

**PLANNING COMMISSION**  
Wednesday, June 19, 2019

**#1 Call to Order**

Planning Commission Chair Gorham called the meeting of the Brainerd Planning Commission to order at 6:00 p.m. in the City Hall Council Chambers.

Noted present were Commissioners Gorham, Burslie, Duval, Woodward and Foley; and Council Liaison Lambert. Community Development Director Chanski and Collin Mieras, Planning Intern were also noted as present. Commissioner Marohn joined the meeting at 8:50 p.m.

Commission Chair Gorham welcomed the two new members to the Commission; Theresa Woodward and Christopher Foley.

**#2 Approval/Amendment of Agenda**

MOTION AND SECONDED BY COMMISSIONERS LAMBERT AND DUVAL, DULY CARRIED, TO APPROVE THE AGENDA.

**#3 Approval of Minutes**

MOTION AND SECONDED BY COMMISSIONERS DUVAL AND LAMBERT, DULY CARRIED, TO APPROVE THE MINUTES OF THE REGULAR MEETING HELD MAY 15, 2019.

**#4 New Business**

**4a. Conditional Use Permit – 1002 Laurel Street – To Operate a Daycare**

Community Development Director Chanski explained in a B-3 Central Business District the purpose of operating a daycare is a conditional use. He indicated the Findings of Fact are as follows:

1. *The operation of a school on the aforementioned property is considered a conditional use per [Section 515-62-6.F](#) of the Code of Ordinances.*
2. *The proposed day care facility meets the following criteria as required by the [Section 515-29 Commercial Day Care Facilities](#):*
  - a. *Lot requirements and Setbacks*
    - i. *Minimum lot area, width, setback, and height requirements are not applicable in a B-3 (Central Business) District per Section 515-62-7.*
  - b. *Sewer and Water*
    - i. *The proposed building is connected to municipal sewer and water and has adequate private sewer and water to protect the health and safety of all persons who occupy the facility.*
  - c. *Screening*
    - i. *The proposed location has a fence and additional natural screen along the south side of the property, a fence along the west side of the property, and the applicant will be constructing a fence to enclose a play area along the east side of the property.*
  - d. *Parking*



Commissioner Burslie asked the petitioner about the number of parking spaces the petitioner is requesting. Ms. Blood responded they are going to potentially have 16 staff members and will need the spaces indicated.

Community Development Director Chanski explained the off-street parking requirements.

Commissioners asked questions which were answered by the petitioner.

The Chair closed the public hearing at 6:11 p.m.

MOTION AND SECONDED BY COMMISSIONERS LAMBERT AND BURSLIE, DULY CARRIED, TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT AT 1002 LAUREL STREET CONTINGENT UPON AN APPROVED PARKING SURFACE WITH A STATEMENT OF AGREEMENT FROM THE ADJOINING PROPERTY OWNER FOR A SHARED PARKING LOT.

**4b. Variance Request – 1002 Laurel Street – To Allow Parking on an Unimproved Surface**

Community Development Director Chanski indicated this variance is in partnership with the Conditional Use Permit previously approved. He explained a variance is required in order to approve parking on an unpaved surface for the staff of the daycare being developed.

*Findings of Fact*

1. *Section 515-7-2, Subdivision 3A – Variances shall only be permitted:*
  - a. *When they are in harmony with the general purposes and intent of the ordinance*
    - i. *The purpose of a B-3 (Central Business) District is to encourage the continuation of viable, traditional downtown area by allowing retail, service, office, and entertainment facilities and public and semi-public uses as well as the allowance of second-story dwelling units located above such uses.*
  - b. *When the variances are consistent with the Comprehensive Plan*
    - i. *The current Comprehensive Plan and updated Comprehensive Plan in development support the reenergizing of the downtown corridor.*
2. *Section 515-7-2, Subdivision 3B & Subdivision 4 – Variances may be granted when the applicant for the variances establishes that there are practical difficulties in complying with the Zoning Ordinance.*
  - a. *The property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance.*
    - i. *The proposed day care facility is a conditional use within a B-3 District.*
  - b. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*
    - i. *While all off-street parking requirements are exempt in a B-3 District, it is staff's opinion that it is in the best interest of the community to require off-street parking for, at a minimum, the facility's employees as they will have 16 employees present at all times.*
  - c. *The variance, if granted, will not alter the essential character of the locality.*
    - i. *The building for the proposed day care facility is an existing structure. The proposed parking area is also already present.*

The Chair opened the public hearing at 6:23 p.m.

The Chair recognized Mr. Greg Grandahl, 12581 Little Pine Rd SW, Brainerd and is part owner of 1014 Laurel Street, who would be in a contract with the petitioner for shared parking.

Ms. Denise Blood stated the allowance of the five years to complete paving is financially based.

The Chair closed the public hearing at 6:27 p.m.

Commission discussion took place.

MOTION AND SECONDED BY COMMISSIONERS BURSLIE AND LAMBERT, DULY CARRIED, TO RECOMMEND DENIAL OF THE VARIANCE BASED ON THE FINDINGS OF FACT AND FINANCIAL CONSIDERATIONS ALONE DO NOT CONSTITUTE PRACTICAL DIFFICULTY WITH THE UNDERSTANDING THAT THEY CAN SHARE PARKING WITH THE ADJACENT PROPERTY OWNER THAT DOES NOT NEED TO BE IMPROVED AS IT IS A PRE-EXISTING USE.

**4c. Variance Request – 501 3<sup>rd</sup> Ave. NE – Nonconforming Duplex as a Rental**

Community Development Director Chanski explained the property was recently purchased with the intent to use the duplex as a rental. It was discovered the property was never registered with the City as a rental by the previous owner, thus establishing it as a nonconforming residential use.

Findings of Fact

1. Section 515-7-2, Subdivision 3A – Variances shall only be permitted:
  - a. *When they are in harmony with the general purposes and intent of the ordinance*
    - i. *The purpose of an R-1 (Single Family Residential) District is to allow and preserve areas in the City of quiet neighborhoods of one-and two-family homes, free from other uses except those which are compatible with residents of such a district.*
  - b. *When the variances are consistent with the Comprehensive Plan*
    - i. *The current Comprehensive Plan and updated Comprehensive Plan in development support maintaining of the historical integrity of the neighborhoods within the City of Brainerd.*
2. Section 515-7-2, Subdivision 3B & Subdivision 4 – Variances may be granted when the applicant for the variances establishes that there are practical difficulties in complying with the Zoning Ordinance.
  - a. *The property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance.*
    - i. *The proposed duplex is an existing home within the North East neighborhood. The home has been used as a rental, but never registered as one with the City of Brainerd.*
  - b. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*
    - i. *The owners purchased the property under the assumption that they could use the property as a multi-family rental as the previous owner did. However, as the previous owner never officially registered the property with the City, the property is considered illegal nonconforming.*
  - c. *The variance, if granted, will not alter the essential character of the locality.*

- i. *The property is an existing home constructed in 1917 and has been previously used as a rental duplex. The current owners are not proposing any kind of expansion to the use except for that which it was previously used.*
- 3. *The Housing Inspector has inspected the property, and it does conform to the Property Maintenance Code and the Rental Housing Code.*
- 4. *A rental license has been issued for the property's lower unit.*

Community Development Director Chanski received an email from the previous City Planner, Mark Ostgarden on Tuesday which stated many of these same situations have been brought forth and staff and legal counsel agreed a variance is not an option. Mr. Chanski reached out to the City attorney but did not yet receive a response in time for the meeting.

Commissioners discussed.

MOTION AND SECONDED BY COMMISSIONERS BURLIE AND LAMBERT, DULY CARRIED, TO RECOMMEND THE APPLICANT WITHDRAW THE VARIANCE REQUEST BASED ON THE PROPERTY HAS NOT BEEN REGISTERED IN THE PAST AS A RENTAL PROPERTY AND SECTION 515-15.6.B DOES NOT APPLY. THE PROPERTY OWNER HAS FORMALLY REQUESTED TO WITHDRAW THE VARIANCE AND COMMUNITY DEVELOPMENT DIRECTOR CHANSKI WILL ISSUE A VARIANCE FEE REFUND AND THE APPLICANT WILL COMPLETE A RENTAL LICENSE APPLICATION FOR THE SECOND UNIT.

**4d. Rezoning Request – 215 N. 3<sup>rd</sup> St. – From a B-1 (Residential Office) District to an R-2 (Medium Density Residential) District**

Community Development Director Chanski explained the petitioner has requested a rezoning in order to better serve the property as the main residence and business office of the applicant, to be able to construct a larger accessory structure and to allow a second-floor residential rental unit.

Findings of Fact

1. Per Section 515-60-1 of the Code of Ordinances, the purpose and intent of a B-1 District is to allow single family uses and office space uses. Additionally, “This district serves as a transitional district between residential neighborhoods and commercial uses in areas where redevelopment is anticipated. The district includes uses that will not disrupt nearby, low-density land uses through high traffic generation, noise, or other nuisances.”
  - a. It is staff’s opinion that, while single family dwellings and office spaces are permitted uses within a B-1 District, a property containing an owner-occupied unit with a home business and a rental unit does not fit well.
2. Per Section 515-56-1 of the Code of Ordinances, the purpose and intent of an R-2 District is to “provide for low to medium density housing through the mixture of one- and two-unit dwellings and medium density multiple family dwellings as well as directly related complementary uses.”
  - a. In R-2 Districts, multiple family dwellings containing 4 units or less are permitted uses and home businesses are accessory uses. As such, it is staff’s opinion that the use of this structure as an owner-occupied dwelling with a home business and additional residential rental space is much more suitable in an R-2 District.
3. As noted throughout various Planning Commission discussions including that of the Thrifty White CUP process and through the walking tours of Kingwood Street recently conducted by Commissioner Marohn, it is the opinion of the Kingwood area neighborhood that residential uses should be the primarily uses within the area and commercial uses should only be permitted if they are low impact and conform in shape and manner to the neighborhood.

- a. *The property seems to be initially designed as a single-family home.*
  - b. *The home business use is as a financial advisor.*
  - c. *The rezoning of the property would reduce the likelihood of more intense commercial uses being conducted on the property in the future.*
4. *If the property is rezoned as an R-2 District, the property will be considered legal nonconforming to the lot coverage requirement for residential uses within an R-2 District.*
- a. *Section 515-56-10 state that impervious surface lot coverage for residential uses in an R-2 District shall not exceed 60 percent of the total lot area.*
  - b. *The impervious surface lot coverage of this property is approximately 61%.*

The Chair opened the public hearing at 7:07 p.m.

The Chair recognized Ms. Julie Dillion, owner of 215 N 3<sup>rd</sup> Street and Agate Homes, who explained she recently purchased the property and would like to remove the existing pavement as it is in very poor condition. She stated she would like to construct a garage, repave a smaller area and install a privacy fence in various areas.

The Chair closed the public hearing at 7:15 p.m.

MOTION AND SECONDED BY COMMISSIONERS LAMBERT AND WOODWARD TO RECOMMEND APPROVAL OF THE REZONING OF 215 N 3<sup>RD</sup> ST FROM A B-1 RESIDENTIAL OFFICE DISTRICT TO AN R-2 MEDIUM DENSITY RESIDENTIAL DISTRICT.

Members Lambert, Duval, Gorham, Woodward and Foley voted “aye”. Member Burslie voted “nay”. The Chair declared the motion carried.

**#5 Public Forum**

The Chair opened public forum at 7:21 p.m.

No one came forward.

The Chair closed the public forum at 7:21 p.m.

**#6 Old Business**

**6a. Comprehensive Plan Update**

The Chair welcomed Ms. Ashley Kaisershot and Mr. Jake Huebsch, the Sourcewell Planning Team who thanked the Commission for the opportunity to present and also wanted to acknowledge Region Five for their work on the project. Mr. Huebsch and Ms. Kaisershot gave an update of the progress and timeline for the Comprehensive Plan. Ms. Kaisershot stated there will be a 30 day open public comment period coming up in July, with a draft being brought forward to the Planning Commission in August. She said the final version will be ready for the Planning Commission to hold a public hearing and to make a recommendation to Council in September for adoption in October. The Chair thanked them for the update.

**6b. Nonconforming Rentals**

Community Development Director Chanski explained there is a concern throughout Brainerd with duplex’ and multi-family structures that have rental units that the licensing has

lapsed for more than 365 days. He said many of these duplex' and multi-family rentals are in single-family residential districts, which are considered legal nonconforming as long as they existed prior to the zoning designation and remain registered with the City. He stated that staff does well at locating and questioning properties that may be rentals that are not licensed.

Commissioners discussed the concerns and available options.

Community Development Director Chanski would like to get to the policy level and possibly suggest changes for the City Council to consider.

Commissioner Duval requested Community Development Director Chanski provide a list of suggested solutions for the Commission to consider and work on.

**6c. Nonconformance Discussion – 701 7<sup>th</sup> St. NW**

Community Development Director Chanski explained the details of a previous meeting that resulted in a denial of the variance that was requested for this property.

Commissioner Lambert indicated since this property has been used as residential property for many years, she inquired about the possibility of rezoning this property back to a residential district. She stated this would allow the owner to improve the property as requested.

Commission discussion took place.

MOTION AND SECONDED BY COMMISSIONERS BURSLIE AND DUVAL, DULY CARRIED, TO DIRECT COMMUNITY DEVELOPMENT DIRECTOR CHANSKI TO CONTACT THE PROPERTY OWNER AT 701 7<sup>TH</sup> STREET NW TO INQUIRE IF THEY ARE INTERESTED IN PURSUING A REZONING OF THE PROPERTY TO A RESIDENTIAL DISTRICT.

**6d. Kingwood Walking Tour Recap**

MOTION AND SECONDED BY COMMISSIONERS DUVAL AND LAMBERT, DULY CARRIED, TO TABLE THIS TOPIC UNTIL THE JULY MEETING.

**6e. Zoning Ordinance Review Subcommittee Report**

Community Development Director Chanski explained the results of the first subcommittee meeting that met regarding the use of a zoning ordinance matrix in the code. He stated the subcommittee combined uses into categories, which is provided in the packet.

MOTION AND SECONDED BY COMMISSIONERS MAROHN AND LAMBERT, DULY CARRIED, TO DIRECT STAFF TO UPDATE THE COUNCIL OF THE DIRECTION THE SUBCOMMITTEE IS GOING.

**6f. Continuation of Lighting Standards Discussion**

Community Development Director Chanski explained with the most recent Conditional Use Permit applications, lighting standards have become a concern. He stated the City Council indicated if the Planning Commission feels that the ordinance is inadequate, the Commission should address the standards through ordinance changes.

Commissioner Duval suggested different lighting standards for each defined district. Commission discussion took place.

MOTION AND SECONDED BY COMMISSIONERS MAROHN AND WOODWARD, DULY CARRIED, TO DIRECT STAFF TO RETURN TO THE PLANNING COMMISSION IN JULY WITH EXAMPLES OF POSSIBLE ORDINANCE SOLUTIONS.

**#7 Commissioner's Questions/Comments**

Commissioner Marohn made a statement that the Planning Commission has power, authority and responsibility regarding applications that indicate the need for excessive parking, lighting requirements not being met and the costs of required lighting. He said it is important for the Commission to feel empowered to get all the facts and take the time to evaluate each application without the feeling of time constraints to make a hasty decision. He indicated the streamlined process of reviewing applications that is currently in place is not allowing the Commission to complete the research and fact gathering. His suggestion would be a 30-day process of research and review prior to a meeting.

Commissioner Gorham stated if a pre-meeting takes place, this is in violation of open meeting laws. He also indicated the Commission members would have to become full time planning commissioners and this would put a huge burden on everyone. He stated he has faith in City staff to do the reviewing and research for the Planning Commission meetings that take place once per month.

**#8 Community Development Director's Report**

Community Development Director Chanski updated the Commission of past topics that have been reviewed by Council.

- The high school lighting was approved at a 23' height, which was approved for all the high school property.
- Council directed staff to work with the school district regarding the landscaping plans.
- The variance for the school district's performing arts center was approved.
- The rezoning of the water treatment plant was denied at the June 3<sup>rd</sup> meeting. BPU requested reconsideration and spoke at the June 17<sup>th</sup> meeting. The first reading for the rezoning passed.

**#9 Adjourn**

The Chair adjourned at 9:40 p.m.

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Planning Commission Chair