

**CITY OF PARK RAPIDS
REGULAR MEETING
PLANNING COMMISSION
MARCH 28, 2016, 6:00 p.m.
Park Rapids Library, 210 First Street West – Lower Level
Park Rapids, Minnesota**

1. CALL TO ORDER: The March 28, 2016, Regular Meeting of the Park Rapids Planning Commission was called to order at 6:00 p.m.

2. OATH OF OFFICE – SAM SPAETH: Chair Dick Bradow administered the Oath of Planning Commissioner to Sam Spaeth who was appointed by the City Council on 2-23-16 to serve a three year term ending 12-31-19. Mathisrud witnessed the Oath. The commissioners welcomed Spaeth to the Planning Commission.

3. ROLL CALL: Present: Commissioners Dick Bradow, Joel Vorhes, Dick Rutherford, Nels Peterson and Sam Spaeth. Absent: City Council Member Paul Utke. Staff Present: City Planner Ryan Mathisrud and Planning Assistant Carmen L. Lockhart. Others Present: Rebecca Bentley, Nancy Newman, Karla Thielen, Bill & Sue (Foss) Dahl and Catherine Fake.

4. APPROVAL OF AGENDA: A motion was made by Vorhes, seconded by Peterson, and unanimously carried to approve the following addition to the agenda:

7D. Depot Park Expansion.

5. APPROVAL OF REGULAR MEETING PLANNING COMMISSION MINUTES OF FEBRUARY 22, 2016: A motion was made by Rutherford, seconded by Vorhes, and unanimously carried to approve the February 22, 2016 Regular Meeting Minutes as presented.

6. PUBLIC HEARINGS:

6A. ZONING DISTRICT BOUNDARY AMENDMENT REQUEST FROM REBECCA BENTLEY TO REZONE ONE PARCEL CONSISTING OF APPROXIMATELY .40 ACRE LOCATED AT 806 MONICO LANE FROM R-1 SINGLE FAMILY RESIDENTIAL DISTRICT TO R-B RESIDENTIAL-BUSINESS TRANSITIONAL DISTRICT, PID#32.47.01100:

Mathisrud provided a power point presentation for the zoning district boundary amendment request from Rebecca Bentley for 806 Monico Lane from R-1 Single Family Residential to R-B Residential-Business Transitional District in conjunction with a Conditional Use Permit request for combining a residential and nonresidential use for an

interior design studio with living space. Mathisrud advised the staff report covers both action items but a public hearing will be held for each item separately.

Mathisrud explained the property is located at the intersection of Lake Ave and Monico Lane and was formerly a church and later used as a commercial use as a dance facility. The owner wishes to utilize this as a single family residential property and owner occupied and intends to live in the basement and open an interior design studio in the upper level. A zoning change is need in order to do this as the property was previously operating as a nonconforming use but legally permitted at the time and subsequently lost it's grandfathered status because it had been vacant for over a year. This parcel is Lots 9, 10 and 11 of McKinley's Addition.

Mathisrud explained the Comprehensive Land Use Plan shows this area as single family residential in use and our zoning map mirrors that and the zoning designation is R-1 Single Family Residential District and the properties to the north, south, west and east are all designated R-1. The request is to convert that to an R-B Residential-Business Transitional District which allows for the mixing of both uses. There are no known environmentally sensitive areas in this location and the airport overlay district is Safety Zone C meaning that towers that exceed 150 feet are prohibited. It is within the Wellhead Protection area and the proposed use does not impact our wellhead area.

Mathisrud explained the R-1 zoning district allows primarily for single family dwellings and related uses which means single family dwellings, public parks and playgrounds, licensed daycare facilities. If a person wishes to open another use there are some conditional uses allowed in the district including home occupations, bed and breakfast, churches, hospitals and clinics. What's being requested is the R-B District which allows single family dwellings, duplexes, and multi-family dwelling units up to twelve units which are primarily residential uses but you can also have limited commercial uses such as professional service offices and the conditional uses are very similar to the R-1 District with the exception that you can have parking facilities, additional medical offices and clinics if you go through the conditional use permit process and are awarded a conditional use permit. The applicant is requesting a conditional use permit for buildings that combine residential and non-residential uses.

Mathisrud stated the building is approximately 2,500 square feet and has over two stories in a fairly small footprint and was built and used as a church and sits on a large lot. The applicant currently owns the three lots but there are two additional lots to the south which are not included in this parcel. The owner has started some work on the building including the roof and basement. In looking at the background of the church, it was built in 1920 and the use was discontinued as a church in 1985 and at that time it was permitted to be converted into a dance studio. Then ownership changed and became a legally established nonconforming use. The grandfathered status has been terminated so under our current zoning ordinance it has to be converted into a single family residence or a conditional use that is very similar. Mathisrud advised that he has received a number of inquiries on this property primarily from people who want to

convert it to commercial uses but staff felt that most of them did not fit into the area. Also, someone wanted to move the church out of the city limits.

Mathisrud explained that when he originally met with the applicant they intended to convert this into a single family residence with a home occupation conditional use permit but under our home occupation ordinance you are only allowed 25% of the structure to be in commercial use and what really made sense for this particular property was to use 50% as commercial so I advised the applicant to consider an application for this route as an alternative because that would meet her needs if approved. The R-B District is intended to allow for some mixing of commercial uses but really much more limited than a commercial district.

Mathisrud commented with structures like this that are best suited to adaptive reuse, they always pose challenges. A lot of times future uses are difficult to establish because the buildings are built for a different purpose so finding ways to accommodate new uses that are sometimes beneficial to the community because many of these tend to become eyesores and get further dilapidated and generally bring down the quality of the neighborhood. It's been my experience that finding some sort of future use is worth exploring. One thing that concerned me about other inquiries on the property was the intended use and it's important that we don't get into spot zoning when looking at these adaptive reuse projects and that any future use does not rise to that level of spot zoning. In the packet I included definitions of spot zoning and the one I prefer to use is and basically in my interpretation of spot zoning is when the application only benefits a single owner and the uses are in direct conflict with the adjacent uses meaning they are very much non-compatible and generally poses a great conflict with the neighborhood. Some examples of spot zoning are when someone chooses to put an industrial use or a large commercial use in a residential neighborhood, for examples car lots or repair facilities being in direct conflict with the neighboring area. Mathisrud stated he does not believe this request specifically rises to that level but that is open to interpretation.

Mathisrud recommended approval based on the Findings of Fact with three conditions:

1. The commercial space shall be limited to the upper floor of the church existing at the time of application or approximately 1500 square feet.
2. All work shall meet the standards of the Minnesota Building Code for respective residential and commercial uses.
3. Paved off street parking shall be provided for the combined uses.

Rutherford inquired if the applicant has to install a drainage area since they are having paved parking? Mathisrud explained there is an exception for small numbers of parking spaces so there are no additional storm water requirements that are met, however rain gardens or other ways of capturing that water is always recommended and there are grants available for that through the SWCD.

The Public Hearing was opened at 6:13 p.m.

Susan Dahl, my maiden name was Foss, my parents bought the property directly across the street from the church in 1970 and my mom is in assisted living now and we are trying to maintain the property and the value of the property for her until she can make decisions as to what to do with it. We have always had concerns about that property and we never liked it sitting empty and from what we have learned and several of us neighbors have done quite a bit of research. We are up here from Sioux Falls and will not be here for the next two City Council meetings. We like the idea of someone living there, we like the history and what we've gotten to know and I've done an internet search and I'm very impressed. We like it not sitting empty and we think that business would be not generating huge amounts of traffic or parking needs or large crowds of people and from what we've talked about in the last few days seems to be acceptable and different ones of us have met also at City Hall and asked some questions and I'm not sure I'm using the proper terminology but with the three conditions that are proposed, there is one concern and we're not totally sure how it works but we kind of have a basic understanding just enough to be dangerous, but once it gets a conditional use and then if for instance her business took off and she needed a bigger place or she had to move or for any reason sold it we don't want the conditional use or anything in the future we would like this to be somehow written into conditions and I frankly can't remember how you were trying to describe to me this morning this might work, that it not become another apartment building and not multiple use, I mean a duplex you know what if they take the building down or do something with it but we have problem buildings in that neighborhood already and we absolutely don't want another, period. I will let the others add to that but we will, on my mom's behalf, her name is Katherine Foss, if that can't be written in as one of these conditions we are going to question wanting it to go through. If it is in there, I think it would be an asset to the neighborhood rather than having the empty building there. We like the work we see being done so far so I will let the others here add to this if I didn't cover something or didn't explain it right.

Karla Thielen said she concurs with what Susan Dahl said so far, I live on the corner of Woodland Ave and Monico Lane and Lake Ave runs right into my driveway. I'm very concerned about traffic and we do have plenty of traffic down that road anyway because of the school during the year and I know sometimes the kids aren't as cooperative with their driving as they should be as I've seen them do many spin outs on the corner trying to get around and I just don't want a lot of traffic, I've been very concerned about a car or truck coming into my yard because of that and I'm just concerned about the traffic. I would love to see that place being used and utilized to its best facility that can be done because I don't like empty houses as we've got three of them over there already and there is a lot of work that needs to be done as the properties need to be taken care of. I know last year we called several times because the grass was too tall and we all try to take care of our neighborhood and keep it nice and we called the realtor several times because we need to have that issue addressed. Other than that, I have no complaints other than if it became a multi-family unit where there is ten or twelve families there, I don't want that.

Susan Dahl added that is the one stickler that if something could be written in there that if and when it didn't work or whatever or she was to sell, we don't want it to then be slid into a multi-unit apartment or something.

Nancy Newman stated she lives right behind her property and I'm very, very pro for her to move in and it sounds like she would be doing great things and an improvement. The only thing again like our neighbors say, that if she expands to the point that she would want to move to a different location we don't want an apartment building or low income other housing facility to be allowed to move there. That is our only concern.

Susan Dahl asked Mathisrud did you say this morning that you could possible write that into like a fourth proposed condition or I'm trying to remember how you described that. Mathisrud said he did a little bit of research on this and you can basically enforce conditions that are added to these conditional use permits but we cannot add conditions to rezones. We have not done that in the past and that is something that is more difficult to do. As far as conditional use permits, they are a property right with the exception of conditional use permits for home occupations. The heart of this request is not a home occupation, this is a rezone with a conditional use permit so we can add conditions that as long as they are acceptable to all parties we can add conditions and enforce those conditions. If we revoke a conditional use permit it goes to the underlying district so we've got to be careful on what type of conditions we add that are reasonable, acceptable and enforceable. Does that answer your questions? Susan Dahl asked can it be done? Mathisrud said yes, it can be done.

Bradow stated when we rezone this to an R-B District then anything that is currently allowable in an R-B can go there. Mathisrud responded if we apply a conditional use permit we can enforce the conditions in the conditional use permit. Typically what you do is if somebody does not follow the conditions in that permit, you can revoke the permit but if you revoke a conditional use permit then it reverts to the underlying district so it's something of an administrative difficulty to do but if we write conditions where we can enforce conditions we would be able to do that. The next time somebody comes for an application for a change in use, we would have to issue a new conditional use permit as that would be the way of administering as I understand from our city attorney.

Peterson commented that's correct but if Rebecca puts the property up for sale in the future it is vulnerable to any of these conditional use permits coming through under residential-business. Mathisrud said that is correct, somebody could apply for a conditional use permit for one of the other uses. Peterson added – townhouses containing eight units or less so somebody could easily go in and legally request that. Mathisrud said that is correct. Bradow said that is what I was looking at because they voiced their concern about increased density and adaptation, but that is part of this R-B District rezone.

Peterson inquired if there is another avenue to take here instead of rezoning this, just simply to give a variance to the property? Mathisrud said that is an alternative, we could potentially do a use variance. Peterson said then it stays under the residential district and protects it from becoming a multi-family building. Mathisrud said that is a potential alternative we would have to research that and get back to the commission with whether or not that would be acceptable or not as I'm not familiar enough with use variances but we could do that, we could table the application and pursue something of that nature if that would be preferable.

Vorhes commented if we can do that it is a better way to go about it given that if I'm coming in as a new buyer I can say you zoned this R-B it's an acceptable use under R-B and I'm going to do it and you can't do a conditional use permit very easily if it is a permitted use under the zoning. For the second issue I don't know how quickly Rebecca is going to need a decision from us because she has already started spending some money on repairs and it seems to me the quicker the better.

Peterson said let's back up here before we go too far into variances and look at this closer as what is allowed in R-B verses if a conditional use permit is applied. If Rebecca does sell the property and it does come forward at a later time and somebody requests a conditional use permit, that can be denied, simply denied so then we fall back into what is allowed. Bradow said no, if it is listed as allowable, on what grounds would you have to deny it? That would be very iffy. Peterson said that's what we would have to write into process. Lockhart commented they don't have to come to the Planning Commission if it is a permitted use. Peterson said okay. Mathisrud advised we typically issue permits for permitted uses.

Bradow stated he likes the idea of a variance because if the property is sold and somebody wants to come in and do any of the items listed in an R-B they can do it and it is very difficult to write anything that you won't get sued over to take that out of there just on a piecemeal basis. Vorhes added you are absolutely right, if you put an and/or in your zoning, you would probably lose that lawsuit. Bradow added, yes you would, you would lose that lawsuit, I agree with Vorhes. Bradow said that's the ugly thing about spot zoning, I do not like it but we need to repurpose this building, I agree with that. I agree with what she's doing but if we do this we do not have any control to honor what you're asking us to recommend. I don't see any way we can control that, if we do what you're asking us to do. Bradow asked if he was wrong with that assessment? Mathisrud said I think that's a reasonable assessment and would agree it would be difficult to administer that effectively for us. Bradow said you couldn't, it's in black and white right here.

Spaeth inquired couldn't it be rezoned and given permission and then put an addendum on there that when that building is sold the R-B zoning would not go with the buildings, it can go only with her? Bradow asked it reverts back to an R-1? Spaeth said no as long as it's there would it add it in there? Several commissioners said no, we couldn't do that. Vorhes inquired we let dance studios come in on a conditional use, it seems to me that this is less of a burden on it. Peterson said but it is residential in

combination with nonresidential. Vorhes said this is more residential and here we've got something that's part residential coming into a residential district verses when the dance studio was there we had 100% commercial. Bradow responded we didn't have this zoning in place when the dance studio was there as it was pre-zoning and grandfathered in. Vorhes added if we could figure out a way to do it as a conditional use.

Rutherford asked what do they have to do to get a conditional use without rezoning, a variance and how long would that take? Mathisrud said we could discuss it at the next meeting I would just request from the applicant for an extension on our 60 day rule so we can get an extension and review it at the next meeting if that's how we would like to proceed with this.

Peterson asked if we go to the conditional use permit for what it's zoned now the variance request would simply be to allow for more square footage for residential in there than what's allowed now, would that be correct? Mathisrud said no, it would be for the mixture of uses of residential and commercial. Peterson said remind me again what's the rule right now as it sits for how much square footage of the building you can use for residential compared to the home occupation? Mathisrud said under our home occupation ordinance we allow 25% of the gross floor area as a commercial use. Peterson asked therefore the variance request is for 50% of the floor area for her business. Mathisrud agreed we could potentially do it under the home occupation conditional use permit with a variance to 50%, that's a potential way of doing it as well.

Vorhes said I think it's really the only way to accomplish this. Rutherford asked Rebecca how this is going to affect her plans? Rebecca stated she has a lot of work to do on the building and will continue either way this goes she will continue to work on the building. Rebecca stated she was hoping to be open in June because of the tourist season and people opening their lake cabins in need of design and people want to redecorate so I would just continue to work on the building at this time.

There was discussion as to whether a variance could be drafted now, the notification and publication process, scheduling an early meeting, variance fees, and it was decided to look into this further and hold a public hearing at the regularly scheduled April Planning Commission meeting.

Susan Dahl commented that makes sense and is wisely thought out.

Catherine Fake stated she thinks the variance idea is a great idea and honestly thinks that in order for that building to succeed it has to be some sort of mixed use, it is a huge footprint and thinks it's really necessary to have some sort of residential for the owner of the business to be there. My questions at this point, I think you mentioned that the structure is on three lots and there are two additional lots, I think we are already getting away from the rezoning so my question was would the rezoning apply to all of those lots but I think we are getting away from that already and I think the variance is a much more comfortable way to pursue because we all have that apartment building

across the street which has been a nightmare and we would really like to avoid anything like that in the future so I think rezoning to R-B could be problematic if an eight unit townhouse could come in and there wouldn't be any way to stop it if the property were to change hands so I'm with you, I think that your strategy is a good strategy and I would love to see your business succeed and I think it would be an asset to the neighborhood and I think the variance is a good suggestion.

Susan Dahl inquired the three conditions that you named, would you still be looking at those with a variance? Mathisrud stated what we would look at doing is a home occupation conditional use permit with a variance, so there would still be conditions associated with that. Susan Dahl asked if these conditions would change? Mathisrud and Peterson said they would remain.

The Public Hearing was closed at 6:39 p.m.

The Findings of Fact were NOT reviewed.

A motion was made by Bradow, seconded by Peterson, and unanimously carried to TABLE the Zoning District Boundary Amendment request from Rebecca Bentley to rezone one parcel consisting of .40 acre located at 806 Monico Lane from R-1 Single Family Residential District to Residential-Business Transitional District, PID#32.47.01100.

6B. CONDITIONAL USE PERMIT REQUEST TO COMBINE A RESIDENTIAL USE AND NON-RESIDENTIAL USE FOR AN INTERIOR DESIGN STUDIO AND LIVING SPACE FROM REBECCA BENTLEY AT 806 MONICO LANE IN A PROPOSED R-B RESIDENTIAL-BUSINESS TRANSITIONAL DISTRICT, PID#32.47.01100:

No public hearing was opened. See public hearing comments above regarding zoning amendment.

The Findings of Facts were NOT reviewed.

A motion was made by Vorhes, seconded by Rutherford, and unanimously carried to TABLE a Conditional Use Permit request to combine a residential use and non-residential use for an interior design studio and living space from Rebecca Bentley at 806 Monico Lane in a proposed R-B Residential-Business Transitional District, PID#32.47.01100.

7. INFORMATIONAL/DISCUSSION:

7A. FENCE ORDINANCE REVIEW: Mathisrud provided proposed language for addition to the existing ordinance:

(B) No perimeter fence or screening shall exceed 6 feet in height in residential areas, 8 feet in height in industrial or commercial areas, or 4 feet in height in the front

yard. All fences must maintain a 30 foot sight triangle along the right of way when placed on corner lots.

(I) Fence material used shall be of common residential fence material and shall not consist of salvaged materials i.e. Pallets, tires, doors, plywood, tarps, etc.

(J) Any fence erected on a tract of land subject to an easement for the construction, maintenance, operations, or replacement of any water, sanitary or storm sewer, gas line, electric power, telephone, or other utility poles, or other cables or lines shall be designed and constructed to be readily removable to permit the use of the easement. Such fences shall be subject to removal by request whenever necessary to permit access. The cost of removal or replacement shall be the responsibility of the owner of the fence.

(K) Fences shall be erected and maintained so as to avoid limiting or obstructing the flow of water in natural drainage courses, or drainage ways created within easements.

(L) Garden fences not exceeding 8 feet in height and at least 50% transparent are permitted in residential areas in the rear yard as long as they do not exceed 50%? of the rear yard area.

After further discussion regarding garden fences concerning the size of the garden verses size of the lot, height of fence, transparency of garden fences for law enforcement and deer nuisance it was agreed to delete the proposed item (L) for garden fences.

7B. COMMUNICATION EQUIPMENT EXCEEDING 30 FEET: Mathisrud provided Chapter 155 Wireless Telecommunication Antennas and Towers from the City of Walker, Minnesota Code of Ordinances along with informational drawings from MN Transmission Technology Network, LLC.

There was discussion concerning the following:

- The number of inquiries to install towers
- The height of towers
- Different types of towers
- Location of towers in the right-of-way
- License agreements/fees
- Co-location and expansion for multiple users
- Number of towers to allow
- What if tower is abandoned
- Insurance requirements
- Aesthetics and blending in the environment
- Small cell apparatus/antennas
- Ham radio towers located in residential areas
- Write a Zoning Ordinance with regulations/restrictions

Mathisrud stated his recommendation for the towers is that they be co-locatable meaning that other carriers can locate on the same tower and that way we don't have towers all over the community, you really only need one spot for one or two towers. They may be placed in a park area where it is large enough where if they do tip over the odds are they are not going to hit a person or property and that they provide a steady revenue stream for our park system which is the benefit of doing them and they can be painted to blend into those settings.

Some commissioners agreed the location of the towers is very important in developing ordinance language.

7C. GARAGES: Mathisrud explained he wanted the commissioners' thoughts on some inquiries he has received. The City does not permit garages as a principal use on a property so when someone buys a piece of property and they don't have any other uses on it and they want to simply build a garage for storage without building a single family house, that's not permitted, which is pretty typical in most communities. The reason being is that if you permit that you've got these neighborhoods develop that are primarily used for mini storage and it detracts from community character.

Mathisrud said he has had a number of people complain about that but in the past we held that as being an important regulation to keep. Mathisrud asked the commissioners if they feel that is important? Mathisrud asked the commissioners their opinion on pole sheds for recreational vehicles as we tend to get requests from people who want to build garages suitable for their RV's?

There was discussion regarding:

- Properties that have built garages on separate lots and combining the lots to do so.
- Buying property across the road and putting up a garage which isn't allowed
- Losing nice lots for homes
- Applying for a use variance
- No rental units
- Height restrictions
- Pole buildings with reduced roof pitch
- Flat roofs
- Regulating placement of garages only on vacant lots

The commissioners agreed to leave the ordinance as it is.

7D. DEPOT PARK EXPANSION: Mathisrud provided pertinent portions of the Parks and Trails Plan and the Comprehensive Plan which recommends the City acquire two lots adjacent to add to Depot Park if it becomes available. David Town the owner of two lots located at 301 5th Street E was given notice that he needs to remove

the dilapidated structures and he has now offered it for sale to the City. Mathisrud explained the beneficial location of Depot Park as it is near the grocery store, downtown and Riverside Apartments so there are a lot of users in the neighborhood so the two lots would be a good location to further develop the park. Mathisrud requested the commissioner's thoughts and a recommendation to the City Council as to acquiring the property?

Discussion topics:

- Commissioners were very concerned about the condition of the structures and obtaining an estimate as to the cost to demo and remove the structures in order to develop the property
- Commissioners were very concerned about the estimated land value and the actual value of the property minus the demo costs to even consider a purchase price
- Time frame in which structures were to have been removed
- If it was tax forfeited and obtaining it from county at that point
- Delinquent property taxes and special assessments
- If the property is really needed
- Requiring Town to clean up the property and negotiating a price

A motion was made by Bradow, seconded by Vorhes, and unanimously carried to recommend to the City Council to negotiate a sales price to acquire two parcels located at 301 5th Street East, PID#32.40.05700 and PID#32.40.05800 for park land expansion of Depot Park as recommended in the City's Comprehensive Plan and Parks and Trail Plan.

8. ADJOURNMENT: A motion was made by Rutherford, seconded by Vorhes, and unanimously carried to adjourn the meeting at 7:35 p.m.

Vice Chair Nels Peterson

ATTEST:

Carmen L. Lockhart
Planning Assistant