

**EAST GRAND FORKS  
REGULAR  
PLANNING COMMISSION MINUTES  
Thursday, November 10, 2016 – 12:00 Noon  
East Grand Forks City Council Chambers**

**CALL TO ORDER**

Chairman Mike Powers called the November 10, 2016, meeting of the East Grand Forks Planning Commission to order at 12:05 p.m.

**CALL OF ROLL**

On a Call of Roll the following members were present: Chairman Mike Powers Commissioners Gary Christianson, Randy Boushey, Marc DeMers, Chad Erickson and Kevin Marcott

Absent: Commissioner Niel McWalter

Guest(s) present: Dan Boyce and Keith Mykleseth, Water & Light; Paul Gorte, Economic Development Director; Roger Scheving and Beau Scheving.

Staff present: Nancy Ellis, East Grand Forks City Planner; Brenda Ault, Executive Assistant, David Murphy, City Administrator and Ron Galstad, City Attorney.

**DETERMINATION OF A QUORUM**

A quorum was present.

**COMMUNICATION**

CP Ellis reminded the Commission that Niel McWalter had moved and resigned his position with the Planning & Zoning Board. She is searching for someone qualified to be appointed in January to replace him. She also stated that someone who had recently moved into the area from Granite Falls had stopped by the office. He served on the Planning Commission there and is interested in serving on the Commission here. She will be in contact with him.

**APPROVAL OF THE MINUTES OF THE October 13, 2016, REGULAR MEETING:**

A Motion was made by Commissioner Boushey, Seconded by Commissioner Marcott approve the minutes from the October 13, 2016 Regular Meeting. M/S/P- Boushey, Marcott; 6-0, mc.

## **OLD BUSINESS**

None

## **NEW BUSINESS**

### **PUBLIC HEARING: Matter of Consideration to Approve a Variance for Beau and Kristen Scheving for Lot 14, Block 2 Garden Valley Addition to reduce the front yard setback to less than 30 feet for a porch on the front of their duplex.**

A Motion was made by Commissioner Christianson, was seconded by Commissioner Erickson to open to a Public Hearing. M/S/P- Christianson, Erickson; 6-0, mc.

CP Ellis informed the Commissioners that this was old business; but because of a discrepancy in mailing the City Council had sent the issue back to the Commission to rehear the matter.

President Powers invited the applicants to speak to the group. Roger Scheving addressed the Commissioners. He stated that he had went to get a building permit to take an old porch off the front and replace it on a duplex that needs a lot of work. He also had added a 2<sup>nd</sup> door to the front, replaced windows and was doing some shingling. When he went in for the permit, he was denied. He asked for a variance and she would not give him a variance. So he went to talk to Ron Galstad, the City Attorney who told him CP Ellis would be contacting him. When she didn't contact him, he started the project. A few days later a couple guys came to the site and informed him that he needed a permit. He has talked to his neighbors and none of them have a problem with it. He also stated that if Ron Galstad hadn't called him and told him the issue was going to the City Council that evening he wouldn't have known about it. He did not receive any notice of the hearing.

Commissioner Boushey stated that to be fair to CP Ellis; she does not have the authority to issue a variance; it would need to come from the Planning Commission and then be approved by the City Council.

Commissioner Christianson stated that he should have known he couldn't move forward without a permit.

CP Ellis stated that the notice was sent to Beau and Kristen Scheving because the City policy is to send it to whomever Polk County has listed as the tax payers on the property. She also clarified that Roger Scheving had come in for another permit in April

and that was granted with no issues. The problem arose when he had a porch listed on the permit application. A porch is something with a roof and he does not have enough setback room to accommodate a porch. The other items on the application; windows, doors, shingles would have been granted a permit. And to address the issue he has that he wasn't given a variance or the application; it is on the city website and available at any time.

A Motion was made by Commissioner Christianson, was seconded by Commissioner Boushey to close the Public Hearing. M/S/P- Christianson, Boushey; 6-0, mc.

Commissioner Boushey stated that Mr. Scheving should have gone through the proper channels. The permit for the windows, doors and other projects would have been issued without the porch on the application. The roof on the porch should not have been done without the permit.

CA Galstad informed the Commissioners that the statute outlines the process for a variance. This is based on City Code Section 152.079 (D) (1) which requires a 30-foot front yard building setback. Based upon case law; the variances must satisfy all three of the analysis required by the state. When Mr. Scheving came to see him, he referred him to CP Ellis and then drove out to look at the property. He then wrote him a letter to outline the process and notified him when the issue was to go to the City Council.

Commissioner Boushey stated that CP Ellis had done the steps correctly, the application was not approved; so what are the steps to be taken now? He doesn't want people to not want to move to East Grand Forks and would like to be reasonable with variance applications.

CA Galstad stated that the Commissioner's could impose a fine, deny the variance application and then if the City Council did not override the issue; Mr. Scheving could take the issue to district court. And as far as the neighbor's approving that does usually not sway the State's position if the points aren't met.

City Administrator Murphy informed the Commissioner's that this type of situation had come up in the city he had worked for before he came to East Grand Forks, so he has had experience with this issue. He would like some things taken down for the record.

1. Mr. Scheving did not take the proper steps. A letter was sent to Beau & Kristin Scheving because they are the registered property owners with Polk County.
2. The City did not receive the notice back, so it was delivered.
3. CP Ellis had listed the requirements for a variance and in his experience if those requirements are not met, the State does not grant the variance.

CP Ellis stated that for the record; small roofs over the doorway would be allowed. But once that full roof was attached to the house it made in non-conforming. A deck for a walkway would be allowed without the roof.

Commissioner Christianson stated that he has a real problem with people not following the proper steps and then asking for forgiveness, rather than permission. He would recommend denying this application.

Commissioner Demers stated that it is important to accommodate the citizens and to be reasonable when possible, but neighborhood ascetics shouldn't apply. The purpose of ordinances is to allow for fairness with its entirety. There could be ramifications to future decisions if they approve this one. The reason for variances in the past is highly subjective; so the benefit of this group is to walk through the steps in an open hearing. He would like CP Ellis to go through the analysis for the group.

CP Ellis stated that the Planning Commission should make its recommendation based on the following three factors test for the "practical difficulties" legal standpoint.

The first factor is that the property owner proposed to use the property in a reasonable manner. Staff Comment; the use is reasonable for the zoning of the property and the size and shape of the property. The request to vary from the front setback is not reasonable in that if they were told that they could have a small landing and stairs to each driveway but no roof when they came in and applied for the permit. They continued to build without a permit.

The second factor is that the landowner's problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property. Staff Comment; there are no conditions unique to the property for which the variance is sought. Their unfamiliarity with code requirements is not unique to the land.

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place or otherwise inconsistent with the surrounding area. Staff Comment; This building and request will not alter the character of the area and the structure will fit in with surrounding uses. It will not be out of scale or out of place.

Other items to consider are;

1. Is the variance in harmony with the purposes and intent of the ordinance? No, the intent of the Ordinance is to keep all structures setback a minimum distance from the front lot lines so as to maintain a consistent look and feel. With other options available to the applicants that would not require a variance. The request does not meet the criteria.
2. Is the variance consistent with the comprehensive plan? Yes, the variance does not change the current use of the property, and as such, is consistent with the Comp Plan.

3. Does the proposal put the property to use in a reasonable manner? Yes, the use is reasonable.
4. Are there unique circumstances to the property not created by the landowner? No.
5. Will the variance, if granted, meet the practical difficulties test as opposed to a mere inconvenience? No, neither the physical surroundings, nor shape of topographical conditions of the parcel present a practical difficulty to following city code. Removing the roof on this project is an inconvenience and not a practical difficulty.

Staff recommendation is to deny this variance to reduce the 30-foot rear yard setback for a roofed landing/stairway. A building permit can be issued without the porch/roof.

A Motion was made by Commissioner Christianson, was seconded by Commissioner Demers to deny the variance request. M/S/P- Christianson, Demers; Roll Call Vote; Erickson N, Christianson Y, Boushey N, Demers Y, Marcott Y, Powers Y; 4-2; mc.

This item will be on the Agenda for the City Council Meeting, November 15<sup>th</sup> at 5:00pm.

**PUBLIC HEARING: Matter of Consideration to Approve a Variance for the City of East Grand Forks to allow for residential access for 5 properties located on the north side of 23<sup>rd</sup> St NW on a Medium Priority Roadway**

A Motion was made by Commissioner Christianson, was seconded by Commissioner Erickson to open to a Public Hearing. M/S/P- Christianson, Erickson; 6-0, mc.

Commissioner Christianson inquired who had instituted the variance request; because he has a real problem with the City making those changes to get State funds to fix the road and then to come back and request a variance.

A Motion was made by Commissioner Demers, was seconded by Commissioner Christianson to close the Public Hearing. M/S/P- Demers, Christianson; 6-0, mc.

CP Ellis informed the Commissioners that the property was platted in 2004 with the easements shown on the plat in the packet. The reason for the variance is due to the reconstruction of one mile of 23<sup>rd</sup> St NW, from River Road to Trunk Highway 220. The existing roadway was a rural section, with a ditch on the north and south sides of the road. The past construction made the roadway an urban section with concrete curb and gutter.

In October of 2007, the classification of this street section changed from a low priority street which allows street intersections be at least 660' apart with no residential accesses to a medium priority street. This results in a 660 foot requirement for spacing of intersections and driveways. The City is requesting a variance of access spacing for

driveways that were platted on the original Waters Edge 1<sup>st</sup> Addition Plat. However, the lots have not been developed and the driveways were not installed when the street was reconstructed into an urban road.

EDD Gorte stated that that without access to those lots, there would be no sale. He would have to discuss with the City Council at that point how to replenish those funds to other EDA programs; such as the \$5000 incentive grant, the two year tax abatements, etc. The assessments on those lots would have to be paid as well.

Commissioner Christianson inquired who actually was asking and who owns the lots. If it was the City they should have been aware that no access to those 5 lots may cause a problem. EDD Gorte stated the property is owned by the City and managed by the Economic Development Authority.

President Powers invited Dan Boyce, Water & Light Superintendent, to speak to the group. Boyce stated that they would have a high cost to install water and sewer to those homes because they would have to cross the gas lines. This would be at a cost to the Light and Water Department which they would pass on to those property owners.

CP Ellis stated that she is recommending approval of this variance.

Commissioner Demers stated that things change. The lots were platted with one set of rules and they now conform to the 2<sup>nd</sup> set of rules. We have an access management plan in place for a reason.

Commissioner Erickson stated that they were already platted and questioned whether they would be grandfathered in; he would like to follow the process followed with other properties like this situation.

CP Ellis stated that state funds were used and the road can't change back to a low access road, so they would also need a variance to access the lots.

Keith Mykleseth, Water & Light stated that he wanted to be clear so he understands the process. What obligation would you have for people who purchase those lots and expenses encountered when the construction begins?

EDD Gorte stated that they would have something recorded about the extra ordinary costs involved in developing those lots.

A Motion was made by Commissioner Boushey, was seconded by Commissioner Erickson to approve the recommendations by CP Ellis as stated above. M/S/P- Boushey, Erickson; Roll Call Vote; Erickson Y, Christianson N, Boushey Y, Demers N, Marcott Y, Powers Y; 4-2; mc.

EAST GRAND FORKS  
PLANNING COMMISSION MEETING  
THURSDAY, November 10, 2016

**ADJOURNMENT**

A Motion was made by Commissioner Marcott to adjourn the meeting, was seconded by Commissioner Erickson; meeting adjourned at 1:20pm.

Respectfully submitted by,

Brenda Ault  
Executive Assistant