

PLANNING AND ZONING COMMISSION MONTHLY MEETING

Council Chambers

5/27/14 6:30 P.M.

Present: Ron Welder, Larry Wright, Ed Delaney, Brenda Parker, Neal Boeding
Absent: Joel Amandus, Lyle Brown, Council Liaison Kevin Rink
Staff: Doug Krogmeier, Emily Britton
Visitors: Linda Lair, Bob Manka, Michael Carter, Nancy Carter, Joe Thompson, Jackie Thompson

Chairman Ron Welder called the meeting to order at 6:30 P.M. with five members present.

ACTION ON MINUTES

The minutes from April 22, 2014 were approved with corrections on a motion by Wright, seconded by Boeding.

NON AGENDA ITEMS

Welder asked about the previous discussion of changing the meeting time from 6:30 to 6 for future meetings. Parker commented she would like 6 better, and Boeding agreed mentioning 5:30 would be even better. Wright requested confirmation that there would not be scheduling conflicts with other meetings, which Krogmeier assured there are no other meetings that would interfere. Welder directed to move the meeting time to 6 from now on to see how it goes.

14-07: Special Use Permit to allow a Cottage Business (Fixit Shop) within a garage at 2701 Ave K for Michael Carter.

Staff reviewed the report and mentioned the code states an accessory structure must be there for 2 years prior to applying for the special use permit for a cottage business. This was overlooked during review of the application, so staff recommended denying the request.

Welder opened the public hearing at 6:35.

Michael Carter spoke in favor, but said he would re-apply next year once the structure meets the requirement. Jackie Thompson spoke in opposition, explaining the Carters had requested a special use in the past to run a bed and breakfast, which she believed would be a positive addition to the neighborhood, but they never followed through with it. She went on to explain the traffic on 27th St is often loud and she described the street as a raceway with vehicles speeding over the bridge frequently. She commented that she does not want any more noise in the neighborhood than what is already there. She also questioned why the accessory structure is so large and built resembling a pole-barn when a regular garage could be used to repair things and would have been more aesthetically pleasing to the neighborhood. She finished by stating she is totally against approval of the special use permit.

Welder closed the public hearing at 6:38.

Parker questioned if there are size requirements for structures or if any size structure can be put on a lot. Krogmeier explained that 2701 Ave K is zoned residential, which allows 35% coverage of the lot. He pointed out this particular lot is large therefore the structure was within that requirement. He continued to explain there is nothing in the code specific to pole barn style structures, so the property with that garage is compliant as far as that is concerned. Because the neighbor was complaining that the structure is “ugly,” Parker asked if it is possible for the commission to add something to the code regarding “curb appeal” as they are reviewing and updating. Krogmeier said it could be added but must be added to the correct section which can be specific, and Welder mentioned the wording of such a thing would have to be just right.

Krogmeier also pointed out there are multiple metal roofs already, and Parker stated that if they become more common it will be more noticeable and look “tacky.” Krogmeier did advise holding public forums or otherwise reaching out for public opinion prior to making such changes.

Wright motioned, seconded by Parker, to deny the Special Use Permit to allow a Cottage Business (Fixit Shop) within a garage at 2701 Ave K for Michael Carter.

Vote: Yes-5, No-0; Motion Passed

Final Plat Review of Boulder Inn Subdivision

Staff reviewed.

Parker questioned if the original plat included the entire area and they want a specific section separated. Krogmeier confirmed and said he believes they will likely bail it until they are able to sell that section. Parker requested clarification that as long as the owner chooses an odd size lot it’s fine to separate it that way, and Krogmeier stated that as long as the minimum frontage to the street was met it was fine.

Welder opened the public hearing at 6:40.

There were no comments from the public.

Welder closed the public hearing at 6:41.

Wright suggested recommending for City Council to review anything that may still change. Welder requested staff explain any changes to the plat. Krogmeier proceeded to point out and show all changes that had been made. Wright then asked why there was no preliminary plat required, so Krogmeier explained that every subdivision requires a final plat review, however only subdivisions with 4 or more lots also require a preliminary plat. Although a preliminary plat often contains more information it is not required, but a meeting was held with Public Works Director Larry Driscoll to review and he was comfortable with this plat. Originally the only concern was drainage toward the rear of the property, but it has been determined that it should not be an issue. He also stated that Staff is comfortable with it but informed the commission they can request the extra step if they want even though it is not required. Parker clarified that since the Innsbrook Subdivision had multiple lots a preliminary was required because there was more to review but since this one only has two lots it is not required even if they are the same size lots, and Krogmeier confirmed that was correct.

Parker motioned, seconded by Boeding, to recommend Council approval of the Final Plat of Boulder Inn Subdivision.

Vote: Yes-5, No-0; Motion Passed

OLD BUSINESS

None

OTHER/NEW BUSINESS

Bob Manka took the floor, and began by explaining his credentials as a former member of several boards and commissions as well as sitting through many hours of meetings. He pointed to a copy of the Innsbrook subdivision final plat which he explained showed 7 houses but only 6 lots, therefore one house is located outside the approved lot and a building permit should have never been issued for it. He went on to explain that a 4 foot variance for a deck had recently been reviewed by this commission which was an 18% variance, whereas this house would stick out 14 feet into the right of way resulting in a 60% variance which is excessive and a variance of that size has never been approved by this commission. He continued to say that if the homeowner parked in their driveway the vehicle would stick out into the sidewalk, and sidewalk codes have

been in the books since the 1950's. He commented that he had brought this to the attention of Doug Krogmeier in the past but a building permit was still issued before the final plat was approved when it should not have been.

He then changed the topic by referring to a copy of the adjacent subdivision showing the sidewalks and streets which also showed the street through Innsbrook subdivision. He said the code states the lots must face the minor street, and the house on the corner (33rd St and Avenue E) faces the wrong street. He suggested that any other city would require more review and approval prior to dealing with the building department for permits. He continued to explain the code states lots must be large enough to be developed within the code requirements for coverage and things which he did not believe was the case with one of the lots on this plat. Krogmeier stated that after discussing with Public Works Director Larry Driscoll, it was determined that both streets had similar traffic flow, therefore were considered equal as opposed to a major and minor street.

Next he changed topic again to explain that the final plat showing those 6 lots was missing the green space which should have been included on it. According to Manka, the open green space is required to allow a place for kids to play and would be shared space by all neighbors of the subdivision therefore each property should pay a portion for upkeep of park equipment on it. He insisted the city should mandate a covenant for the neighbors within the subdivision to pay for the upkeep because he feared the city would be forced to take over maintenance on the "park" if the homeowners of the subdivision are not required to pay for it. His concern was the 6 lots approved on that final plat would not be required to pay their portion for the upkeep even though their children would also play on it. The idea is to avoid the city taking over play equipment including the liability of said equipment when that liability should be with the homeowners association. He also stated that all these things were written in the code for a reason to benefit the city. Wright then asked for clarification that those six houses would not have to pay simply because it is not included specifically on their final plat even though it would be included on the overall final plat, furthermore questioned if it must be included on all final plats for every section. Manka said that is exactly right and it is written in the subdivision code that way. Wright then read the section of code in question which said the "owner" is responsible for upkeep, to which Manka corrected him saying "owners" even though currently Mike Mohrfeld is the sole owner. Krogmeier pointed out that it also says "may" as opposed to "must" or "will," which Manka argued it does not say "may" and the entire thing must be read to understand, not just one paragraph. Wright acknowledged his argument and explained that he has read all the sections and it is not there under subdivisions. Manka then said it should have been caught when the city engineer reviewed the code along with the plat, but it was not because the city does not have a city engineer even though it is required by state code to have one. Wright insisted there was not a lack of review in regard to the code it was just not seen anywhere in there. Delaney pointed out that there was a discussion in regard to the responsible party for mowing the green space to ensure it was maintained, however there was never a mention of park equipment there. Welder said it was his understanding that the issue was resolved and there was no discussion of a park or park equipment and the commission was satisfied that Mohrfeld would be responsible for upkeep on the green space until he makes a change and passes that responsibility to the homeowners association or whoever. Krogmeier acknowledged Manka's concerns but explained he does not know of any current homeowners associations since he has been in the position of Planning and Zoning Director, so it should not be assumed there will be a homeowners association in the long run. Wright then commented on the code he was reviewing that the part in question is referring to parks or schools as being official plans of the city, but this plat is not an official plan of the city therefore it does not apply. Delaney agreed that it did not apply here because a covenant refers to what happens within the neighborhood and covenants are not mandated by the city. He went on to say there was no discussion of the green space containing park equipment, and that particular lot is a hill and would not likely be a park at any time. When Manka suggested it could be leveled and turned into a park Delaney pointed out that would require a large retaining wall which would

not be practical. Several commission members expressed appreciation for Manka's information and concerns, but did not see that it applied to this subdivision the way he explained it. Manka expressed frustration that the commission did not understand, however Wright reiterated the code specifically says a "city plan" and this is not a "city plan" so it does not apply to this subdivision. It was mentioned that it has not been required on other subdivisions such as ones approved while Manka served on the commission and Manka said they were all smaller than this one. Parker asked if there is anything in the code specifying that it is required after a certain number of houses and Krogmeier said no. Wright also pointed out, with his experience on two different homeowners associations, that covenants are established and enforced by homeowners association not by the city. Krogmeier did say he has seen it done where the developer established some guidelines for the subdivision, but it was the developer's choice and he added those regulations to each deed but nobody maintained the covenant so it didn't matter in the long run. Manka suggested Mohrfeld should have established covenants, and Welder said there is a difference between saying he "should have" and he "could have." Krogmeier said it was not required and it is too late to change that requirement now as the deeds are already being prepared and it would not be on them. Welder asked Krogmeier, as advisor to the commission, if they met all requirements on this subdivision and Krogmeier explained that there may be discrepancies but they have already been approved and cannot be changed now. Welder asked if it should be addressed in the future, and Krogmeier stated that it could still be addressed in the loop as that portion of the subdivision is not finalized yet. Wright then questioned the accuracy of the code online as opposed to the paper copy Manka was referring to. Krogmeier explained that the copy on the city website is the most up-to-date copy as there are codifiers paid to keep it current. Parker asked what the next step is after hearing concerns from a citizen on something to determine what needs to be dealt with. Manka mentioned it is best to have at least two people on the commission to read and study the code since some things can be interpreted differently and it is nice to have two opinions. Delaney suggested talking to Mohrfeld about these concerns to find out his thoughts. Krogmeier assured the commission that he has discussed the subdivision with Mohrfeld many times, and he has not yet platted that area and may still make changes to it. Parker then questioned the issue of the car parked in the driveway yet overhanging the sidewalk. Krogmeier said he would look into that.

Parker motioned, seconded by Delaney to adjourn.

Motion was passed unanimously. The meeting adjourned at 7:50.

Ron Welder, Chairman of Planning and Zoning Commission