

ORIGINAL

June 1, 2016
Minutes of the Board of Appeals Meeting
Albert Lea, Minnesota

Vice Chairman David Klatt called the hearing to order on Wednesday, June 1, 2016 at 11:34 a.m. in the Multi-Purpose room #109 on the lower level of the City Center.

Board Members Present:

Craig Hoium
Douglas Conn- Chairman
David Klatt- Vice Chairman
Paul Stieler
Margaret Ehrhardt
Matt Maras
Larry Baker –Ex Officio

Absent Board Members:

Richard Sydnes-Abstain

Staff Present:

Molly Patterson-Lundgren, Planner
Rob Rice, Building Official
Jennifer Nelson, Office Assistant

Staff report prepared by Molly Patterson-Lundgren, Planner WSB & Associates, Inc. become part of these minutes by reference.

Appeal:

Jared Dawson and George Dress
Lots 3, 4, 5, 6 & 7 of Block 1 Summerdale 2nd Addition
(located on the cul-du-sac at the northern end of Hale Dr.)

Interested Parties:

Jared Dawson, 72056 255th St
Curtis Jensen, 1806 Hale Dr.

Background

The property was platted in 1999, which was a re-plat of a previous out lot and included this area which is adjacent to the wetland complex to the north. Within this wetland complex is a stream which is classified as protected water by the DNR and under the city shoreland standards. The shoreland standards apply to lands within 300 feet of an OHWL and the definition of OHWL and the definition of OHWL includes the delineated boundary of any wetlands associated with the protected water.

The underlying zoning district is R-1. Duplexes in the R-1 district require a Conditional Use Permit (CUP). An application for the CUP is scheduled for a review at the public hearing of the Planning Commission on June 7th. The duplexes are proposed to be constructed on what is an existing 3 plus platted lots (Lots 4, 5, 6 and a portion of lot 3, Block 10). The total area of the combined property is 56,034 square feet. Once foundations are set, the proposal is to split these properties so that each of the four dwelling units will sit on their own parcel of land and are attached on one side to the adjacent duplex. An administrative survey process is proposed to reconfigure the existing lots.

The portion of the area is also covered in floodplain. The elevation of 1220 has been determined to be the base flood elevation (1% or 100 year elevation). The proposed buildings would be outside of this, several feet higher than the 1220 elevation. Some backfill is proposed within the floodplain which will require additional review but does not require any variance.

Variance Requested

Jared Dawson and George Dress are requesting a variance to construct two duplexes on lots 3, 4, 5, 6, & 7 of Block 1 Summerdale 2nd Additions, located on the cul-du-sac at the northern end of Hale Drive. His proposal would require three variances including: lot width in a shoreland, front setback and setback from the ordinary high water level (OHWL). George Dress is the property owner and is a co-applicant on this request.

Findings

OHWL Setback

One of the two variances requested from the shoreland standards is the setback from the OHWL. This variance would apply to the east unit on the northeast side of the property. Setbacks from the OHWL for structures which are connected to public sewers along rivers and streams are required to be 50 feet. A corner of the structure in this area would not meet this requirement with the corner of the building coming as close as 32.58 feet (a variance of 17.42 feet).

Harmony with Official Controls & Comprehensive Plan

The Comprehensive Plan calls for this area to be residential. The Plan also identifies the need to protect the waters and wetlands of the community and points out the sense of identity these natural features provide to the community. The proposed development provides detailed plans for erosion control to protect the water quality of the wetland during construction.

Practical Difficulties

The configuration of the lots around the arched cul-du-sac and the curving of the stream and wetland create a tight configuration for a building envelope on lot 6. The Golf Course to the west further constrains how these lots were laid out and was developed in 1949 and

expanded in 1965 prior to the time when such resource protection elements were considered.

Character of the Locality

While the neighborhood was originally platted for single family detached homes, duplexes and other sing-family attached homes have been built there over the several past years. Lot six as platted would only allow for a building envelope which is 30 feet deep (a structure 30 foot deep front to back) in order to meet all required setbacks. This would require a residential structure which is configured with its long side to the street which would be out of character of the locality.

Lot Width

The lot width variance is also related to shoreland standards and would be for the west unit proposed to be constructed on lot 4 and a portion of lot 3. The required lot width for duplexes along rivers and streams where there is public sewer is 115 feet. The proposal is for a lot which will be 72.27 feet (a variance of 42.73 feet).

Harmony with Official Controls & Comprehensive Plan

The width of the proposed east lot is 127.15 feet, beyond the minimum 115 feet required. All lots (and portions) combined is an average of 99.71 feet wide for each duplex structure. Lot width for the underlying R-1 zone is 60 feet.

Practical Difficulties

Because of the tight configuration on the east lot, the proposal is to shift the structures westward. This creates the deficient lot width issue.

Character of the Locality

As mentioned previously, the proposed duplexes are consistent with the development patterns and architectural character of the existing neighborhood.

Front Setback

Under the R-1 zone, structures are required to meet a 25 foot setback from the front property boundary. The proposed eastern duplex structure would not meet this requirement. The proposal would place the structure just over 23 feet setback from the lot line (a variance of 1.86) feet).

Harmony with Official Controls & Comprehensive Plan

While the proposed would not meet the exact setback requirements, the amount of difference from what is required would likely be visually indiscernible.

Practical Difficulties

The proposed location moving the structure to the front of the lot creating this issue is the location of the 1% (100 year) floodplain boundary which has been determined as topographic elevation 1220. In order to keep the proposed structure out of the floodplain, the structure would be just under two feet closer to the front property line that what is required.

Character of the Locality

The difference in front setbacks between the two duplexes will likely be visually indiscernible and the proposed structures are of the same character as the rest in the neighborhood.

General Variance Issue Analysis

The stated purpose of the shoreland standards is to reduce the effects of overcrowding and overdevelopment, to prevent pollution of waters of the community, to minimize flood damages, to maintain property values, and to maintain natural characteristics of shorelands and adjacent water areas. Even with the issuance of the variances, these purposes can still be met due to other factors in the configuration of this and adjacent properties. Overcrowding and overdevelopment will not be created with the issuance of these variances due to the presence of the open golf course and the open space wetland area which is platted as Outlot A of the subdivision. The outlot is a separate parcel owned by the same owner as the property in question (George Dress) and is not developable. The wetland will therefore remain open space in perpetuity. With appropriate storm water management, the public waters and wetlands will be protected from the impact of development. The shoreland impact summary submitted which will be reviewed in more detail under the CUP for the project to ensure that it addresses these issues to prevent water pollution. The location of the eastern structure (and the reason for the requested front setback variance) is to avoid development of structures within the floodplain. The requested variances will allow the new units to be in harmony with the established character of the locality which will in turn help to maintain property values. The proposed development is of relative low intensity and will not have a negative impact on the natural characteristics of the protected waters/wetland.

As required in the shore land standards, the DNR local area hydrologist has been contacted and provided information regarding the requested variances and their comments on the variance request may be provided. These will be forwarded to the members of the BOA if comments are provided by the DNR. In addition to staff analysis provided above, the applicant has provided comments regarding the different standards for issuance of a variance.

Staff Recommendation

Based on the analysis above, staff is recommending approval of the requested variances allowing for the construction of the two duplexes as proposed in the application material submitted. Additional comments from the DNR or other appropriate agencies or the public may prompt the addition of or revisions to the conditions however, staff notes that the applicant has already addressed issues and potential concerns within the submission of their final application.

Public Hearing was opened at 11:35 a.m.

Jared Dawson advised he has been working with his development project the last 12 years which includes 49 units to this date. He indicated that George Dress (the property

owner) would have like to have seen six units on this proposed site, but due to the constraints of this lot they are going for four units.

Molly Patterson-Lundgren advised the constraints on this lot are two different sets of regulations which include the flood plain and the overlaying shoreland standards. For the Shoreland standards, the DNR issued flexibility in what the City of Albert Lea adopted as part of the zoning code. The Ordinary High Water Level (OHWL) is the boundary of public waters and wetland. The wetland has been delineated, so in this case the wetland boundary becomes the Ordinary High Water Level for the stream.

Matt Maras brought up his concern of the lot width requirement. Molly Patterson-Lundgren advised she was more concerned with the impervious surface requirement being met (which it is) than the requirements of lot width regarding jeopardizing pollution of the waters. This reasoning is part of why she is recommending approval.

Craig Hoiium asked how much fill will be required if any. Dawson advised he will use a skid loader to taper off. Dawson advised he should not need over 1,000 cubic yards of fill.

Molly Patterson-Lundgren also the City of Albert Lea Environmental Engineer, Phil Wacholz advised this would be negligible impact on this area.

The shoreland impact plan will be followed and will include a double silt fence for erosion control.

Craig Hoiium advised stormwater easement need takes up a lot of space?

Molly Patterson-Lundgren advised building the four units as quads at the same square footage as proposed but on the combined property would meet the lot width requirement. Molly explained that state law requires local governments to adopt shoreland standards which have been created by the DNR. The City adopts the standards and enforces them. Patterson-Lundgren notified the DNR May 16th as a requirement but hasn't heard any response. She advised there was also verbal conversation prior to May 16th.

Kurt Jensen commented regulations are set up for a purpose and should be adhered to, he advised he used to do survey work and that's all he had to say.

Larry Baker brought up how this would affect insurance rates for these properties. The 1220 elevation has been determined to be the base flood elevation or 100-year elevation. The buildings will be 8 ½ feet higher making the proposed elevation 1228.5. One foot above the 1220 elevation should be insurable. David Klatt advised flood insurance is probably required unless paying cash. This could trigger additional FEMA requirements.

When asked about basement elevations and potential walkouts, Jared indicated that these buildings will be slab on grade.

Margaret Ehrhardt asked if a constructing a berm would be helpful to lower insurance cost or flood risk. Molly Patterson-Lundgren informed that it is possible to do flood proofing with structures such as a berm or a wall and then go through FEMA to have the property deemed as no longer in flood plain. This requires a formal map amendment but would not be necessary or the best approach in this case. This same type of activity could also occur by building on fill. In this case the applicant is building the structure outside of (at a higher elevation) than the flood elevation.

Public Hearing closed at 12:04 p.m.

Discussion

Paul Stieler made a motion to recommend to the City Council approval of the variances as requested for the development of two duplex structures (including 4 units) allowing for:

- *Setback from OHWL of 17.42 feet,*
- *Lot width of 42.73 feet, and*
- *Front setback of 1.86 feet.*

With the conditions that

1. *The CUP is approved by Planning Commission and City Council,*
2. *DNR Submits a letter of approval (email is sufficient),*
3. *As long as site plan is followed as detailed in the application.*

Based on the following findings of fact:

4. *The proposed residential use fits with the comprehensive plan and the proposed design and mitigation features will help to protect the quality of the natural environment which is identified as a significant element in the City of Albert Lea.*
5. *The configuration of the platted street, protected waters & wetlands, floodplain boundary and previously developed adjacent parcels creates a situation of practical difficulties for the applicant to develop and use their property in a reasonable manner as permitted by official controls,*
6. *Some of this development was completed prior to or early in the adoption of shoreland standards, was approved by state or local government at the time of platting and is not due to actions of the property owner,*
7. *The proposed duplexes will continue with the existing character of the locality.*

The motion was seconded by Matt Maras based on the above findings. Motion was approved on a 5-0 voice vote, with Commissioner Doug Conn abstaining from the vote.

Appeal

David and Tamara Jepson
21362 775th Ave (located behind trails west of 777th Ave)

Interested Parties:

None

Background

The Jepson's would like to construct a 24x30 detached shed on their property for personal storage. They already have a detached garage which is over 1,000 square feet as well as a small (approximately 250 sq. ft.) garden shed. Their property is located on the east side of I35 north of Loves Travel. It is shown at 4.8 acres on the County web site and is zoned R-1. According to their application, the family has lived on the property for 16 years. It was annexed into the City in 2004.

Variance Requested

Dave and Tamra Jepson of 21362 775th Avenue are requesting a variance to allow them to have more than 900 square feet aggregate of accessory structures as required in Sec. 74-13 (b)(1)a of the Zoning Ordinance.

Analysis

It is the role of the board of appeals "to hear and recommend to the city council the issuance of variances from the requirements of any official control". Variances shall only be permitted when they:

- Are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan
- Present "Practical Difficulties." As used in connection with the granting of a variance, this means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner.
- Will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of appeals may recommend and the city council may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

The 900 square foot maximum aggregate area allowed for accessory structures applies to residential zoning districts only but applies evenly across all residential areas and is not dependent or related to the size of the parcel.

Findings

Harmony with Official Controls & Comprehensive Plan

While long term plans call for land use in the area to meet the interchange land use district intentions, there is no time line for such action. The minimum size lot allowed in the R-1 district is 7,200 square feet. In the case of the Jepson's their property is 4 xs larger than this minimum. Equating the maximum coverage to lot size to accessory size as a ratio, a lot of the applicant's size would allow for over 3,000 square feet of accessory dwelling. This factor along with the applicant's proposal to meet the maximum size of structure allowed of 24x30 along with maintaining any setback requirements indicated that the proposal is in harmony with land use and other official controls.

Practical Difficulties

Given the size of the property and the rural nature of the neighborhood, it would seem that what the owner proposes for the property is reasonable but simply not permitted by an official control; the plight of the landowner is due to circumstances surrounding the annexation of the property into City limits which was not created by the landowner.

Character of the Locality

The neighborhood is removed from the main part of the City, separated by the freeway. With the large lots and remote sense the additional accessory structures are not likely to be noticed and fit into the current character of the locale.

Staff Recommendation:

Based on the analysis above, staff is recommending approval of the requested variances allowing for the construction of more than 900 square feet of accessory structures on this one property, for up to one additional structure at 720 square feet (the 24x30 size indicated in the application).

Public Hearing was opened at 12:10 p.m.

Molly Patterson-Lundgren pointed out this property is located in a fairly rural part of the city.

Doug Conn remembers when Loves was built and stated no one was happy about being annexed.

Dave Klatt brought up the concern of the owner could possibly split the lot in the future to sell.

Craig Hoium asked if a deed restriction will be placed on the property.

Craig Hoium questioned if the current land use and zoning corresponds with the comprehensive plan. He advised the land north of the Holiday Inn was planned as an industrial park.

Rob Rice advised the proposed plan meets building code for wind loads and strapping. The structure will have more of the appearance of a shed than a carport.

Rob Rice and Molly Patterson-Lundgren advised applicant never brought up the use of the shed as an animal shelter. Rob Rice advised the shed would be used for seasonal items, daycare equipment and personal storage. City code further regulates the keeping of farm animals within the city as well.

Paul Stieler asked if the location of the storage shed should be tied in with the motion. Rob Rice advised the structure would still be required to follow current setbacks.

Public Hearing was closed at 12:20 p.m.

Douglas Conn made a motion to recommend to the City Council approval of the variance allowing for more than 900 square feet aggregate of accessory structures at 21362 775th Avenue based on the following findings of fact:

1. *The proposed residential use fits with the comprehensive plan and official controls. While long term land use planning calls for interchange related commercial activity, in the more short term the current residential use and R1 zoning are anticipated to remain.*
2. *The property owners purchased the property and a few years prior to it being annexed into the city to provide space for a development near to this parcel which did not come to fruition.*
3. *The character of the locale continues to be rural in nature with neighbors having additional and larger size accessory structures similar to what is requested here. This essential character is anticipated to continue into the foreseeable future.*

The motion was seconded by Matt Maras based on the above findings. Motion was approved on a 6-0 voice vote.

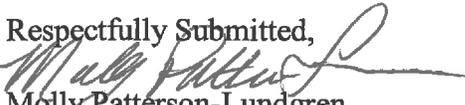
Staff Communications

Staff wanted to advise the BOA members a variance request was submitted for 503 Park Ave and a meeting will be scheduled for July 6th or July 13th, 2016 at 11:30 a.m. Staff will send out a notice.

Adjournment

David Klatt made a motion to adjourn which was seconded by Matt Maras; motion passed unanimously. The meeting adjourned at 12:25 p.m.

Respectfully Submitted,


Molly Patterson-Lundgren
City Planner