



Shakopee Board of Adjustments and Appeals

Minutes

November 8, 2018

7:00 PM

Council Chambers

Presiding Chair Mark McQuillan

Chair McQuillan called the meeting to order.

1. Roll Call

Commissioners present: Lori Brandon, Jody Brennan, Mark McQuillan, Daniel Mock, Noreen Reding, Kent Robbins, Ashlee Sepulvado

City staff present: Director of Planning & Development Michael Kerski, Senior Planner Kyle Sobota, Planner Joe Widing

2. Approval of Agenda

Commissioner Kent Robbins made a motion to approve the Agenda, seconded by Commissioner Lori Brandon and the motion passed.

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3. Call for Notarized Affidavits, Proof of Neighborhood Meeting and Sign in Sheet for appropriate Public Hearings

Staff has received these.

4. Recognition by Board of Adjustment and Appeals of Interested Citizens

No one responded.

5. Consent Business - (All items listed in this section are anticipated to be routine. After a discussion by the Chair there will be an opportunity for members of the BOAA to remove any items from the consent agenda for individual discussion. Those items removed will be considered following the Public hearing portion of the agenda. Items remaining on the Consent Agenda will not be discussed and will be approved in one motion.)

5.A. Approve Minutes of October 4, 2018.

Ms. Brandon stated that she would abstain from the vote on the approval of the October minutes, since she was not present at that meeting.

Commissioner Jody Brennan made a motion to approve the Consent Business, seconded

by Commissioner Kent Robbins and the motion passed.

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6. General Business

A. PUBLIC HEARING - Variance of Building Materials and Building Height

Commissioner Kent Robbins made a motion to reopen the Public Hearing, seconded by Commissioner Noreen Reding and the motion passed.

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Senior Planner Mark Noble presented the staff report.

Mr. Robbins asked for clarification on the staff recommendations and Mr. Noble did so.

Ms. Brandon disclosed that the adjacent property owner submitted materials related to this item, which she ignored. She also stated that she was contacted through her employer's email, which she also ignored. Ms. Brandon added that the information that was in this evening's packet was reviewed by her and if the other information this property owner was trying to get to her was different, she would not know.

Mr. Brad Reiland, 1801 CSAH 14, applicant and property owner, addressed the Board. He asked for a continuance of this Public Hearing and explained his reasons for this. He stated he needed more time to reach out to his neighbor as well as his contractor to see if this issue could be resolved.

Mr. Kerski explained to the Board the specific issue before them and that their choices were to either approve or deny this variance. Mr. Robbins asked for clarification on these choices and Mr. Kerski explained this to him.

Mr. Robbins asked that if the Board approved the staff recommendation tonight, what the consequences would be and Mr. Kerski explained the options the applicant would have, if all or part of the variance were approved or denied.

Mr. Mock asked if the applicant built the structure taller than what the initial permit had allowed and Mr. Noble stated that in their research, the first structure built on the property was over height even though the building inspector at that time approved it. Mr. Mock asked about the current permit issued for this 2nd structure and Mr. Noble answered that the applicant was told that the maximum height was 15 feet. The conditions in this permit stated that the building materials and height were to be compliant with city code for Rural Residential zoning.

Mr. Reiland commented that he used the exact same plan that was used for the 1st structure and felt that there would not be an issue, since there was not one with the 1st structure.

Ms. Brandon asked about the use of this building and Mr. Reiland answered that he would possibly like to have a hobby farm on his property and would use this 2nd structure to house a tractor with a cab, or maybe a camper. He added that his intention was that the 1st structure be used as a shop and that this 2nd structure be used as a barn. Ms. Brandon asked Mr. Noble if the modifications that city staff were asking for fit the zoning and Mr. Noble recited the city code 151.00 7B and explained it in detail. Ms. Brandon asked Mr. Reiland if he had the ability to come into compliance with the city requirements and Mr. Reiland stated that he could.

Mr. Anton Cheskis, attorney for the adjacent property owners objecting to this variance request, Tony and Maria Poehling, addressed the Board. Mr. Cheskis stated that they generally agreed with the staff recommendations, but believed that it was incomplete. He quoted pages 9-10 of the staff report regarding impervious coverage, and that this information was lacking in mathematical detail. Mr. Cheskis went on to state that the structure was currently red-tagged, but that the staff report did not address how long the building was going to sit like this before something was done to it; how long of a process that would be if it was modified or torn down and he felt this needed to be part of the resolution. Mr. Cheskis, on behalf of his clients, formally requested denial of the over height variance and that this 2nd structure be removed or modified quickly. He also requested that the city calculate the impervious surface coverage on the property and that any new plans for a 2nd building on the property comply with the current and any possible future code, including the 15 foot height restriction and the 30% total impervious surface requirement.

Mr. Robbins asked Mr. Noble if there was a time limit on this and Mr. Noble answered that if the variance were approved for the materials and over height, the time to start should be immediate. Mr. Noble stated he was not sure how long of a time frame the city would allow, but if there was not any progress made in a reasonable time frame, the city could either use enforcement or citations. Mr. Noble added that the Board could put a time limit on this as part of the conditions.

Mr. Cheskis stated that the weather was going to start to be a problem now and this was why he thought it would make sense to include something in the resolution regarding a time frame. Mr. Robbins asked what kind of time frame they were looking for and Mr. Cheskis stated that the Board could set the time frame, but would like it included in the resolution.

Ms. Brandon asked Mr. Noble about how the impervious surface calculation played into this variance request. Mr. Noble stated that the impervious surface calculation was not an issue in city staff's view. He did a quick calculation for the Board and stated that he felt it was in compliance. Mr. Cheskis commented that this quick calculation did not include the driveway and the other structure that was on the property. He reiterated that he felt that this was an important piece of information that should be included in any permit application.

Mr. McQuillan asked Mr. Noble if the driveway should be considered impervious and Mr. Noble answered that it should. Mr. Kerski added that if the applicant were even close to this threshold, that the city would warn an applicant about this, however, since this property was so large, the applicant was not near this threshold.

Mr. Tony Poehling, 1926 CSAH 14, addressed the Board. He apologized to Ms. Brandon about contacting her, citing he was misinformed by his legal team.. He thanked the Board for their service and shared his concerns with them about the lot coverage with regard to the impervious surface as well as the processes in place for this specific property. He went on to share his concerns with how the city code is applied to accessory structures, noting lack of specificity. Mr. Poeling also stated that Mr. Reiland intentionally violated city code when the 1st accessory structure was built in 2015. He made numerous references to prior city staff not doing their jobs when that permit was issued and when the structure was inspected after its completion. He went on to say that he felt that the same thing was happening again with this 2nd structure. He asked the Board what remedies would be implemented going forward, so this could not happen again within the city. He again thanked the Commissioners and stated that he and his wife cared about their community as well as the city of Shakopee.

Mr. Kerski pointed out that the Board members were not elected, but appointed by the City Council. He added that both the city planner and building official at the time that the 1st structure was built were no longer employed by the City of Shakopee. Mr. Kerski stated that from a building code standpoint, unless there was a life/safety issue, the city would not require anyone to tear a structure down if it was structurally sound. He also added that with regard to the 2nd structure, it had been under construction for a long period of time and during that time the city switched to a digital plan system. He added that the stamps of approval were all electronic now and that a human being would not be looking at them as they go through the system. Mr. Kerski also clarified that the city has 3 building inspectors and that they are dispatched when called and this applicant did not call for certain inspections. Mr. Kerski again clarified for the Board their choices before them this evening. He stated that the Board could set a time frame for the applicant to come back to city staff with a solution and also remarked on previous Board decisions in similar cases with regard to storage of large vehicles/motor homes in residential communities.

Mr. Noble clarified the impervious surface calculations for the Board and stated that with the driveway and 2nd structure added that it would be approximately 1/2 of the maximum allowable lot coverage and should not be an issue.

Mr. McQuillan asked Mr. Noble that after a decision tonight, how soon would the applicant have to bring the structure into compliance and Mr. Kerski answered that this was up to the Board. He suggested a short time frame for a solution and he clarified again that there were only 2 solutions; either the building get modified or demolished. He added that if was going to be modified, the applicant would need to submit a plan to the Building Department for review and that the building was of simple construction with a lot of ways

for it to be modified.

Mr. Reiland stated that he would be able to modify the structure to come into compliance. He agreed that setting a timeline was fair, however, he disagreed with Mr. Kerski that he did not call for inspections in a timely manner. Mr. Reiland went on to say that there were no inspections needed up until this point. He also commented that he felt the Board did not have accurate information regarding the square footage and added that he may be able to build the 2nd structure to comply with the current city code regarding height, thus alleviating the need for an over height variance. He asked again if this could be continued so that he could gather more information from his contractor so that the Board could make an informed decision.

Mr. McQuillan asked for clarification on what Mr. Reiland was suggesting regarding keeping the height with modifications and Mr. Reiland stated that he had just had a conversation with his contractor this evening about possibly changing the shape of the roof.

Mr. Kerski again clarified the options before the Board.

Mr. Reiland stated that he was hoping to get clear information from a contractor to meet the code and this is why he was asking for more time. Mr. Kerski explained in detail for Mr. Reiland the procedural process and that if this were the case, he would need to apply for a new variance.

Mr. McQuillan asked if 30 days were enough time for him to have modified plans submitted to city staff and Mr. Reiland answered that this would not be a problem.

Mr. Noble stated it would help his staff if the Board clarified a time frame for when modified plans would be due to city staff and then another time frame for when these modifications would need to be complete.

Mr. McQuillan asked if a March 1st start date for modifications with a 30 day completion would be reasonable.

Mr. Kerski clarified a suggested timeline for the Board and audience.

Mr. Poeling stated that they were in agreement with the materials variance request. He added that he wanted the Board to be aware of criteria #4 in the resolution that discussed additional planting that could mitigate the impact on adjacent property owners from over height structures and that this was not included in the actual resolution and that they were requesting it to be added to the conditions of the variance.

DISCUSSION:

Mr. Robbins commented that this item was before the Board last month and that he had sympathy for the neighbors, but believed that there was a solution. He stated that he was of

the opinion that he would not agree with a continuance of this item due to the already delayed construction timeline and that the Board was compelled to act on it tonight. He stated that he like a 30 day time frame for plans to be submitted and then possibly a period of 60 or 90 days from a 3/1/19 for completion. He added that he would also like to recommend that some plantings be done that could lessen the impact of the building from the east side.

Ms. Brandon interjected that in the event that the Board denied the over height variance request and that the homeowner would be required to come into compliance, she did not follow the logic regarding plantings and explained her rationale for this conclusion.

Mr. Kerski clarified the request for additional plantings for the Board.

Commissioner Lori Brandon made a motion to close the Public Hearing, seconded by Commissioner Kent Robbins and the motion passed.

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Ms. Brandon added that with regard to the timing, she understood the reasoning behind the 3/1/19 date, but to her it seemed like the Board would then be extending very far on a project that already has experienced significant delays on the part of the homeowner moving this forward. She proposed that plans be submitted within 30 days and then 30 days for completion once all approvals are received. She stated she had sympathy with regard to the time of the year, but does not think that this should drag out any longer.

Mr. Robbins clarified that what Ms. Brandon was suggesting with that this project be completed before the 3/1/19 date and she stated that this was correct.

Mr. Mock stated that he agreed with Ms. Brandon.

Mr. Kerski clarified a suggested time frame for submitting plans for modification and completion.

Commissioner Jody Brennan made a motion to approve Resolution No. PC2018-21, a resolution approving the proposed variance of Materials Standards and denying the variance of an Overheight Accessory Structure in the Rural Residential Zone, subject to the conditions noted in the resolution, with plans for modification submitted to city staff within 30 days and modifications/completion made within 30 days of city approvals, seconded by Commissioner Kent Robbins and the motion passed.

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Mr. Noble commented that the applicant or adjacent neighbors had the right to appeal to the City Council and would need to submit this appeal within 10 days.

B. PUBLIC HEARING: Conditional Use Permit for Veterinary Clinic

Planner Joe Widing presented the staff report.

Mr. McQuillan asked about his comments about the septic system and Mr. Widing clarified this for him.

Commissioner Kent Robbins made a motion to close the Public Hearing, seconded by Commissioner Ashlee Sepulvado and the motion passed.

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Commissioner Kent Robbins made a motion to approve : Offer a motion to approve Resolution No. 2018-020, a Conditional Use Permit Amendment to allow a veterinary clinic, as prepared, seconded by Commissioner Noreen Reding and the motion passed.

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C. PUBLIC HEARING: Conditional Use Permit for Exterior Storage

No motion to open PH

Planner Joe Widing presented the staff report.

Mr. Jim Nelson, General Manager for Ferguson Enterprises, addressed the Board.

Mr. Robbins asked Mr. Nelson for a brief explanation of their business and Mr. Nelson did so. Mr. Robbins asked how many people would be employed at this facility and Mr. Nelson answered that that to start it would be around 4 employees and they were hopeful that they would grow from there.

Mr. McQuillan asked if the primary entrance for vehicles would be off of 3rd Avenue and Mr. Nelson stated that this was correct. Mr. McQuillan asked if there would be large trucks coming in and out and Mr. Nelson stated that he was correct again.

Commissioner Lori Brandon made a motion to close the Public Hearing, seconded by Commissioner Kent Robbins and the motion passed.

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Commissioner Kent Robbins made a motion to approve Resolution No. 2018-018, a Conditional Use Permit Amendment to allow exterior storage, as prepared, seconded by Commissioner Ashlee Sepulvado and the motion passed.

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7. Other Business

None

8. Adjourn to Thursday, December 6, 2018 at 7:00 p.m.

Commissioner Kent Robbins made a motion to adjourn the meeting at 8:35 pm, seconded by Commissioner Jody Brennan and the motion .

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