasonable for a future detached accessory structure, or extension for the structure which the property owner recently submitted an application for.
- 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:
 - There are a lot of wetlands and restricted high ground on the property.
 - Staff Note: The circumstances leading to the requirement of the variance were created by the property owner through the installation of the driveway without a permit or zoning approval. At the time of application for this residence the R-1 Single Family Residential driveway requirement of one street access had been in effect for 4 (four) years.
- 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:
 - This driveway has existed since 2014.
 - Staff Note: This is the only property in this neighborhood with a second driveway or road access onto Baltimore Street, and this driveway is facilitating the code violations on the property.

McDermott requested the Planning Commission hold a public hearing and recommend an amendment to the Findings of Fact, as well as recommendation of approval to the City Council for a second driveway on an R-1 Single Family Residential property.

McLaurin opened the public hearing at 7:17 p.m.

McDermott stated she had received one comment by email from a neighbor who approved of the request.

McLaurin closed the public hearing at 7:18 p.m.

Lawrence stated he believed staff made good points and he agreed.

Johnson stated she had no comment.

Smith stated the second driveway was put in without a permit. He asked if the City has inspected it and was there a culvert. McDermott responded there was no culvert and it appeared the new driveway was too close to the property line. Jim asked how it would be accessed. McDermott stated initially the applicant wanted to add a third driveway, which was denied. She outlined other options the applicant had. Smith stated he wanted to make sure the driveway was put in correctly.

Terry stated he was concerned about the precedent this would set where someone could do something that was against Code and done improperly that created a situation that other people would do the same thing. He believed this would set a bad precedent. In addition, the property owner was not present for questions and there were compliance issues.

Allenspach stated she agreed with Terry. She indicated she went and looked at the property today and saw the driveway was in. She noted there were already storage units and other buildings on the site and he wanted this building on the opposite side of the property with no access to it from anything on the property. She believed there would be more issues in the future, especially if they didn't ensure conformance with existing ordinances they had. She stated she was in favor of denial.

Eich stated staff had laid out the rules and regulations to this and he agreed that maybe permits were or were not approved and things were not processed the way they were supposed to be, but at this point they had a resident that wanted to get on board and do things so he believed the City should be proactive. He indicated this was an acre parcel and he believed the owner would figure out how to get in there and that was his right as to how the owner wanted to lay his property out as long as it complied with the City's rules. He stated he was in favor of this.

McLaurin stated she also looked at the site and owner had done a nice job with the property. She noted it was fenced nicely and everything was lined up. She noted the property directly north of them has horses and they had a gate at the end of Baltimore Street that entered onto their property and while this wasn't a driveway per se, you can tell it was used to pull horse trailers in and out. She noted the front of their house and home was on 65 frontage street. She stated if this had not come up, she didn't realize there was a house back there. She recommended they get the pool inspected and in compliance, and they get the driveway inspected and in compliance. She noted as it was requested right now, she would not approve this until everything else got into compliance.

Terry asked if they were to deny the variance request, was there a mechanism to get him into compliance. McDermott explained what could be done to get him into compliance.

Smith recommended tabling this until the building permits have been obtained by June 1, 2021. McDermott noted the City would have to recommend denial. She noted the City had 60 days to approve or deny this type of an application, so it would need to be denied and the applicant would need to reapply. Hanson stated this could be tabled with an extension along with an explanation.

Commissioner Eich moved and Commissioner Johnson seconded to recommend approval provided all of the stipulations have been satisfied to the City's recommendations. Roll call vote was taken. McLaurin nay, Allenspach yes, Terry nay, Eich yes, Smith nay, Lawrence nay, Johnson yes. Motion failed 3-4.

McLaurin asked if a recommendation could be made to the City Council that the applicant comes into compliance with everything and he reapplies.

Commissioner Terry moved and Chair McLaurin seconded to table this until the property is in compliance and this will be revisited after that time. Roll call vote was taken. McLaurin yes, Allenspach yes, Terry yes, Eich yes, Smith yes, Lawrence yes, Johnson yes. Motion passed unanimously.

6.0 Updates

Council Liaison Erkel updated the Commission on recent Council actions.

The next Planning and Zoning Commission meeting is scheduled for February 23, 2021.

7.0 Adjournment

Commissioner Allenspach moved and Commissioner Terry seconded to adjourn at 7:39 pm. Roll call vote was taken. McLaurin yes, Allenspach yes, Terry yes, Eich yes, Smith yes, Lawrence yes, Johnson yes. Motion passed unanimously.

Submitted by:

Kathy Altman

TimeSaver Off Site Secretarial, Inc.