

PLANNING & ZONING COMMISSION MINUTES
July 12, 2016 - 6:00 p.m.

CALL TO ORDER

The regular meeting of the Planning and Zoning Commission was called to order at 6:00 p.m.

MEMBERS PRESENT: Chair Bob Kinzel, Commissioners Steve Lund, Howie Oswald, Gwen Carleton, Bob Ryan and Council Liaison Steve Barrows

MEMBERS ABSENT: None

STAFF PRESENT: Community Development (CD) Director Josh Doty and Planner Matthew Gindele

OTHERS PRESENT: Randy Reetz, Dave Petersen, Jim Kramer, Mike Kloss, Julie and Pete Henry

APPROVAL OF MINUTES

MOTION by Commissioner Lund, seconded by Commissioner Oswald to approve the minutes from the June 14, 2016 meeting as presented. Motion carried unanimously.

PUBLIC HEARINGS

*All items under old and new business items will go to City Council on
July 19, 2016 if not tabled, continued or otherwise noted.*

Chair Kinzel stated that this Commission is advisory and the final approval/denial is given at the City Council Meeting on July 19, 2016 at 7:00 pm.

OLD BUSINESS

None

NEW BUSINESS

1. PUBLIC HEARING. Preliminary and final plat named "Vaughans Lots" and a conditional use permit to allow two principal structures on a single lot. The plat and CUP would allow the development of two, 4-unit rental buildings on property located near the intersection of Baxter Lions Rd. and Art Ward Dr. Legally described as Vaughans Lots Outlot A Section 12, Township 133, Range 29 (City file 16-17)

Requested by: Diversified Construction 1107 South 6th Street, Brainerd, MN 56401

Chair Kinzel asked CD Director Doty to review the application with the Commission. CD Director Doty stated this is a preliminary and final plat named "Vaughans Lots" and a conditional use permit (CUP) to allow two principal structures on a single lot. The re-plat and CUP would allow the development of two, 4-unit rental buildings on property located near the intersection of Baxter Lions Rd. and Art Ward Dr. He gave history on the first plat, reviewed the site location and site plan, access/traffic concerns, there is no new right of way that is needed, however park fees would be required in the amount of \$14,400.00. CD Director Doty indicated that the Utility Commission had no concerns however,

requested a developers agreement in place prior to a building permit and that the Architectural Review Commission is to review the proposed buildings prior to a building permit being issued.

CD Director Doty stated that the CUP is needed in order for the property to have two principal buildings on one site. He stated that typically with rental units there will be a property management company involved, that is the case on this proposal. It was noted that the rental units and garages will be similar to other rental properties in the area.

CD Director Doty stated that staff is recommending approval of the plat and CUP application with the conditions noted in the two draft resolutions.

Chair Kinzel opened the public hearing.

Mr. Jim Kramer, architect for this project, indicated that this is a straight forward project that is very similar to the applicants last build in Baxter. Chair Kinzel asked if there were any concerns with the conditions, there were none.

Mr. Randy Reetz, 5828 Fairview Rd. stated that he is dead set against more rental units in this area. He has rental units behind his home and has had problems with them. Mr. Reetz stated that someone from the rentals or the rental owners had trees trimmed and the branches and brush were placed on his property. His neighbor to the east had a box spring and mattress placed on his lot. Mr. Reetz indicated that the rentals have been nothing but a pain for property owners. Chair Kinzel asked where Mr. Reetz lives; Reetz indicated that he is east of the house on the corner. He reiterated that he is against the addition of any more rental units. Chair Kinzel explained the zoning of properties dictates what and were different types of housing and buildings can be built. He suggested taking his concerns to City Council on July 19, 2016, as this Commission is an advisory Commission and does not have the final say regarding this approval/denial.

Chair Kinzel closed the public hearing.

Commissioner Carleton questioned if Mr. Reetz voiced a complaint with the rental owner.

Motion by Commissioner Ryan, second by Commissioner Carleton to recommend the City Council approve the preliminary and final plat named "Vaughans Lots" on property located near the intersection of Baxter Lions Rd. and Art Ward Dr.

Prior to the vote, Commissioner Lund asked CD Director Doty if the CUP would not be required if the applicant chose to build one building instead of two. CD Director Doty stated yes, that one building would make elevate CUP not be required.

Motion carried unanimously.

Motion by Commissioner Carleton, second by Commissioner Oswald to recommend the City Council approve a conditional use permit to allow two principal structures on a single lot on property located near the intersection of Baxter Lions Rd. and Art Ward Dr. as presented in the draft resolution. Motion carried unanimously.

2. PUBLIC HEARING. Conditional use permit to allow a nonconforming structure on a riparian lot to be expanded and variances to allow a nonconforming use to be enlarged to occupy a greater area of land and to allow a structure to encroach 17 feet into the required 100-foot setback to the Mississippi River for property located southeast of County Road 48 at 12464 Camwood Trail. Legally described as PART OF GL 3 SEC 17 DESC (full legal available at City Hall) Section 17, Township 133, Range 28 (City file 16-18)

Requested by: Peter and Julie Henry 12464 Camwood Trail, Baxter, MN 56425

Chair Kinzel asked Planner Gindele to review the application with the Commission. Planner Gindele stated that the applicant is requesting a conditional use permit (CUP) to allow a nonconforming structure on a riparian lot to be expanded and variances to allow a nonconforming use to be enlarged to occupy a greater area of land and to allow a structure to encroach 17 feet into the required 100-foot setback to the Mississippi River. Planner Gindele gave the history of the house and the previous and current setback requirements, the site location and a partial survey with the Commission. The new deck and 4 season porch are not expanding towards the river, however, it will be larger than the existing deck. The plans call for diamond pier footing which will eliminate the need for erosion control BMPs.

Planner Gindele moved onto the variances for the applicant. The variance is to allow a nonconforming use to be enlarged to occupy a greater area of land within the required 100 foot setback of the Mississippi River. Planner Gindele explained that the existing deck on the home is approximately 82 feet from the OHWL where the shoreland ordinance requires 100 feet; the existing home is 89 feet from the OHWL. The addition of the four-season porch and new deck would not extend any further toward the river than the existing deck but would expand the structural area that lies within the 100-foot setback, thus creating the need for this variance. The new addition would increase the setback of the current deck to the river from approximately 82 feet to 83 feet. The second variance is to allow an encroachment into the setback to the river for the addition to occur. Planner Gindele, on a map, showed the areas that would encroach and pictures of the current deck/house and explained that the current deck is legally non-conforming and that the granting of the 17 foot variance would give a clear title to what is currently there and what is being proposed.

Planner Gindele stated that this property is in an area that is slated for water and sewer in 2017 and will be required to hook up to city services by the end of 2018, if the water/sewer project moves forward in 2017. If the home was currently on city services then the setback would only have to be 75' instead of 100', thus not needing the CUP or variances. CD Director Doty stated that the 5 year CIP plan is a guideline and not confirmed until a separate process takes place and is approved by City Council to move forward.

Planner Gindele stated that staff is recommending approval of the CUP and variances being requested in this application. Chair Kinzel recapped the approval request.

Chair Kinzel opened the public hearing.

Mr. & Mrs. Henry, owner/applicant, approached the podium and stated that they have lived in Baxter for 18 years. They have lived in this house the enter time. They have decided to retire in this home after looking at several different properties. They would like to add a formal dining room to the home and this is the best option, being there are obstacles to the east and west of the property.

Chair Kinzel stated that it is unbelievable how many times this house was legal, was not legal, and in the future could be legal again.

Mr. Mike Kloss asked how the OHWL line and building lines were determined. Planner Gindele indicated the lines were set by a licensed surveyor and that the setback measurement runs perpendicular to the OHWL and not parallel to the property line.

Chair Kinzel closed the public hearing.

Motion by Commissioner Carleton, second by Commissioner Oswald to recommend the City Council approve the conditional use permit to allow a nonconforming structure on a riparian lot to be expanded and variances to allow a nonconforming use to be enlarged to occupy a greater area of land and to allow a structure to encroach 17 feet into the required 100-foot setback to the Mississippi River for property located southeast of County Road 48 at 12464 Camwood Trail as indicated in the draft resolutions. Motion carried unanimously.

Mr. Henry stated that he works in the public and deals with a lot of people and that Planner Gindele is very professional and excellent to work with, the Commission agreed.

3. PUBLIC HEARING. Variances to allow a principal single-family structure to encroach 3.3 feet into the required 30-foot rear yard setback and to allow a principal single-family structure to encroach 3 feet into the required 40-foot front yard setback for property located on the south side of Fairfax Court. Legally described as Lot 8, Block 2, 2nd Addn to Paige & Blair Development Section 12, Township 133, Range 29 (City File 16-19)

Requested by: Home Builder Construction & Consulting Inc. 4935 Pine Mountain Beach Road SW, Backus, MN 56435

Chair Kinzel asked Planner Gindele to review the application with the Commission. Planner Gindele stated that the applicant is requesting variances to allow a principal single-family structure to encroach 3.3 feet into the required 30-foot rear yard setback and to allow a principal single-family structure to encroach 3 feet into the required 40-foot front yard setback for property located on the south side of Fairfax Court. Planner Gindele provided a map of the area for the Commission to review. He reviewed the setback of 40 feet in the front and 30 feet in the rear yard requirements with the Commission. Planner Gindele reviewed the site, house plan and garage plan. Planner Gindele reviewed the reasons that the variance would or would not be allowed with the Commission.

Planner Gindele stated that the lot conforms to all area and dimensional standards set forth in the zoning code and is currently vacant. Although the lot is a bit shallow, staff finds that the applicant does have the ability to construct a home that is able to fit within the required setbacks. Minnesota Statutes are clear that the uniqueness test relates to the physical characteristics of the particular piece of property and economic considerations alone cannot create practical difficulties. There is an inconvenience to the applicant in that he cannot build the desired home but staff finds that a reasonable home can be built on site in compliance with the ordinance. The variance would not be in harmony with the general purposes and intent of the ordinance because it would allow a structure setback inconsistent with the zoning ordinance when the opportunity to construct a home within the required setbacks exists.

Planner Gindele then stated that staff is recommending denial of this application based on the findings.

Chair Kinzel opened the public hearing.

Mr. Mike Kloss, builder for this lot, stated that his investor Mr. Chad Schwendeman purchased this lot as an investment. He stated that it is not easy to change plans once the plans are picked. However, he went back to his plan portfolio looking for a different set of plans that would work on this lot. He stated that all of the house plans were 50 feet or deeper. He never had this problem when he previously built in Baxter. Mr. Kloss stated that he is not asking for a large amount of the setback to be removed and that it will not be noticeable from the street. He further stated that they would like to build more of this type of home, as this house is a good selling house for them. He reviewed the map with the Commission of other homes in that court that do not fit correctly.

Chair Kinzel asked why Mr. Kloss couldn't stretch the house towards the side yards and not lose any square footage. Mr. Kloss stated he was open for any options. Mr. Kloss stated that he has never had to ask for a variance for depth, usually it is the side yard setback. Commissioner Carleton asked CD Director Doty for his opinion on this application. CD Director Doty indicated that most lots are deeper, narrower and usually oversize, therefore staff doesn't see a lot of these situations. He stated that this is a shallow lot that is a conforming city lot; it can be built on meeting the setbacks.

Mr. Kloss stated that this is the last house on the court and no one will ever notice the difference when looking down this street. Chair Kinzel asked if Mr. Kloss was indicating that he could not build a house on that lot. Mr. Kloss stated he is trying to put the bestselling house on that lot and none of them were under 50 feet. He indicated that he has spoken to the neighbors while he was walking the lot and they were glad to know that it was going to be cleared and were approving of this request. Mr. Kloss explained the layout of the house to the Commission.

Commissioner Lund asked if there was going to be a deck. Mr. Kloss said yes, it will but that falls into a difference ordinance. Planner Gindele stated that an attached deck would only require a 10' setback. Mr. Kloss asked how many builders have come in and asked for a variance for this situation. Chair Kinzel said that he was the first one to come forward with an empty lot looking to build a new house that doesn't fit. Typically a variance is for a home that has been previously built looking to expand.

Commissioner Ryan stated that the facts are that the lot is a conforming lot and a house can be built on that lot. He indicated that Mr. Kloss may not be able to build the house with the best financial return on this lot, but a house can be built. Commissioner Ryan stated that the rule book should just be thrown out if variances are going to be given for homes that are not even built yet. He further stated that Mr. Schwendeman has even advised Mr. Kloss to find a home that would fit; Commissioner Ryan suggested that he listen to his investor.

Mr. Kloss attempted to change the requested setbacks; Commissioner Ryan and Chair Kinzel indicated that is not an option at this point in time and that Mr. Kloss needs to take his case to City Council on July 19, 2016.

Chair Kinzel closed the public hearing.

Motion by Commissioner Ryan, second by Commissioner Oswald to recommend the City Council deny the variances to allow a principal single-family structure to encroach 3.3 feet into the required 30-foot rear yard setback and to allow a principal single-family structure to encroach 3 feet into the required 40-foot

front yard setback for property located on the south side of Fairfax Court. Motion carried unanimously.

4. PUBLIC HEARING. Conditional use permit for forestland conversion to allow tree clearing on property located between Homestead Drive and Isle Drive. Legally described as Outlot A, Perch Lake Estates Section 7, Township 133, Range 28 (City File 16-20)

Requested by: Mike O'Donnell 11697 E Laketowne Drive, Albertville, MN 55301

Chair Kinzel asked CD Director Doty to review the application with the Commission. CD Director Doty stated the applicant is requesting a conditional use permit for a forestland conversion to allow tree clearing on property located between Homestead Drive and Isle Drive. CD Director Doty gave the Commission a location map explaining the layout of the area. Currently the property is R-1, however is going to be rezoned to OS. Currently FEMA is in the process of updating the FEMA maps. With the current FEMA map there is no floodplain on the lot, however the new FEMA map does have floodplain on the majority of the lot. The applicant and staff have been in contact with FEMA representatives regarding this lot. FEMA is in support of clearing and filling this lot prior to the new maps taking affect.

CD Director Doty stated that the forestland conversion is allowing the clearing of live trees for a future zoning change; however it does require a CUP to complete the process according to Baxter code. The applicant is proposing to leave a 20 foot buffer of trees along the west and east property lines and a 10 foot buffer along the south and along Isle Drive with a larger buffer around the wetland.

CD Director Doty stated that staff is recommending approval of this application based on the conditions in the draft resolution.

Chair Kinzel opened the public hearing.

Chair Kinzel asked if the trees were all Jack Pine, CD Director Doty stated that he believes there is a mix of trees on that lot. Commissioner Lund asked how they are going to retain the trees and the buffer, CD Director Doty stated that they are going to have to taper down to the trees.

Mr. Jim Kramer, representing Mr. Mike O'Donnell the land owner, stated that the revised FEMA maps have been going around since 2011, it's just the City hasn't adopted it yet. CD Director Doty stated he will clarify that later. Mr. Kramer explained the floodplain map and how it can affect property owners and flood insurance. He stated that it is easier to market a property that does not have any flood plain on it. In this case, by removing trees and raising the lot roughly 1.5-2 feet will achieve that goal of not having floodplain.

From the audience a question was asked if there was wetland being filled, CD Director Doty stated there is not going to be any wetland filling. The hashed area is the proposed flood plain. CD Director Doty also clarified the FEMA map process to the Commission.

Chair Kinzel closed the public hearing.

Motion by Commissioner Lund, second by Commissioner Ryan to recommend the City Council approve the conditional use permit for forestland conversion to allow tree clearing on property located between Homestead Drive and Isle Drive based on the conditions in the resolution. Motion carried unanimously.

OTHER BUSINESS

None

ADJOURNMENT

MOTION by Commissioner Oswald, seconded by Commissioner Ryan to adjourn the meeting at 7:18 p.m. Motion carried unanimously.

Approved by:

Submitted by:

Chair Bob Kinzel

Shanna Newman CD Administrative Assistant