

CITY OF PARK RAPIDS
REGULAR MEETING
PLANNING COMMISSION
JUNE 27, 2016, 6:00 p.m.
Park Rapids Library, 210 First Street West – Lower Level
Park Rapids, Minnesota

1. CALL TO ORDER: The June 27, 2016, Regular Meeting of the Park Rapids Planning Commission was called to order at 6:00 p.m. by Chair Bradow.

2. ROLL CALL: Present: Commissioners Dick Bradow, Joel Vorhes, Dick Rutherford, Nels Peterson, Sam Spaeth and City Council Member Paul Utke. Absent: None. Staff Present: City Planner Ryan Mathisrud and Planning Assistant Carmen L. Lockhart. Others Present: Stephen and Rebecca Clark.

3. APPROVAL OF AGENDA: A motion was made by Vorhes, seconded by Rutherford, and unanimously carried to approve the agenda as presented.

4. APPROVAL OF REGULAR MEETING PLANNING COMMISSION MINUTES OF APRIL 25, 2016: A motion was made by Rutherford, seconded by Spaeth and unanimously carried to approve the April 25, 2016 Regular Meeting Minutes as presented.

5. PUBLIC HEARING:

5A. VARIANCE REQUEST FROM STEPHEN AND REBECCA CLARK REGARDING EXTENDING A ROOF LINE AND DECK 2 FT. CLOSER TO THE SHORE ON AN EXISTING NONCONFORMING HOME FACING THE FISH HOOK RIVER IN THE SHORELAND OVERLAY AND R-1 SINGLE FAMILY RESIDENTIAL DISTRICTS LOCATED AT 316 EAGLE DRIVE, PID#32.85.00600:

Mathisrud explained this is a variance request from Stephen and Rebecca Clark and they are seeking the approval of a variance to allow the construction of a deck and roof dripline extension to allow an expansion of an existing non-conforming structure. The land area is .32 acres and is currently used as a seasonal single family residence located at 316 Eagle Drive and consists of several lots combined into one buildable parcel. The Comprehensive Plan designates this area as residential use and is zoned for residential use. It is located in the Shoreland Overlay District and looking at the bulk regulations, structures are to be set back 50 feet from the ordinary high water mark. In the R-1 District we have a setback of 35 feet and in shoreland areas the front yard is defined as the water side of the dwelling so our more restrictive regulation is the Shoreland Overlay District with a 50 foot setback.

Mathisrud advised the applicant submitted a letter requesting this variance and is interested in extending the deck and the roof as part of this request. There is a site plan included in the packet. The deck is shaped like an arrowhead and the point on the deck is 28 feet from the Fishhook River. The sides of the deck extends from the house approximately 5 feet and they are requesting to add an additional two feet on both sides

of the deck and in effect squaring it off. Looking at the aerial photo the site is covered with trees. Front and side view pictures were provided and the approximate width is 21 feet. The encroachment proposed is on the sides. The neighbor's property is set back approximately 20 feet from the shoreline. The existing deck is approximately 135 square feet and the heart of this request is for an additional 22.5 sq. feet extending the sides of the deck closer to the water. This is a fairly small encroachment however the property is a legally established but non-conforming use and it can continue to be used and maintained at the existing scale under State Statute. As part of the application the applicant sent a letter to make their case supporting the variance.

Mathisrud disputed each of the points pursuant to the City Ordinance as follows:

A. The applicant stated he is not using the property in a manner that is prohibited by an official control. *Mathisrud identified that it is prohibited by an official control which is the setback requirements for the front yard as well as the front yard setbacks for the Shoreland Overlay District.*

B. The applicant stated their plight is due to circumstances unique to the property created by the original landowner in 1963 that designed the original deck and gable and they would like to square off the deck and bring the roof over to cover the deck. *Mathisrud identified that another way of dealing with this is to reduce the size of the deck by removing the point which would also accomplish the effect of squaring off the deck.*

C. The applicant stated the variance can be granted without upsetting the purpose or intent of the zoning ordinance as the front edge of the deck will be no closer to the water than the existing deck is currently. *Mathisrud identified that the required setbacks are intended to limit the visibility of structures from boaters on the water and reduce the amount of impervious surface. There are no new impervious surface requested however the structure is still encroaching closer to the water which is prohibited under the zoning ordinance.*

D. The applicant stated the variance can be granted without upsetting the purposes and intent of the Comprehensive Plan because the deck is not any closer to the water. *Mathisrud identified the sides of the deck will be closer to the water and that an additional 22.5 sq. feet of structure will be added in the front yard. The Comprehensive Plan states the Fishhook River is a major resource that needs to be protected. Page 12 of the Plan, Land Use Goal #1 Policy #4 states that adequate transitions and other mitigation measures should be implemented between incompatible land uses. As part of this application no additional mitigation measures have been proposed.*

E. The applicant is also stating the variance can be granted without altering the essential character of the area by not removing any trees or neighbor's view of the water will actually enhance the view from watercraft by seeing a beautifully covered deck. *Mathisrud identified the adjacent house to the south is closer to the water with a setback of approximately 20 feet so this is still in line with that 20 foot setback and the proposed encroachment would not be out of scale with the neighbor's house however the intent of the ordinance is still to limit how much visibility the structures have from the water.*

Mathisrud recommended denial of the variance request because the purpose of the zoning ordinance applies effectively to this situation.

Spaeth said he doesn't see a reason to object as the water will fall off of the roof or onto the deck and understands it is encroaching there but why would you want to change your roofline to cover the deck? There was discussion about putting a metal roof on.

Peterson objected as the style of the house has nothing to do with the questions we are discussing here such as the setbacks not aesthetics.

Bradow explained the public hearing process.

The Public Hearing was opened at 6:11 p.m.

Stephen Clark introduced his wife Rebecca Clark who is Dick Breezee's youngest daughter and has a number of ties to the area. Stephen Clark stated when they bought the house they understood it was built too close for what the standards are today. Our purpose is to square the deck off and bring the roof over and put a metal roof on and a metal roof is easier to do when straight and not cut back at angles.

Utke asked if the roof is squaring up too, you're not extending the point? Clark said right, the roof would come out to the edge of the deck. Rebecca Clark explained that the roof now actually sits back in the middle of the deck. Stephen Clark said no the roof doesn't go all the way out. Rebecca Clark said then it angles back. Utke said just to clarify – the point of the current roof is going to be extended out or that's already lined up with the 7 ft. reach of the deck? Rebecca Clark said it's behind it. Stephen Clark said it's out about 5 ft. to the point and then came back a little bit but the deck is out 7 ft. Utke said that is still going to be the end of it. Stephen Clark said he wants to put the roof out to the edge of the deck. Utke said so you are extending the point then? Stephen Clark said yes, I would square the roof out to the front edge of the deck.

Rutherford said he talked to the neighbor on the south, Bob and Ruthann Helgren because they are pretty close to the river and wanted to see what the neighbor's opinion was and they had no objection. Rutherford said he had no objection.

Bradow said the major problem with this is it is a nonconforming structure and doesn't fit our Comprehensive Plan and we would be allowing a variance on a nonconforming structure where the nonconformity is outlined in our statutes and regulations do not allow for that. That is what we are going to make a recommendation on tonight but the fact of the matter is it is outside of our current ordinance and it doesn't conform with the Comprehensive Plan.

Vorhes said it really increases the nonconformity. Bradow agreed albeit by a small amount but it does increase it.

Rebecca Clark asked what a nonconforming structure is? Bradow said the 50 ft. setback. Mathisrud added it is nonconforming with the setback requirements of the ordinance. Bradow added you don't have the 50 ft. setback and maybe the square

footage as well. Mathisrud said he reviewed the square footage and they are not exceeding the impervious square footage allowed on the lot so they are okay there. Bradow clarified it is just the setback that's causing the nonconformity.

Utke said rules change so it's not they're fault.

Rebecca Clark talked about the shoreline being closer on one side verses the other but Mathisrud stated they were about the same.

Bradow said his concern is the nonconformity.

Utke said it is tough to have an ordinance painted with a paintbrush, one brush that covers everything and that's why we have these meetings.

Vorhes said it makes sense to approve but the question is how far do open that up or go down that path in the future? Bradow agreed, where do we draw the line?

There was discussion concerning looking at each variance request separately on it's own merits.

Stephen Clark said he thought it might be okay if he doesn't go any closer to the water than the existing. Rebecca Clark said we really aren't going any closer to the water. Stephen Clark said he appreciated listening and considering all this and they will do whatever we need to do.

The Public Hearing was closed at 6:20 p.m.

The Findings of Facts were reviewed. The Commissioners came to the following conclusions. (A Variance may be granted only where the strict application of the Park Rapids Zoning Ordinance will result in practical difficulties and variance is in harmony with the general purpose and intent of the official controls and is consistent with the Comprehensive Plan. Practical difficulties exist only upon a positive Finding of each of the following criteria, but economic considerations alone do not constitute practical difficulties.)

Discussion topics:

- Debate concerning Definition of Official Control
- Wording of the request – deck extension – roof extension – squaring off
- Peterson read statute on variances
- Shoreland Ordinance states a deck cannot be covered
- Opinions concerning whether it would increase visibility from the water

After much discussion and debate and revising individual responses, the Findings of Fact were answered by majority response on each question as follows:

1. Does the applicant propose to use the property in a reasonable manner that is prohibited by an official control? YES. Zoning Ordinance and Comprehensive Plan prohibits.

2. Is the property owner's plight due to circumstances unique to this property, which were not created by the landowner? YES. Home was built prior to Ordinance.

3. Can the variance be granted without upsetting the purpose and intent of the Zoning Ordinance? YES. Squaring corners.

4. Is the variance consistent with the Comprehensive Plan? NO. Does not conform to Shoreland Ordinance and Comprehensive Plan.

5. Can the variance be granted without altering the essential character of the surrounding area? YES. Two foot square up.

A motion was made by Rutherford to approve the variance, seconded by Vorhes for the purpose of further discussion -

DISCUSSION:

- Commissioners reviewed the Findings of Fact questions again.
- Debate on interpretation of "prohibited by an official control".
- Disagreement with having to have all affirmative findings.
- Plights and Hardships Definition – Peterson read the pertaining statute.
- Shoreland Ordinance–no roof on Decks–Peterson read ordinance.

A roll call vote was taken:

Rutherford voted:	Yes
Vorhes voted:	No
Peterson voted:	No
Bradow voted:	No
Utke voted:	Yes
Spaeth voted:	Yes

The motion failed due to a 3-3 tie vote.

The Recommendation based on the Findings of Fact (as all findings on the criteria were not affirmative answers) is for DENIAL of the Variance Request by Stephen and Rebecca Clark, 316 Eagle Drive, PID#32.85.00600.

Bradow advised Stephen and Rebecca Clark to attend City Council Meeting on July 12th, 2016.

6. INFORMATIONAL/DISCUSSION:

6A. Temporary Family Health Care Dwelling Legislation: Mathisrud explained the State of Minnesota passed legislation authorizing temporary family health care dwellings which are a specific type of dwelling unit to be an accessory use to a principal dwelling unit on a site. It allows these temporary dwelling units to be put on a normal single family lot. This type of legislation has been introduced in states around the country basically to accommodate the need for temporary housing as a greater number of people are reaching the age where they need assisted living care. This legislation takes effect on September 1st of 2016 and we have to make a decision on how we want to handle temporary family dwelling units in Park Rapids. The number of people in

Minnesota that are aging is growing and the number of people that need assisted living is growing and the cost of providing assisted living services through a normal provider is very high, approximately \$3,000.00 per month or more for this type of care. A number of companies have manufactured this specific type of housing to allow a child of the aging individual to place this dwelling unit on their site and then take care of parents as they need care. These types of housing units are often approximately half the price per month than assisted living and this is a way of allowing this type of use. They are not permitted under normal zoning ordinances, which is why this legislation was enacted. Mathisrud provided a picture of a temporary family dwelling which is temporary like an RV and are mobile, however the materials used are like single family dwelling unit housing materials with a traditional roof, siding, conventional doors and windows. These are defined as not being a permanent structure, they are ADA accessible, less than 300 sq. ft., cannot be attached to a permanent foundation, must be made of materials compatible with single family construction, insulated with minimum of R-15, equipped with sewage backflow valves and connected to primary home's utilities so no generators. They are designed to be minimally intrusive. They are not fish houses or RV's. This legislation permits these as a temporary conditional use for up to 12 months, it establishes criteria for review and permitting for the city, it establishes a fee to review the application and the other important part is that it gives the opportunity for cities to opt out of using this legislation. If we choose we can adopt an ordinance that prohibits this type of use. If we feel that we have a different way of handling this or we simply don't want these as a use in the City of Park Rapids. Mathisrud asked for comments, concerns and thoughts.

Peterson said his gut instinct is it's pure insanity and I would opt out. Utke stated it is a disaster waiting to happen the way I look at it is shutting the door before it gets out of control because who is going to be the little house police and tell them to move out after 12 months and they say they need to continue using it so I see a ton of problems. Vorhes asked how are you going to rationalize, even though the ordinance doesn't allow an RV, how do you explain it to the public? Utke said that would be a can of worms we don't want to open up. Rutherford said fish houses look better than these. Vorhes said he likes the idea of what they are trying to accomplish but it is a mess to do it. Peterson agreed the intent is good, we do have a big issue coming up in the forefront. Utke agreed, it's only going to get worse with more elderly. Peterson said he thinks we need to let the families figure it out themselves and stay out of it. Utke said that could happen on one of these 50 ft. lots, it would be wedged on it. Rutherford said what are you going to do, we wouldn't have a choice then. Bradow agreed it would be hard to kick someone out of it after 12 months. There was discussion about it not working in this climate because of our winters. Bradow suggested if people are going to care for mom or dad they should move into the house with them. The commissioners agreed. Utke said the thought was good but not the practicality is not.

A motion was made by Vorhes, seconded by Bradow and unanimously carried to recommend to opt out of the State's Legislation of MN Statutes Section 462.3593 concerning Temporary Family Health Care Dwellings.

7. ADJOURNMENT: A motion was made by Vorhes, seconded by Rutherford, and unanimously carried to adjourn the meeting at 7:16 p.m.

Chair Dick Bradow

ATTEST:

Carmen L. Lockhart
Planning Assistant