

CITY OF PARK RAPIDS
SPECIAL MEETING
PLANNING COMMISSION
MAY 21, 2018, 6:00 p.m.
Park Rapids Library, 210 First Street West – Lower Level
Park Rapids, Minnesota

1. CALL TO ORDER: The May 21, 2018, Special Meeting of the Park Rapids Planning Commission was called to order at 6:00 p.m. by Vice Chair Petschl.

2. ROLL CALL: Present: Commissioners, Thomas Petschl, Nancy Newman, and City Council Member Liz Stone. Absent: Bruce Johnson and Dick Bradow. Staff Present: City Planner Ryan Mathisrud and Planning/Administrative Assistant Carmen L. Lockhart. Others Present: Scott & Cheryl Rising, Jerry Perpich, Sandra Erickson and Chante Freyholtz.

2A. CITY CODE ORDINANCE §151.242 PLANNING COMMISSION: Mathisrud explained we previously discussed changing the Bylaws to allow a City Council representative to serve as an elected member such as a Chair or Vice Chair. The Bylaws specifically call for the City Council representative to not serve as an elected officer. What I'm getting at is that when we reviewed the Ordinance that is not allowed so in order to make that happen we have to change the Ordinance that creates the Planning Commission. In looking at that closer, the intent of the Ordinance is to create the Planning Commission and to separate that from the City Council so this is something that we should take a closer look at if we want changes, but basically at this time I am recommending that we not make changes and spend more time reviewing the intent of it. Liz Stone stated for the sake of simplicity, time and effort we keep it as is and nominate someone else on the commission to be the Vice Chair. Petschl said he thinks if a person steps forward and wants to do a job it means a lot and they want that and have the initiative to do that where if someone else gets pulled in it's a completely different story so I think we shelve it until we get a complete commission and discuss it further at that time, either let the whole commission make the decision to kill it or to proceed in another fashion if we can. Newman said she agrees with Petschl. Mathisrud said we will revisit once we have a new commissioner on.

2B. ELECTION OF VICE CHAIRPERSON: A motion was made by Stone, seconded by Newman and unanimously carried to nominate and elect Tom Petschl as Vice Chair.

3. APPROVAL OF AGENDA: The Agenda was revised to 6D is now 2A and 2B is added. A motion was made by Stone, seconded by Newman, and unanimously carried to approve the agenda as revised.

4. APPROVAL OF REGULAR MEETING PLANNING COMMISSION MINUTES OF APRIL 23, 2018: A motion was made by Stone, seconded by Newman and

unanimously carried to approve the April 23, 2018 Regular Meeting Minutes as presented.

5. PUBLIC HEARINGS:

5A. PRELIMINARY PLAT APPROVAL OF SIMONSON ADDITION FOR ARCH SIMONSON OF BEMIDJI MANAGEMENT CO., LLC CONSISTING OF 1 BLOCK AND 2 LOTS:

Mathisrud explained this is for the Preliminary Plat approval of Simonson Addition for Arch Simonson of Bemidji Management Co., LLC. This plat creates one block and two lots. The developer has provided a Preliminary and Final Plat to essentially all the real estate they've assembled for the development of a new gas station. There are two lots and one is set aside for a gas station and one is for future commercial development with no completed plans at this time. The location is on the 100 block of First Street West and the total site size is 1.34 acres. The area within this plat was used for a number of different uses, a service station on one corner, a retail space on several of the lots and there is currently an active gas station on another corner and two residential properties to the north. Several of the properties have been demolished and some will be at a future date.

As part of the Preliminary Plat in your packets you will notice in the center where the alley currently is, there is a 15 ft. wide utility easement that is proposed to be dedicated as part of the plat. There are several lines indicating utilities that are currently in the ground and the symbols identify what they are, gas, phone, etc. To the very north of the utility easement there is a manhole for city sewer and the city is requesting that be relocated to the north and just outside this plat so we don't have to enter their property to service sewer lines.

Our Comprehensive Plan shows this area as a commercial area and the zoning map shows it as B-1 which was approved at a previous meeting. This area is within the Wellhead Protection area but former uses include a couple of gas stations with underground fuel tanks and redevelopment projects that include underground fuel tanks need to be sensitive to that so any environment contamination is cleaned up during that process. This property is located within our Airport Overlay Zone but the restrictions associated with that do not impact this particular use. This plat is served with water/sewer and storm water so it is well served for this particular use.

When you subdivide real estate there are two steps, one is a Preliminary Plat which shows existing conditions on the site, utilities, parcel lines and other information associated with it as well as a proposed outline of where future lots will be. Once this very indepth plat is reviewed by city engineer, public works, police, etc. and once this is approved the developer will invest in all their market studies, financing, and begin to prepare developer's agreements with the City for extension of utilities or provision of other services. Once the Preliminary Plat is approved by the Planning Commission and City Council, then the Final Plat is approved. When you have projects that already have

utilities in the ground everything is set up correctly, you can request approval of the Final Plat at the same time and we call that a minor subdivision and it goes very smoothly. The utility corridor is currently an alley and they will dedicate that portion for underground utilities but not surface rights so you will no longer be able to access from the north part of the plat.

The City Engineer had reviewed this and said the utilities do have the capacity to serve the proposed use. The City Clerk said there are some outstanding assessments that are due from previous street projects approximately \$4,255.00 and those need to be apportioned to the new lots respectively or paid off. We forwarded this to Hubbard County Soil and Water and received no comments, our police and fire departments didn't have comments.

Mathisrud advised the City has a Parkland Dedication Ordinance stating any time someone files a new plat they are supposed to dedicate 5% of the real estate within that plat for parkland purposes to be used and set aside to create new parks. This is a really good thing to have when platting large acres of real estate. For example if you are platting 320 acres as a new subdivision you will get a 5 acre park to serve that neighborhood. When doing small plats like this and you carve out 5% that gives you a 50'x50' park which is not useful so we have the option in that Ordinance to dedicate cash in lieu of parkland per se. Based on that formula we came up with \$22,105.00 to be used for the acquisition of parkland for park purposes.

This plat is being brought with an application to vacate the existing alley for just the real estate they own. They are dedicating a new easement for those utilities so those utilities should not be impacted by this. The proposed plat has been sent to all utility companies and developers have been working with them to coordinate new underground infrastructure improvements. The proposed plat meets all the minimum lot size and depth requirements for it's zone.

Mathisrud stated staff is recommending approval of the Preliminary Plat of Simonson Addition with the following conditions:

1. Parkland dedication in the amount of \$22,105.00 is required prior to the filing of the Final Plat.
2. Deferred assessments to be apportioned to their respective lots.
3. Minor clerical changes to the plat are also required prior to signature.

The Public Hearing was opened at 6:15 p.m.

Chante Freyholtz and Sandra Erickson said they bought a home adjacent to what's going on here, just north of it, both houses actually side by side, and our concern was with the gas station going in there if they would be required to put like some type of fencing between our properties and the business because we really don't want all the people from their business just cutting across our yards and that so we are just looking

to see if there is a way that they would have to erect a fence in order to protect our privacy from the public's goings on in their facilities there?

Petschl asked if the houses are along 71? Freyholtz responded yes they are. Newman inquired 109 and 115? Freyholtz said that is correct.

Mathisrud explained within the City's Zoning Ordinance we do have a provision that states that any commercial zone that abuts a residential area if they are redeveloping they are required to erect a privacy fence to be approved by the City Planner and I believe it calls out the height too. During the site plan review we will be looking for a fence to be included. Freyholtz replied we appreciate that.

The Public Hearing was closed at 6:17 p.m.

Newman commented she looked at that area quite a bit in the last few days, you are right I know your gas meter is right on the end by that wanted fence so I'm sure you would want a big fence like that for privacy.

A motion was made by Stone, seconded by Newman, and unanimously carried to recommend to the City Council approval of the Preliminary Plat of Simonson Addition.

The Planning Commission later amended their previous motion as follows:

A motion was made by Stone, seconded by Newman, and unanimously carried to recommend to the City Council approval of the Preliminary Plat of Simonson Addition with the following conditions:

- 1. Parkland dedication in the amount of \$22,105.00 is required prior to the filing of the Final Plat.**
- 2. Deferred assessments to be apportioned to their respective lots.**
- 3. Minor clerical changes to the plat are also required prior to signature.**

5B. VARIANCE REQUEST FROM SCOTT & CHERYL RISING, 19367 EAGLE POINTE TRAIL, OF THE REQUIRED REA YARD SETBACK IN A SHORELAND OVERLAY AND R-1 DISTRICT, PID#32.91.00200:

Mathisrud explained this is a variance request from Scott & Cheryl Rising at 19367 Eagle Pointe Trail who recently purchased this house and are hoping to do some remodeling specifically to an attached garage on the site. They are requesting a triangular shaped variance to construct a larger garage where the current one sits. Their lot is a trapezoid shaped lot and their setback from their street side property line is required to be 30 ft. This one is a little different as their front yard setbacks are actually their rear yard setbacks because it is also governed by the Shoreland Overlay District and in the R-1 District. In other locations there is a 20 ft. setback and in the Shoreland Overlay District there is a 30 ft. setback and the most restrictive setback does apply in this situation. They are ultimately requesting a 76 sq. ft. of area to be part of that. There was a letter with their request that wasn't included in the packets and it has been provided to you tonight.

Mathisrud provided a site plan of the requested variance. The lot size is 1.06 acres, zoned R-1 and in the Shoreland Overlay District. It is not located in the Airport Overlay District. The parcel is served by water and sanitary sewer.

Mathisrud stated since the Planning Commission members are fairly new to variances he wanted to explain that variances are reviewed on a case by case basis. The Zoning Ordinance is written to apply to each property as if they are all the same and everyone is intended to meet the same requirements. There are sometimes situations that come up, for example a property owner based on the physical aspect of the property – something physically related to the property finds that the ordinance doesn't really apply effectively to their particular situation. An example of this could be that when you get to a property you start to dig out the basement and you find a boulder in the middle of it that cannot be moved and now it is impossible to build in the exact location you thought you would so in that case you would apply for a variance to allow you to move it a few feet in order to still be able to get your basement dug. So, you have a practical difficulty that makes it so you can't meet the letter of the ordinance but you can meet the intent of the ordinance. Variances, if awarded, should be the minimum possible to maintain reasonable use of the property without violating the intent of the ordinance. The ordinance is intended to apply to everybody equally as I discussed and the intent of the variance is to provide for relief when it is justified. As you review the request there are a series of Findings of Fact that apply to this situation and if all of the findings can be met then you can recommend approval of the variance but if one of the findings cannot be met then you have to recommend to deny the variance.

Mathisrud stated the garage itself is somewhat obsolete in that the garage door doesn't go very high and it was a flat/pitched roof and leaks water into the house so they are hoping to replace that and want to expand it to allow for a three-car garage. The owner has an alternative – instead of rebuilding this garage and expanding it slightly the request was to potentially put a detached garage in another location but the only location on their lot that they can reasonably do this is an area with quite a few very mature, very tall, 24" diameter pine trees which look very nice. Those were the facts on the site and images were provided for review.

Mathisrud provided his views on the Findings of Fact as follows:

1. Does the property owner propose to use the property in a reasonable manner that is prohibited by an official control? **Yes**. The property owner wants to replace his garage with a modern one that is slightly larger.
2. This can be viewed either way. Is the property owner's plight due to the circumstances unique to this property which were not created by the land owner? **(Yes)** The lot is trapezoid with the structure placed at an angle to the road. Therefore, there is not a practical solution to replace the garage without requiring the owner to place a detached garage on another location on the lot. The remainder of the lot has very large mature trees that the owner and neighbor desires to preserve and meets other goals of the ordinance and comprehensive plan. **(No)** The owner can replace the existing garage on its current footprint or a detached garaged can be placed on the lot in another location by removing trees.
3. Can the variance be granted without upsetting the purpose and intent of the zoning ordinance?

(Yes) Removal of trees for a detached garage would be worse than allowing the variance **(No)** The variance would make the structure extend past the building line of the adjacent structure causing it to be out of character.

4. Is the variance consistent with the Comprehensive Plan?
(Yes) or **(No)**.

5. Can the variance be granted without altering the essential character of the surrounding area? **(Yes)** Other structures on Eagle Pointe Trail are non-conforming and set closer to the road. or **(No)** The addition would be set closer to the road than the neighbor's house changing the neighborhood character.

Mathisrud stated the developer did provide some site sketches in your packet showing the required setback and the lot is at an angle to the street and their structure does extend approximately 6 ft. on one corner and it tapers down into a triangular shape so it is just one corner that is extending into that required setback. The owner noted some mature trees in another area which would be the only other appropriate area to put a detached garage.

Mathisrud stated after reviewing the facts on site with the property owner, it would be preferred not to see removal of the mature trees on the west side of the lot for constructing a detached garage. The applicant stated they met with the neighbor to the west who agreed that replacement of the existing garage with a slightly larger one is the preferred alternative and not to see the removal of the trees. The owner has minimized his request to a small triangular piece as indicated in the site plan. The fact that the shape of the lot is trapezoidal and significant removal of mature trees as an alternative, could support approving a variance. Alternatively, you could take the view that the owner can rebuild that as the same footprint and place a new garage in a different location.

Mathisrud stated staff recommends approval of the request. However, the commission should listen to the applicant and review the facts themselves to make an appropriate determination.

Newman said she has been to the area to check it out.

Mathisrud stated he discussed this with Chair Dick Bradow and the commission has historically taken the view that variances are something that should be looked at very closely and should often defer to not approving variances and as the city's insurance agent he would prefer to have these looked at very closely and recommend denial on most of them or changing the code in cases where it warrants it.

The Public Hearing was opened at 6:34 p.m.

Scott Rising introduced himself and his wife Cheryl and explained he is originally from Sebeka and Cheryl is from the Crookston area – Fisher. We have lived away from the area for a very long time and are intending to move back and retire. Rising stated Mathisrud pretty much covered everything he wanted to point out but the property in it's current state generally is wonderful but the fact of the matter is the garage is a disaster and the addition of that particular roof on it causes it to leak inside so we are going to have to do extensive remodeling on that end and we would prefer very much if you allow a variance so we could look more like our western neighbor with the three-car garage, a well-kept piece of property which we historically have done, put stuff away

that kind of thing. The alternative that Mathisrud mentioned would destroy some beautiful trees which we would very much like to see stay in place. This minimizes the impact on trees and makes the property extremely useful for us to be able to put stuff away. It does away with a shed that sort of looks okay but the neighbor to the west of us is going to send us a Christmas card every year and thank us to make that go away should that opportunity appear. I would be happy to answer any questions.

Cheryl Rising introduced herself and said they came in earlier yesterday and we did go down the neighborhood and we knocked on everybody's doors and everyone was in agreement and we showed them the plans and they had already gotten the letter that it was going to be tonight. Rich our neighbor directly to the east was going to try to be here tonight if he didn't have a complication and he had absolutely no problems and he was coming here to support it. Petschl said he was going to ask if the neighbor to the east agreed? Cheryl Rising said yes and actually his even sits closer to the road and he had no problem with that at all. Stone said this is the gentleman to the east? Cheryl Rising responded yes, exactly. Scott Rising said all of the properties to the east of us the driveways exit directly onto the road across the street from Deane Park and that is one of the reasons we would prefer to keep the driveway the way it is as it allows us to turn around and exit going forward instead of backing onto the road. Cheryl Rising said neighbor Gloria said if we are able to build that new garage with the variance we will take down that old shed because all of our stuff will be able to go in the garage and she said she would be forever more grateful, as my husband said she will send us a Christmas card because she hates that shed sitting in front of her window there, and Rich did agree too. Scott Rising said we have a long history of being a good neighbor and we intend to continue doing that. Cheryl Rising said they spent actually the whole afternoon talking with neighbors and everybody was fine with it. Thank you. Scott Rising said if you have any questions I can answer I would be happy to do that.

Petschl said he drove by there yesterday and to him the house is, the fact that the road curves puts your house technically visibly farther back than your neighbors so to me aesthetically it wouldn't be a problem, it would be an improvement and you wouldn't be that far forward as far as I can see, but I wouldn't consider changing the driveway because I think what you have there is just fine the way it goes. Stone agreed. Cheryl Rising said absolutely.

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

The Findings of Facts were reviewed. The commissioners came to the following conclusions:

1. Does the property owner propose to use the property in a reasonable manner that is prohibited by an official control? **Yes.** Replacement of the garage with a larger and modern garage.
2. Is the property owner's plight due to the circumstances unique to this property which were not created by the land owner? **(Yes)** The trapezoid lot and non-removal of the trees, the aesthetics would be better if trees are left as is.
3. Can the variance be granted without upsetting the purpose and intent of the zoning ordinance? **Yes.** Removal of the trees would look worse.
4. Is the variance consistent with the Comprehensive Plan? **Yes.** Doesn't conflict with the Comprehensive Plan.

5. Can the variance be granted without altering the essential character of the surrounding area? **Yes.** It would be more aesthetically pleasing not to remove the trees. It improves the cohesiveness of the area. Other structures are set closer to road on that block.

A motion was made by Stone, seconded by Newman, and unanimously carried to recommend to the City Council approval of a variance request for Scott and Cheryl Rising, 19367 Eagle Pointe Trail, to allow a 24 ft. rear yard setback where a 30 ft rear yard setback is required in the Shoreland Overlay and R-1 Single Family Residential District, PID#32.91.00200.

6. GENERAL BUSINESS:

6A. REVIEW OF FINAL PLAT OF SIMONSON ADDITION: Mathisrud said this is the review of the Final Plat of Simonson Addition as we just reviewed the Preliminary Plat and typically we do this as a two-step process but the developer submitted both for approval at today's meeting. The Final Plat will be the recorded document and it shows a lot less information as it shows the dimensions of each lot and the utility corridor as it shows an 8 ft. easement over Lot 2 and a 7 ft. easement over Lot 1 for a total width of 15 ft. Mathisrud stated he checked calculations and their survey appears to be correct and mathematically accurate. They sent this to the county surveyor to do a second review on it so an actual licensed surveyor did that double check and it all appears to fit the requirements in the City's Subdivision and Zoning Ordinance. They also included their site plan showing the future gas station on Lot 2 but this is not the final layout but likely what they will have.

Mathisrud stated staff recommends approval of the Final Plat.

A motion was made by Stone, seconded by Newman, and unanimously carried to recommend to the City Council approval of the Final Plat of Simonson Addition with the following conditions:

- 1. Parkland dedication in the amount of \$22,105.00 is required prior to the filing of the Final Plat.**
- 2. Deferred assessments to be apportioned to their respective lots.**
- 3. Minor clerical changes to the plat are also required prior to signature.**

6B. REVIEW OF VACATION REQUEST FROM BEMIDJI MANAGEMENT FOR A PORTION OF AN ALLEY IN THE PLAT OF SHIELD AND FITCH AND A PORTION OF AN ALLEY IN THE PLAT OF CUTLER'S ADDITION:

Mathisrud explained this is part of the previous request and when we bring it to the City Council we will actually vacate this alley first and then approve the platting portion of Simonson Addition, as a procedural step. The applicant has requested Preliminary and Final Plat approval and are also requesting vacation of this existing alley. The applicant is Arch Simonson and the owner is City of Park Rapids. This is the current plat location and the orange area is the location of the alley they are requesting to vacate and what makes this slightly complicated is the fact that the City owned this as actual real estate which we recommended be sold to Simonson but we still had surface rights using this for an alley and underground rights by prescription because it was used for

that purpose for a long period of time. The applicant is requesting this be vacated and that will correct those issues associated with that. The total land area of the alley is 20'x175' or approximately .08 acres and is currently used as a utility corridor and for access with people driving on it. The Comprehensive Plan shows this area as future commercial and is zoned B-1 Highway Business District, is located in the wellhead area and airport overlay and is served by water/sewer and storm sewer adequately without that access.

Mathisrud explained that in reviewing a vacation the City has several options for dealing with alley vacations or street vacations. What your options are is to approve the request, to deny the request or to give permission to use the area through a license agreement and there are appropriate reasons for each one. The City has broad discretion to vacate but just because someone requests one doesn't mean you have to approve it so we have broad authority to make that decision one way or the other.

Mathisrud said in looking at the facts of this case there are utilities in there and those companies need to be able to continue to use that utility corridor as there is a gas line in there that would cost a million dollars to re-locate so it's really not practical to completely remove all those utilities from it and they need to be able to remain in place. In looking at this particular location Simonson is dedicating that corridor back within the plat so all these purposes should be adequately served. The only thing that changes with this request is access from traffic using that corridor to access their garages but there will still be access from the north to get to property owner's garages.

Mathisrud stated staff is recommending approval of the alley vacation and does not feel a license agreement was appropriate for this type of request.

Petchl asked if the fence would go all the way across on both lots right away or just cover the first lot and up to the alley way or all the way across? Mathisrud said that is a good question, and that is put in during the site plan review process so if he is requesting to develop one lot only that's the lot that is going to get the fence unless the property owner is willing to do that on both lots. Petchl said well at least it will extend across the alley to block traffic. Mathisrud said they intend to close that access with a fence.

A motion was made by Stone, seconded by Newman, and unanimously carried to recommend to the City Council approval of the vacation request from Bemidji Management for a portion of an alley in the Plat of Shield and Fitch and a portion of an alley in the Plat of Cutler's Addition.

6C. REVIEW OF VACATION REQUEST FROM GERALD PERPICH FOR A PORTION OF AN EASEMENT IN THE PLAT OF NORTSHORE PARK ADDITION:

Mathisrud explained this request is to vacate a sanitary sewer easement located in Gerald Perpich's backyard as he currently has a garage built over the sanitary sewer easement and he wants to expand this garage and City policy is not to issue a building permits on top of public easements. Back a number of years ago we left that on the property owners to identify all their easements and property lines and we are starting to ask for more survey work to be done prior to building garages to help verify exactly where these easements are as these are starting to come up occasionally. The Petitioner is Gerald Perpich at 352 East River Drive and he has provided a Certificate of Survey showing exactly where the structures are on his property as well as the area that he is requesting to be vacated. The City has a sewer easement as shown on the survey

which runs through several properties and was obtained as part of a different sewer project. We have a lift station located which takes the sewage and pumps it to East River Drive and then catches up with utilities and goes out another location. This easement was never developed or ran any utilities through this corridor so essentially when you get to his garage there are no other utilities in that location and this sewer easement is not needed by the City and there are no other utilities within the easement. The easement is not known to be needed at this time because we are adequately served in other parts of the street. The garage is square on top of the easement and their neighbor to the south also has a garage on the easement as well and has the same situation essentially. Perpich wants to expand his garage a little and needs this vacated in order to do that. The description of the area they are proposing to vacate is on the Certificate of Survey and this vacation, if approved, would only vacate the portion on his property and not the neighbor's property.

Mathisrud further explained when the City reviewed this all the utilities are under his driveway and we have access to that if needed. Mathisrud indicated this request was sent to the public works staff, city engineer and the applicant contacted all the utility companies to verify whether or not they had any utilities in this location and through that process we identified that no one is using it and staff's recommendation is to approve the vacation.

Newman said she is very familiar with this property and that area.

A motion was made by Newman, seconded by Stone, and unanimously carried to recommend to the City Council approval of the proposed vacation request from Gerald Perpich for a portion of an easement in the Plat of Northshore Park Addition as described in the Certificate of Survey.

7. INFORMATIONAL/DISCUSSION: None.

8. ADJOURNMENT: A motion was made by Stone, seconded by Newman, and unanimously carried to adjourn the meeting at 7:04 p.m.

Vice Chair Tom Petschl

ATTEST:

Carmen L. Lockhart
Planning/Administrative Assistant