

**PLANNING COMMISSION**  
Wednesday, April 17, 2019

**#1 Call to Order**

Planning Commission Chair Gorham called the meeting of the Brainerd Planning Commission to order at 6:00 p.m. in the City Hall Council Chambers.

Noted present were Commissioners Gorham, Marohn, and Duval; and Council Liaison Lambert. Commissioner Burslie was noted as absent. Community Development Director Chanski was also noted as present.

**#2 Approval/Amendment of Agenda**

MOTION AND SECONDED BY COMMISSIONERS LAMBERT AND MAROHN, DULY CARRIED, TO APPROVE THE AGENDA.

**#3 Approval of Minutes**

MOTION AND SECONDED BY COMMISSIONERS DUVAL AND LAMBERT, DULY CARRIED, TO APPROVE THE MINUTES OF THE REGULAR PLANNING COMMISSION MEETING HELD ON MARCH 20, 2019.

**#4 New Business**

**4a. Variance Request – Mitch Tuomi, 701 7<sup>th</sup> St. NW on behalf of Property Owner David Muhonen to Construct a 16'x 40' Addition**

- The property is a nonconforming residential use in a B-4 (General Commercial) District

Community Development Director Chanski stated the applicant is proposing to construct a 16' x 40' addition which would include a garage, bedroom and bathroom. The property is zoned B-4 (General Commercial) district and is a residential use and is considered a legal non-conforming use. The property was rezoned in 1978 from an R-3 (High Density Residential) district to a B-4 (General Commercial) district. The section of the code in question is 515-15-2 D. which reads *“Any nonconformity, including the lawful use or occupation of land or premises existing at the time of adoption of an additional control under this Ordinance, may be continued in the same size and manner, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, except as specifically provided in this Section.”*

Community Development Director Chanski discussed the application with the city attorney and was told, *“Unless the residential use was discontinued for a year or more, it is still a legal nonconformity under MN Statute 462.357, Subds. 1E a & b. and the City Code. A request for variance of a nonconforming expansion prohibition could be heard by the City Council, who shall be the Board of Appeals, and Adjustments for this City after review by Planning and Zoning if the property owner demonstrates practical difficulties. Under the circumstances, a variance may be possible and suggested having the property owner submit a variance application in order to construct a garage on an existing nonconforming house.”* City Attorney Langel also cited a 1972 Supreme Court case in Freeborn county in which stated an addition to an existing building is clearly an extension or expansion of the prior nonconforming

use. He added that Brainerd Zoning Ordinance states “any nonconformity, including the lawful use or occupation of land may be continued in the same size and manner not including expansion.” He said by adding a garage with a bedroom is not continuing the use in the size and manner; it is expanding the use just as adding a building to vacant land would be. He stated in order to proceed legally a variance is required.

Commissioner Marohn stated he disagrees with the interpretation presented by City Attorney Langel. He said the attorney is conflating uses and structures and does not feel this is a correct interpretation of state statute or the code. He indicated the League of Minnesota Cities information memo titled “Land Use Nonconformities” states, “The statutory right of legal nonconformities to continue specifically provides that the right does not include expansion of the use. Because the state statute does not define expansion, some cities choose to define expansion in the city zoning ordinance. The definition could refer to any physical expansion of the nonconforming use, or even intensifying the use.” He said this means that the state statutes are silent on the issue of what it means to expand a use, but local codes will often not be silent.

Commissioner Marohn cited the following Brainerd Zoning Codes and does not think the variance is required.

Section 515-15-3: Non-Conforming Uses:

1. When a lawful non-conforming use of any structure, building or parcel of land in any district has been changed to a conforming use, it shall not thereafter be changed to any nonconforming use.

2. A lawful, nonconforming use of a structure, building, or parcel of land may be changed to lessen the nonconformity of the use. Once a nonconforming structure or parcel of land has been changed, it shall not thereafter be so altered to increase the nonconformity.

Section 515-3-4: Appeal Procedures:

A. The Board of Zoning Appeals shall act upon all questions as they may arise in the administration of this Ordinance. (opinions of staff, legal counsel, research)

Commissioner Marohn feels the Planning Commission members have the capacity to decide if this is in violation of our code, that the structure meets the criteria of the ordinance and that no variance is required.

Commission discussion took place.

MOTION AND SECONDED BY COMMISSIONERS MAROHN AND LAMBERT TO FIND THAT A VARIANCE IS NOT REQUIRED FOR THIS REQUEST DUE TO THE FOLLOWING:

- 1.) LEAGUE OF MN CITIES LAND USE NONCONFORMITIES INFORMATIONAL MEMO, WHICH STATES “CITIES HAVE THE AUTHORITY TO DEFINE WHETHER AN EXPANSION OF A BUILDING IS THE SAME AS AN EXPANSION OF THE USE”
- 2.) SECTION 515-15-3 NONCONFORMING USES IN THE CITY ZONING CODE
- 3.) THE REQUEST DOES NOT VIOLATE ANY OF THE PROVISIONS OF SECTION 515- 15-3

Members Marohn and Lambert voted “aye”. Members Gorham and Duval voted “nay”. The Chair declared a split vote on the motion.

The Chair opened the public hearing at 6:30 p.m.

The Chair recognized Mr. Mitch Tuomi, 701 7<sup>th</sup> Street NW, who stated his application is to allow the construction of an addition which would include a bedroom, a bathroom, and a garage to accommodate his disabled brother to live with him. He stated the current shed that is located on the property would be removed to allow for the construction.

Community Development Director Chanski stated he did receive an email from Mr. Tim Haglin, Thelen Heating & Roofing who indicated he is not against the variance, however asked if this would be the best investment for the property long term. He said the resale value of the home with this addition is hampered because of the limited market share of home owners who want to live in a B-4 zone.

The Chair closed the public hearing at 6:36 p.m.

Commissioner Marohn said in Section 7 of the Zoning Code it states, "*Variances shall only be permitted when I.) When they are in harmony with the general purposes and intent of the ordinance and II.) When the variances are consistent with the Comprehensive Plan.*" He indicated in Section 63-1 of the Zoning Code states, "*The purpose and intent of the B-4 General Business District is to allow more intensive commercial uses that require extensive highway access for customer contact.*" He explained he has concerns when there is clearly an issue.

Commissioner Lambert indicated she does not feel that a variance is necessary based on the information that it is improving the property and not extending the use.

MOTION AND SECONDED BY COMMISSIONERS MAROHN AND DUVAL, DULY CARRIED, TO RECOMMEND DENIAL OF THE VARIANCE DUE TO THE USE OF A RESIDENTIAL BUILDING IS NOT IN HARMONY WITH THE PURPOSE AND INTENT OF SECTION 515-63-1 (B-4 GENERAL BUSINESS DISTRICT) WHICH STATES "*THE DISTRICT IS TO ALLOW MORE INTENSIVE COMMERCIAL USES THAT REQUIRE EXTENSIVE HIGHWAY ACCESS FOR CUSTOMER CONTACT.*"

**4b. Variance Request – William John Cory, 212 and 214 – 2<sup>nd</sup> Ave NE to Construct a 24' x 24' Garage**

- The property is in an R-2 (Medium Density Residential) District

Community Development Director Chanski explained the details of Mr. Cory's recent application of constructing a 24'x20' garage. The applicant previously applied for a variance regarding only the property at 214 2<sup>nd</sup> Avenue NE. Mr. Cory has since acquired the property adjoining this property and will be combining the lots with Crow Wing County Land Services, which is in the process of being completed. The applicant now has the space to construct a garage of the size he desires. This variance would pertain to Section 515-17, which states "*Garages for single family dwellings greater than 500 square feet and less than 750 square feet are limited in size to 16' x 20'.*"

The Chair opened the public hearing at 6:58 p.m.

Commissioner Duval confirmed with Mr. Cory the stormwater grading will be towards the alley.

The Chair recognized Mr. William Cory, 214 2<sup>nd</sup> Ave NE who stated he received the deed from the County and the consolidation is in process.

The Chair closed the public hearing at 7:00 p.m.

MOTION AND SECONDED BY COMMISSIONERS DUVAL AND LAMBERT, DULY CARRIED, TO RECOMMEND APPROVAL OF THE VARIANCE REQUEST BASED ON THE COUNTY FINALIZING THE CONSOLIDATION OF THE LOTS AND THE FINDINGS OF FACT PROVIDED BY STAFF. THE AGGREGATED SUM OF THE PRIMARY STRUCTURE IS ESTIMATED AT 1,100 SQUARE FEET MEETS THE SPIRIT OF THE ZONING ORDINANCE. THE PRACTICAL DIFFICULTY BEING UNIQUE TO THE PROPERTY THE DWELLING AREA CRITERIANCE DIVIDED INTO THESE TWO SEPARATE BUILDINGS ARE NOT CREATED BY THE LANDOWNER.

Commissioner Marohn indicated this seems like moving backward; the first variance was approved with the smaller garage. He said the vacant lot could have had a new home built on it, earning tax-based income for the City which is now going to just be land in order to build a larger garage.

Community Development Director Chanski indicated these lots are currently nonconforming and the consolidation will bring them back to conforming.

#### **#5 Public Forum**

The Chair opened public forum at 7:05 p.m.

No one came forward.

The Chair closed public forum at 7:06 p.m.

#### **#6 Old Business**

##### **6a. Uses Within Zoning Districts**

Community Development Director Chanski stated the Zoning Matrix was sent to the commission members and feels it is a great start to the discussion of the review of the zoning code.

Commissioner Marohn stated now is the time to bring this to the City Council for direction and feels the table should be inserted into the city code to eliminate the bulk of the zoning ordinances. He said to condense the table further, some of the similar uses may be able to be joined together; e.g., Auto Dealerships, Auto Sales, Auto Repairs or omit some of the uses.

Community Development Director Chanski asked if the Commission would like to address the Council at the same time of the Commission's desire to rewrite the code.

Commissioner Lambert indicated going to a form-based code could take years to accomplish. She suggested start with simplifying the code, inserting the table and bring the rewrite to Council at a later date.

Commissioner discussion took place and it was determined to proceed with the simplification of the code and incorporate the Zoning Matrix.

Commissioner Marohn indicated he would like to work on using Kingwood Street as a model to develop the start of a form-based code.

Community Development Director Chanski will bring the Zoning Matrix idea to Council at the May 6<sup>th</sup> meeting.

#### **#7 Commissioner's Questions/Comments**

Commissioner Marohn would like to see information regarding the topics in the Planning Commission agenda sooner than the Friday prior to the meeting. He said with the upcoming school projects, it would benefit him to have more time to prepare and research.

Commission discussion took place. Community Development Director Chanski will compile all questions, comments and communication regarding the Brainerd High School renovation plan into the packet for review in advance of the Planning Commission meeting.

Commissioner Marohn explained some of the items he would like to see in future Planning Commission packets, regarding the Findings of Fact and Staff Report: 1) Specific ordinance provisions that the decision needs to be based on 2) Findings of Fact need to be facts related to the findings of the topic at hand.

Commission discussion took place regarding the street lighting ordinance and suggested changes.

Commissioner Lambert indicated she is the Chair of the Rental Ordinance Review Committee and they have been working on revisions to the Conduct on Premises and the current Rental Housing code.

#### **#8 Community Development Director's Report**

Community Development Director Chanski updated the Commission on items from the last Planning Commission meeting:

- Rezoning Ordinance for Harrison School on Oak Street – First and Second Ordinance Readings held and approved by City Council
- Rezoning Ordinance on 28<sup>th</sup> Street SE – First and Second Ordinance Readings held and approved by City Council
- Conditional Use Permit for Harrison School on Oak Street – Approved by City Council with one additional condition of the applicant to provide an exit or turnaround on the vacated alley between 16<sup>th</sup> and 17<sup>th</sup> Street SE.

He stated the City has hired a summer intern for the Planning Department who will start on May 6, 2019.

**#9    Adjourn**

The Chair adjourned at 8:07 p.m.

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Planning Commission Chair