

**CITY OF PARK RAPIDS  
REGULAR MEETING  
PLANNING COMMISSION  
NOVEMBER 24, 2014, 6:00 p.m.  
Park Rapids Library, 210 First Street West – Lower Level  
Park Rapids, Minnesota**

**1. CALL TO ORDER:** The November 24, 2014, Regular Meeting of the Park Rapids Planning Commission was called to order at 6:01 p.m.

**2. ROLL CALL:** Present: Commissioners Joel Vorhes, Janice Tidrick, Nels Peterson, and City Councilmember Paul Utke. Absent: Dick Bradow and Diane Smith. Staff Present: City Administrator John McKinney and Planning Secretary Carmen L. Lockhart. Others Present: Kevin Pelkey of Lakes Area Habitat for Humanity, Bob Smith, Charles Anderson and Scott Disney.

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

**4. APPROVAL OF REGULAR PLANNING COMMISSION MINUTES OF OCTOBER 27, 2014:** A motion was made by Vorhes, seconded by Peterson, and unanimously carried to approve the October 27, 2014 Regular Meeting Minutes as presented.

**5. PUBLIC HEARING:**

**5A. VARIANCE REQUEST FROM LAKES AREA HABITAT FOR HUMANITY FOR A 15 FOOT FRONT YARD VARIANCE TO ALLOW A 15 FOOT SETBACK WHERE 30 FEET IS REQUIRED IN ORDER TO CONSTRUCT A 1,056 SQUARE FOOT HOME AT 605 3<sup>RD</sup> STREET EAST WHICH IS A SUBSTANDARD LOT OF RECORD LOCATED IN THE R-2 SINGLE, TWO FAMILY AND TOWNHOUSE RESIDENTIAL DISTRICT WITHIN THE SHORELAND OVERLAY DISTRICT, PID#32.44.02600:**

McKinney read portions of the report prepared by former Planner Dan Walker which explained the applicant is Lakes Area Habitat for Humanity (LAHFH), the property owner, who is requesting a 15' front yard variance to allow a 15' setback where 30' is required in order to construct a 1,056 square foot home on a substandard lot of record and located in the R-2 Single, Two Family and Townhouse District within the Shoreland Overlay District. The site is located within the Shoreland Overlay District as it is within 300 feet of the Fish Hook River.

The property is located at 605 3<sup>rd</sup> Street East and was the location of a vacant single family home which has been demolished. The property is .16 acres. The property is currently zoned R-2, Single, Two Family, and Townhouse Residential District, and the City's Comprehensive Land Use Plan designates this area for single

family residential use. The property is located in City limits and serviced by City water and sanitary sewer.

Citizens National Bank donated the property and existing home to LAHFH in early 2014 after attempts to sell the previously foreclosed property were not successful. The condition of the previous home had degraded to the point where it was beyond repair and LAHFH determined that the best use for the property was to remove the existing home and replace it with a new 1,056 square foot home.

The previous home on the property was considered a non-conforming structure as it was located within the front yard, back yard, and street side yard setbacks. The property was recently surveyed and the site plan provided by the applicant also shows that a corner of that structure was likely located within the street right of way. The proposed new home would move the structure away from the right of way of both Grove Avenue South and Third Street East. The size and the shape of the lot make it nearly impossible to build anything that would meet all of the setback requirements. The new home would be built 15' from the front property line along Grove Avenue South, but would still be a good distance from the edge of the street. The applicant is proposing a structure that would meet all of the other setback requirements.

This application would remedy some of the existing setback issues and bring the property closer to conformity. It would also replace an extremely blighted structure and improve the housing stock and quality of the neighborhood.

No garage is being proposed with this application, but the applicant has shown a 10'x 20' class V parking spot on the site.

McKinney commented Walker had advised that since the new parcel will be orientated towards Grove Avenue South, the address of the new home will also be changed to 208 Grove Avenue South. A building permit will be required prior to construction.

*McKinney read comments prepared by former planner Dan Walker addressing the Findings of Fact:*

1. The applicant does propose to use the property in a reasonable manner. A single family residential home is considered a permitted use in this zoning district and the new home would be closer to conformity than the previous home. The size of the proposed house is also reasonable considering the size of the parcel.
2. The parcel is considered a non-conforming lot of record which was not created by the property owner. The size and shape of the lot make it nearly impossible to build on the lot without the variance.
3. The variance can be granted without upsetting the purpose and intent of the Zoning Ordinance.
4. The variance is consistent with the Comprehensive Plan.

5. Staff feels the variance can be granted without altering the essential character of the area. The proposed project includes removing a blighted/vacant home from the block and building a new home that fits within the neighborhood.

McKinney stated staff recommended approval of the variance request for a 15' front yard variance to allow a 15' setback where 30' is required in the R-2, Single, Two Family, and Townhouse District in order to construct a 1,056 square foot home on a substandard lot of record and located within the Shoreland Overlay District at 605 3<sup>rd</sup> Street East, PID#32.44.02600 with the following conditions:

1. The new address of the property will be 208 Grove Avenue South.
2. A building permit will be required prior to construction.

Peterson said it would be nice if Walker was here because he has quite a few questions and doesn't know how to address them as Walker's the one that gave the staff recommendation for a variance so maybe we can address the applicant with certain issues and maybe we can get a better finding then of what was said and intended.

**The Public Hearing was opened at 6:07 p.m.**

Kevin Pelkey explained he is with Lakes Area Habitat for Humanity and truly hopes that they have the opportunity to build on this lot but understands it's not a certain thing and that's why we are here is to request that. Pelkey provided a site layout. Pelkey said the house that has been removed by permit for demolition was vacant and foreclosed. Citizens National Bank tried to dispose of the property through sale through public markets and were unsuccessful and their conclusion was that the property had value and they really felt that the way to dispose of this was to donate it to Habitat for Humanity and we since then applied for the demolition permit and have taken care of removing it. We had several evaluations of the existing structure and truly felt that the energy input far exceeded the output that we would gain by trying to save the home and that improving the neighborhood in the manner of delivering a new home was the ticket. So having a survey done which was probably the most challenging process of this whole thing as the crew was having some difficulties finding corner markers but they did and the professionals from WSN created the survey and then the team from Nor-son has dropped onto the survey what you have before you so that's literally the survey super imposed with our request for a building plan. There isn't enough property to push it back to 30 ft. There would be no buildable property if that is the case so it is your call ultimately with the City Council's approval to say this is a buildable lot and with this type of a proposal or not. We built a home in 2012 very similar to the one that we are proposing to build here on Spruce Lane and provided a picture which will kind of give you an idea as it's really hard to see what a house looks like on a blueprint it's not a three dimensional map or picture and that is exactly what we are proposing to deliver in the neighborhood, a single family three bedroom, one bathroom, single level living. When we were first approached by Citizens National Bank I did take the time and sit

down with Walker and asked him what are the steps I need to go through to see about using this property and he said well it is a substandard lot. I knew that in accepting it. Walker had said there would be a variance request process and his opinion, and I respect it as simply that at that time, I did not ask for anything more than his opinion, was that reuse of the property as a single family dwelling in the same type of manner made sense to him and so we accepted the donation knowing that it might just be green space property. It's not our hope that is what happens but ultimately we knew that there was a calculated risk in accepting the donation and so we are here. I welcome you to ask any questions that you might have.

Peterson said we will work our way through the chapters that speak of items like this and do understand that as supportive as we all are, we are confined by the Comprehensive Plan of the City and we are confined by the Zoning Ordinance and those are things that we will strike up here in a short while after we hear from anyone else who has something to say about this and see where we can go through that and what we can do. Pelkey responded very good, thank you.

Scott Disney stated he is a neighbor to the east and it is a very small lot and asked if there is going to be a garage on it? Pelkey said no. Disney said he is kind of for it but then again on the other hand I'm leaning more towards against because again, it is a very small lot.

Peterson asked when was the building was demolished? Pelkey said it was taken down Wednesday, November 6<sup>th</sup> and Thursday, November 7<sup>th</sup>. Peterson asked of this year? Pelkey said yes.

Utke asked is the alley on the drawing actually opened up and a useable alley at this point and not just on the drawing? Several people said yes. Utke asked Disney if he borders the east side of the alley? Disney said correct.

Tidrick asked where the parking and driveway is? Pelkey said if you look on the site map it is right off of the alley and is only large enough to hold one car and it would be nonpaved class V.

Peterson said Chapter 151.002 of Zoning Ordinance – Is the intent and purpose ordinance and there is one item here within the context of intent and purpose which is to bring about the gradual conformity of the uses of land and buildings throughout the City through the Comprehensive Zoning Plan set forth in this chapter and to minimize the conflicts among the uses of land and buildings so there we have to work through our Comprehensive Zoning Plan which is our ordinances that follow intent. Vorhes said I don't really believe this is a zoning question because it is zoned and we aren't changing the zoning, we are changing a setback that would be nonconforming if we approve it so it has nothing to do with zoning directly. Peterson said okay, that is well taken and I was maybe mistaken that that was specifically for the zoning and that's a good thing.

Peterson said Chapter 151.055 of the Zoning Ordinance – this is one that is difficult – averaging setbacks and it talks about the R-1 Single Family Residential and the R-2 Single Family and where adjacent structures within the same block have front yard setbacks different than those required, the front yard minimum setback shall be the average of the adjacent structures, which certainly follows true but then there are some exceptions to the rule there and that is the front setback required by this section shall not be less than 20 feet, so there we have an official control and how do we work around that? McKinney responded isn't that what you're doing right now is considering a variance to that rule? Peterson said exactly, but when it is stated in that fashion for us to consider a variance we are in violation of that chapter. McKinney said no, you are making a variation to that provision, which is what the exercise is all about, you don't have to do it but you may because that's what you're doing. Peterson said okay, right.

Peterson said Chapter 151.100 of the Zoning Ordinance – it is the intent of this subchapter to regulate nonconforming uses of structures and lots and provide for their gradual elimination. If such nonconforming uses cease for a continuous period of one year then the subsequent use of the building shall be in conformity to the regulations specified – the new setbacks. Nonconforming use shall not be moved to any other part of the parcel of land. Peterson said these are all direct. Vorhes said this is a conforming use though. Peterson said no it's not a conforming use. Vorhes said yes, it is a nonconforming setback but the use itself is conforming. Peterson said okay. Vorhes explained it is zoned R-2 and it's a residence that is being built so the use is conforming. Peterson said okay. McKinney said an example would be if they wanted to do a restaurant or some commercial activity in a residential zone that would be a nonconforming use. Peterson said sure.

Peterson said Chapter 151.103 of the Zoning Ordinance – this one is an interesting one, substandard lots of record. All lots of record existing as of the effective date of this chapter with the exception of lots located in shoreland areas may be used for the erection of a structure without meeting the minimum lot area and lot width requirements provided that all other requirements of this chapter are complied with. That's telling us that we must comply with all setbacks. Lockhart said you said except in shoreland and this is in the shoreland. Peterson said this is an overlay that is correct but also when you read in the shoreland areas though it states basically the same thing. It is more restrictive I believe in the shoreland. All lots of record existing as of the effective date of this chapter with the exception of lots located in shoreland areas may be used for the erection of a structure. This is a shoreland overlay but not a shoreland area, it falls and I'm not quite clear of the shoreland overlay, it is very brief in here with the description of the shoreland overlay. Peterson said this is a difficult one because the lot area can be less and the lot width requirements can be less but we must meet all other requirements of this chapter of this substandard lot of record.

McKinney responded if you look at Walker's comment I think again, it looks to me like in evaluating the variance request the board of adjustment shall consider sewage treatment and water supply capacities or constraints of the lot if it is in those districts and he says that he has because it has city water/sewer. McKinney explained I think

the difference of it being in the shoreland is that you have to take a look at the water and sewer in addition to the other setback requirements. Vorhes added that would be my guess, particularly the septic and drainfield as you want to keep it from including a waterway which is not an issue here. McKinney advised page 21 of the packet that Walker prepared addresses that question.

Peterson said Chapter 151.156 parking – Single family dwelling – 2 parking spaces required for each dwelling unit and that is something that we don't have on the site plan. McKinney and Pelkey said there is one parking spot. Peterson asked why is it one? It says here off street parking, residential uses, single family dwelling – 2 parking spaces per dwelling unit. McKinney said I'm not saying that it shouldn't be 2, I think the plan is for one, why is it just one? Pelkey responded I'm guessing because my architect didn't read that. Utke said there is room there to put another. Pelkey replied there is room to go wider or longer as long as we don't exceed impervious surface, well it's not going to exceed impervious surface as it will be class V so that is an easy adjustment that can be asked of our architect to either widen it for two or length it for two. Pelkey asked what would be the preferred outcome from whatever body? Utke said if it is drawn to scale it could be doubled or a small garage could eventually be put in there. McKinney and others said I don't think you can put a garage on there. Peterson said I think you can – you could position a garage in there for future planning because garages are important. McKinney said it may not be a question of setback it may be a question of impervious surface on the size of the lot. Vorhes said that's true too. Peterson said no, it's a good point but I did the calculations on the information I had and there is room for considerable more impervious coverage on that lot. Lockhart asked can it meet the setbacks? Peterson said no, you can't meet the setbacks but for impervious coverage there is room to expansion on that lot with the size of the lot. Lockhart commented not if it doesn't meet the setbacks. Peterson said that is correct, but we're in violation of the setbacks already. Vorhes said well, on one side but you say we are going to violate two sides now, because a garage is not necessary. Peterson said we are allowed for coverage on that lot of just a tad over 2,000 square feet on that lot. Vorhes said well you know a garage is something you don't have to have but in this climate you may feel you need one. Tidrick said they are not asking for one. Peterson and Vorhes agreed, no they are not. Pelkey said I want to shelter people, not cars.

Peterson said Chapter 151.245 – variances and appeals. The variance must be consistent with the Comprehensive Plan. You can't argue with this one but I hope you can because we will, I mean we will discuss this and find out what exactly we can do. On the Comprehensive Plan in one of the housing goals for residential areas – enhance existing residential neighborhoods through the adoption of stricter land use controls regarding nonconforming uses now that's a nonconforming use. Vorhes and Tidrick said no it's not, it's a conforming use so it doesn't apply. Peterson said okay.

Peterson said then of course in existing single family residential unbuildable lots should be acquired by abutting property owners and maintained as open space, it is an unbuildable lot. Tidrick said it was built on. Peterson said that's true but the structure is gone. Vorhes said it was built and asked how long Citizen's National Bank owned it?

Pelkey said they had possession of it for two years before donating it to us. Vorhes said so there was an opportunity for adjoining property owners to come forward and say we want to buy it. Peterson said absolutely. Vorhes said they chose not to. Peterson said there is a MN Statute that also discusses nonconformities and I'm not sure if you are aware of this or not. Being that I design like homes, I come up against this frequently and it can be used to an advantage in this case and that is when you have a structure that is sitting on a lot that does not conform to setbacks you can replace that 100% and my question becomes and you have a six month envelope to achieve that once the building is removed you have a six month envelope of saying that you want to utilize that space and maybe even add onto it. Lockhart asked are you saying to keep it nonconforming? Peterson said you mean a nonconforming structure, yeah it's already in violation so we're just changing from one nonconforming structure to another, that's all we are doing here. Vorhes said it is designed that if somebody has a lake home, they have a fire, that's one of the examples, they can replace the lake home in the same location. McKinney added I think the history of that is the little boat houses down on the lake. Peterson said that is correct, but it has also worked in replacing full sized lake homes that are ten feet from the water. Peterson said I'm not sure you were aware of that law? Pelkey said to replace on the same foot print? Peterson said and then of course, if that structure was to be moved into that vicinity and placed in such a different way, there would be room to park plus a garage in the future rather than setting it at a diagonal, transferring it from where it was to a new position, we are taking one nonconforming sitting of that building and moving it to another nonconforming sitting, so why don't we just violate everything and let them use the space, the void where the nonconforming was and they can position that building different on that lot and have room to put in a garage and sit it in that lot completely different. Vorhes and Tidrick said the house they are building is bigger with more square footage. Lockhart said to bring it more into conformity than to let it remain. Peterson said we are not bringing it into any better than what it is. Vorhes and others said yes we are. Peterson said over half the house is sitting outside of the setback of the new one. Lockhart added the old house was into the setback. Vorhes said when I look at this I say we have a chance to take a house that was run down which has already been destroyed and turn it into a house that is useable and provides reasonable housing at a reasonable cost for individuals verses having a vacant lot that nobody can do anything with except maybe if a neighbor says they want to buy it which it has been up for sale for two years now and it hasn't happened and that leads to the potential that the lot goes un-mowed. Disney said he mows it. Vorhes said you probably would because you don't want to look at it but if you sell your house and move somewhere else, there is that potential.

Utke said we have to be careful of is that we all like Habitat for Humanity and we don't put them above others, you have to base your decision on the actual property and house and everything like that, no so much who the owner is. Vorhes said oh there is no question about it. Tidrick agreed. Vorhes said had it been a private developer wanting to build that style house there, I would make the same argument. Utke said right, you have to make sure the argument would be the same for all players.

Pelkey said I'm afraid if I tried to reuse the footprint it would be even be further into the 30 ft. setback requirement, I would be more than 15 ft. encroached, it's a wider and deeper home. Utke said actually you would extend into the right of way as it is drawn. Pelkey said yes, that is what I'm saying, it is deeper than the house I am proposing. Utke said even though the road is quite a ways out it looks like that right of way cuts straight across there.

Vorhes asked Disney if there are any strong feelings being a neighbor, either way, and are they concerns or strong feelings? Disney said if it is going to be a building, do it right, it is a very small lot but we have to do the right thing too, because a lot of buildings sitting around Park Rapids are sitting idle, big and little so we need to start filling them up and if we can build a house here, let's build a house. Utke said yes, that is a challenge we do have is a number of run down properties and the whole objective is to get newer pieces in place and spruce up the neighborhoods.

Pelkey said thank you for mowing, but whatever the outcome, presumably you'll appreciate a home that needed to be taken away is gone. Disney said thank you.

McKinney said the exercise you're going through right now is exactly what you are supposed to do, you have an existing set of standards that the law recognizes but those standards from time to time need to be adjusted in accordance with the conditions that exist and that's a process of getting a variance from the standards and that's the function that you are doing so it isn't that you're getting completely off the reservation here, you're just making the kind of judgments that you need to make as members of the commission.

Vorhes added I think it's important that you point out that the owner is not creating the nonconformity in this. McKinney commented that would be a requirement that they not be. Lockhart commented that is one of the questions in the Findings of Fact.

Peterson said my only concern is are we setting a precedence here for future issues with more substandard lots coming in and we are violating everything here, we're moving one nonconforming structure into another position that is nonconforming in itself, the lot is sub-sized, the width is sub-sized, it's very difficult, there is nothing of size with this lot. Vorhes said there is no question that we are, but that was done way back when they allowed that lot to be created. Peterson said that's okay. Vorhes said then we say okay we have a trade-off. Do we want to have an idle lot or do we want that lot to be developed. Peterson said the intent of the Comprehensive Plan is to apply this stricter rule, so if we back off and apply the lessor, are we in compliance? Do we have a case here that we can state yes, we can move this through the Findings of Fact and firmly say yes to all the questions on our Findings of Fact? Peterson said these are very tough issues for me because I'm an advocate of land development and so when I come up against rules and regulations, they are hard. I've lost variance requests myself and I know how devastating it can be.

Pelkey agreed that there are nonconforming substandard lot, I'm not sure what created it, it would be really nice to turn the clock back and eliminate all those that exist, but the question is what do you want to do with them? My guess is that when the road was improved whenever it was that there may well have been a widening of that road making this lot even more, but it may not have been as big a deal when that house was first built, that is just conjecture, history, so it's up to you. Again, we knew accepting it that there was a yes or no answer and that's all we are asking for is a clear definition of yes or no.

**The Public Hearing was closed at 6:39 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 the 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.)**

1. *Does the applicant propose to use the property in a reasonable manner that is prohibited by an official control? YES.*
2. *Is the property owner's plight due to circumstances unique to this property, which were not created by the landowner? YES.*
3. *Can the variance be granted without upsetting the purpose and intent of the Zoning Ordinance? YES.*
4. *Is the variance consistent with the Comprehensive Plan? YES.*
5. *Can the variance be granted without altering the essential character of the surrounding area? YES.*

McKinney and the Commissioners agreed to attach the following conditions:

1. The new address of the property will be 208 Grove Avenue South.
2. A building permit is required prior to construction.
3. Require two parking spaces for vehicles.

**A motion was made by Vorhes, seconded by Tidrick, and unanimously carried to recommend to the City Council approval of a Variance request from Lakes Area Habitat for Humanity, 605 3<sup>rd</sup> St. E., for a 15 ft. front yard variance to allow a setback of 15 ft. where 30 ft. is required, to construct a 1,056 sq. ft. home, located in the R-2 Single, Two Family and Townhouse Residential District within the Shoreland Overlay District, PID#32.44.02600, with the following conditions:**

1. **The new address of the property will be 208 Grove Avenue South.**
2. **A building permit is required prior to construction.**
3. **Require two parking spaces for vehicles.**

Pelkey verified that this goes before the City Council on December 9<sup>th</sup> at 6:00 p.m. at this location. McKinney, Lockhart and commissioners responded yes.

**6. INFORMATIONAL/DISCUSSION:** McKinney gave a brief update on the replacement of the Planning position stating that we advertised and posted the required notice in the appropriate professional publications and the deadline was this past Friday at 4:30 p.m. McKinney reported we have 9 applications and the ad in the paper was pretty much the same as when the position was filled last time, one to two years of experience, appropriate degree and training and we would like to have it filled as soon as possible. Whoever we choose is on their own so if they haven't got any background it is going to make it a lot tougher on Lockhart because she is going to have to do their work as well as her own. We do have a process adopted whereby it has gone through department head staff management team who looked at the applications, two applications came in after the deadline so they were not considered. Of the seven applications, there are several that deserve a further look and the personnel committee of the City Council will meet tomorrow at 4:00 p.m. and that body will receive the report of the department heads staff and decide what they want to do. The report will recommend that they interview two or three, it depends on what they want to do. That process will then lead to a personal interview and from that the personnel committee would make a recommendation to the City Council. There is probably only one City Council Meeting in December so if appropriate we will call a Special Meeting of the City Council or the action will take place at the first meeting we hope. Most of the information about the job, location and pay has been disclosed to the applicants so we aren't anticipating any changes and based upon what the current income is of the people that have applied most of them would not be taking a cut in pay to come up here. McKinney also commented on when the decision is made, starting date would depend on whether the applicant needs to give notice, etc. We are fortunate that this is not a busy time, so unless you have some overwhelming urgency, I would suspect that December would be a good month not to have to put a lot of pressure on yourselves as we won't have a new Planner by then. McKinney added the difficulty we have is we are too big to be little and too little to be big and people that are starting out don't have the experience and the other thing is it's tough to find people who stayed in the business during the recession which made a void in the draft pool, so that's been an interesting observation for me.

**7. ADJOURNMENT:** A motion was made by Vorhes, seconded by Tidrick, and unanimously carried to adjourn the meeting at 6:54 p.m.

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Vice Chair Nels Peterson

ATTEST:

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Carmen L. Lockhart  
Planning Secretary