

PLANNING AND ZONING COMMISSION
October 7, 2019

The City of Jackson Planning and Zoning Commission met in regular session in the Council Chambers of the Jackson City Hall at 5:15 p.m. on October 7, 2019 with the following Commission members present: Tim Beck, Bob Dorschner, Nathan Peterson and City Zoning Administrator/Recording Secretary Dave Maschoff. Also attending was City Administrator Matt Skaret, Jeff Broitzman and Jay Moore of New Fashion Pork. (Planning Commission members Chairman Randy Ringquist, Dennis Hample, Dave Lappe and Donnie Schoenrock were absent.) (A quorum of the Planning Commission was not present.)

CALL THE MEETING TO ORDER

In the absence of Chairman Randy Ringquist, City Zoning Administrator Dave Maschoff called the October 7th meeting of the Planning and Zoning Commission to order.

APPROVE THE MINUTES FROM THE SEPTEMBER 9, 2019 PLANNING AND ZONING COMMISSION MEETING

Due to a lack of a quorum, no action was taken regarding approval of the September 9, 2019 Planning and Zoning Commission minutes.

PUBLIC HEARING ON THE VARIANCE APPLICATION OF NEW FASHION PORK OF JACKSON, MINNESOTA. IN THE VARIANCE APPLICATION, NEW FASHION PORK PROPOSES TO CONSTRUCT A 120' BY 80' BY 18' COLD STORAGE SHED FOR MATERIALS AND EQUIPMENT ON THEIR PROPERTY LOCATED AT 138 INDUSTRIAL PARKWAY IN JACKSON. THE VARIANCE APPLICATION SEEKS TO LOCATE THE SOUTHEAST CORNER OF THE BUILDING AT 7 FEET AND THE SOUTHWEST CORNER OF THE BUILDING AT 11.6 FEET OF THE REAR PROPERTY LINE. CITY CODE 153.042 REQUIRES A MINIMUM REAR YARD SETBACK OF 20 PERCENT OF THE LOT DEPTH

BECK/DORSCHER moved and it was unanimously carried to open the public hearing on New Fashion Pork's variance application.

Maschoff said Jay Moore of New Fashion Pork was on hand to explain the proposed project and to answer any questions.

Maschoff noted the variance application is to construct at 120' by 80' by 18' cold storage shed for materials and equipment on their property located at 138 Industrial Parkway in Jackson. He said some may remember the site as the former Jackson Crop Services location.

Moore referred to the survey of the property and also provided pictures of the site for the Planning Commission members. He said the purpose of the proposed shed is to store equipment over the winter. Moore noted surrounding the building is crop ground. He said the proposed building would line up with an existing building that's on the site. Moore pointed out one corner of the building would be 7 feet off the southeast corner of the property line and the other corner about 11 and-a-half feet off the southwest corner of the property line. Moore said the dimensions of the metal building would be 120' by 80' by 18'. Moore noted it will be 90-plus feet from the Accent building.

Maschoff said all of the adjacent property owners were notified about the public hearing and New Fashion Pork's proposed storage building. He said he received two comments from nearby property owners. Maschoff noted Mary Gilmore of Vet's Oil said she had no problems with New Fashion Pork's proposed plans and the Jackson County Board of Commissions had no objections regarding New Fashion Pork's plans. He said there was no other comments received.

Beck said he had no issues with the variance application.

Dorschner said he also had no issues with it.

Maschoff said due to the lack of a quorum being present at the October 7th meeting, the public hearing on the variance application would continue at the October 15th Planning and Zoning Commission meeting so a vote could be taken on a recommendation to the City Council.

Moore was thanked for attending the meeting.

**PUBLIC HEARING ON AMENDING ORDINANCE 153.037 ALLOWABLE USES E(2)
AND DEFINITIONS: 153.005 ACCESSORY BUILDINGS**

City Attorney Brad Anderson was on hand to explain amending Ordinance 153.037 and 153.005 Accessory Buildings to the Planning Commission members.

Attorney Anderson said presently the City Code does allow a detached accessory building. He said the hang-up that the City has had for about three or four different people who have requested it is that they are not in the same subdivision. Anderson said the feeling was that they had to be in the same subdivision so they could combine the tax parcel numbers in order to keep them as one lot. Anderson said that's not really here nor there.

Anderson explained even though the property owner might have one tax parcel number, the lots could still be sold separately. For example, Anderson said if he owns Lots 1 and 2 in Jackson subdivision and he has his house on Lot 1 and he owns Lot 2 as a vacant lot, he could have petitioned for a variance for a detached accessory building. Anderson said if the variance was granted, he could build that detached accessory building on the lot and he might combine the tax parcels but sometime down the road he could decide to sell his house and keep the accessory building. He said that's the present circumstance that the Code is in.

Anderson explained if he did that, the detached accessory building would become a non-conforming use and he couldn't do anything with it other than keep it and maintain it for as long as it's useful life and when it's done it would have to be removed.

So, Anderson said the issue really comes down to do we want to make it clear in the Code that whether you're in the same subdivision or you're in two different subdivisions, or you're in a subdivision and a non-subdivided parcel which is described by metes and bounds, it doesn't make any difference.

Anderson said the circumstances are that if the parcels touch each other, contiguous and nothing separating them like a road, alley, street or anything like that and if the building conforms to the neighborhood and to the Code, so in other words if you have a house, the accessory building is not going to be higher than the house roof line, it's going to be comparable in style and shape so it makes the neighborhood look appropriate, then he could petition for and get a variance if it's approved. Anderson explained if he's in a clearly residential area that has a definite residential character to it and he wants to come in there and build some kind of shed that's totally non-conforming to the area and is going to change the look of that whole area, then I'm probably not going to be granted that variance because it's doesn't conform to the way the rest of the area looks and will detract from the value, probably, and certainly the appearance of that neighborhood.

Anderson said in order to deal with a platted verses non-platted issue, this is what the amendment is. He said he knows there's a concern about the future and should the two parcels be required to be sold together. Anderson said that can be included but he just doesn't know how enforceable it is. He said that's one of the discussions he had earlier in the afternoon with Skaret and Maschoff. Anderson said there's nothing in the Code that requires those two parcels to be sold together as a single unit. He said he thinks that was part of the misunderstanding in the past due to the way the Code is written.

Anderson said it hasn't been a problem since the Code has been approved and adopted. But he said one of the things we want to do in all fairness is not only to require that the variance be recorded, but in this case, we want to make very sure, and make sure that it's clear, that you can't have an accessory building without a house. He went on to explain if a person would ever separate those two lots, then the accessory building would be a non-conforming use and you can't do anything to expand or improve on it, just maintain it.

Dorschner said for example, if he sold his house on the separate lot and kept the lot with his accessory building on it, there's nothing he could do with the accessory building other than maintain it. Dorschner asked if could then build another house on the lot that has the accessory building on it.

Anderson said that was a good question. He said if Dorschner came to City Hall and said he has this non-conforming structure on a bare lot and he wants to make it a conforming structure by making it a house by expanding on it and make it a residence, he could do that. Anderson said Dorschner could get a building permit to make it a conforming structure.

Beck noted in the past it's always been that the City didn't want lots all over town with just a three-car garage on it and then the property could be sold again, again and again.

Anderson said that's why it's being required that the two lots be tied together and the warnings and both lot descriptions be included so whether you're buying the residence or you're buying the detached accessory building, you're going to be getting the same notice, the same warning about what it is.

Dorschner said he has that situation at his residence on Third Avenue. He said he purchased the empty lot next to the lot where his house is located. Dorschner said he would like to build a garage on the adjacent lot. But he noted if he ever sold his house on the lot separate from the lot with the garage on it, he'd just have a garage which would then be a non-conforming structure.

Anderson said if in that case Dorschner did that and kept the garage, then all he would have is a garage. He said if Dorschner wanted to get a building permit to add a third stall to the garage, it's not going to happen. But Anderson said if Dorschner wanted to take that garage and add a house to it in some way, shape or form, that would be fine. He said at least whoever would buy Dorschner's house or whoever would buy his garage, that warning is going to be in the title records to show what you can and can't do.

Beck said he doesn't have any issue with that.

Broitzman asked about the utilities such as water, electric and sewer.

Anderson said the City already has a policy or code that says you can't have a split utility, so if you sell the house separately and you have a water line running over to the garage, then you'd have to get a direct hook-up and have a direct meter for the garage.

Maschoff noted if a person sold the house and garage all as one, then the utilities could stay the same.

Anderson said that was correct.

Anderson said it's interesting. He said this issue arose at least 12 months ago. Anderson said it's been talked about in the courthouse about how are we going to get around this and that it can't be made into the same tax parcel. Anderson said there's been at least two more requests since this whole process started. He said he doesn't ever remember fielding those kinds of questions prior to that.

Maschoff said maybe those types of situations occurred in the past and no one was ever notified about it or it wasn't an issue.

Anderson said he thinks everybody had the misconception that by taking two different tax parcels and getting a single parcel number for it that you somehow couldn't sell them separately and that it absolutely, clearly a misunderstanding.

Maschoff asked Anderson even if you have platted lots next to each other and you make it one tax number, in essence, are they still two lots?

Anderson said they are still two lots. He explained even if he owned Lot 1 and Lot 2 in Jackson subdivision, and he creates a single tax parcel which you can do and they do that all the time, they are still two separate lots that can be sold. Anderson said we're not changing that part of it unfortunately because that gets to be pretty difficult to try to enforce a restriction on somebody's right to sell their property. But Anderson said we're doing it indirectly with a variance approach.

Maschoff asked if the same type of recording need to be done for platted lots even if it's one tax number.

Anderson said yes it would. He explained there's going to be two legal descriptions in that variance. Anderson said there's going to be the one description of the house that allows you to do it and the second description is going to be that separate vacant lot in our example where are you going to put the building. He explained there will be two descriptions. Anderson said as we move forward, they're going to go back in history and be able to say the person was granted a variance to put a detached garage on this vacant lot, but if the lots are ever separated, then the garage becomes a non-conforming use unless the person puts a house on the lot and makes it a conforming use.

Maschoff said he bet it's happened over the years where two platted lots were combined as one tax number and things moved forward.

Anderson said if you get the abstract or the description of it and the history of that property, for example, they can be lots 2, 3, 4 and 5 in Jackson Subdivision and can be more than one lot. He said it might have four different tax parcels or it might have just one single tax parcel. Anderson explained you as the landowner can choose whether you want to keep the tax parcels separate or not. He explained if the landowner wants to combine them for whatever reason, you just let the County recorder know and they will combine them. But Anderson pointed out the lots have to be basically contiguous to each other, touching each other and be in the same zone.

Maschoff asked if anyone had any other questions.

Hearing no further questions, Maschoff said discussion on amending Ordinance 153.037 Allowable Use and Definitions 153.005 Accessory Buildings will probably continue at the Planning Commission's October 15th meeting.

Anderson said we've put together something that's very clear and can be recorded. He said he wants to make very sure that both legal descriptions are in there so there's a warning to both parcels, not just to one whether there's two or one or multiple number of tax parcel numbers.

Maschoff thanked Anderson for attending the meeting.

CONTINUE THE PUBLIC HEARING ON THE VARIANCE APPLICATION OF JEFF BROITZMAN WHO RESIDES AT 100 OAK AVENUE IN JACKSON. IN HIS APPLICATION, BROITZMAN PROPOSES TO CONSTRUCT A 54' BY 40' SHED ON HIS PROPERTY AT 100 OAK AVENUE WHICH WILL BE FIVE FEET FROM THE NORTH REAR PROPERTY LOT LINE. THE VARIANCE IS NEEDED BECAUSE CITY CODE 153.041 REQUIRES THE REAR YARD SETBACK FOR BUILDINGS TO BE 25 PERCENT OF THE LOT DEPTH IN AN AGRICULTURAL RESIDENCE ZONED DISTRICT

Maschoff noted Broitzman was in attendance at the meeting. He noted Broitzman's variance application goes hand-in-hand with the previous discussion about amending the ordinance because Broitzman's property is a situation where there is one lot platted and the adjacent lot is measured in metes and bounds.

Maschoff asked Broitzman if there were any new developments or anything since the Planning Commission visited with him in September.

Broitzman said he's waiting to see what happens. He noted the Hargan's don't like what he's doing because they think his proposed shed will be too high. Broitzman said to the peak, he's figures it will be 23 feet.

Dorschner asked Broitzman how much higher is Hargan's house from his property.

Broitzman said it's 50 feet. He explained he has an app on his phone called an elevation app.

Dorschner said Hargan's will still look down at his garage.

Broitzman said yes through all the trees and the leaves.

Broitzman said he wants to make sure everybody on the Planning Commission knows Dave Hargan came to him and wanted to trade property. He explained Hargan wanted a driveway because Hargan and another neighbor weren't getting along. Broitzman said he and his wife didn't want to do it, so they waited. Broitzman said he told Hargan if he would give him another 100 feet, he would do the property trade because Broitzman said he figured he'd have more room to build. He said Hargan gave him 50 feet so that's where's he's sitting.

Broitzman said he didn't know there was going to be stipulations on what he could do because he looked into it. He said he came and spoke with Maschoff and found out it was zoned Agricultural. Broitzman said when he found out it was zoned Agricultural; he could do what he wanted to with the building because there weren't the stipulations in the Agricultural Residential Zone as in the Residential Zone.

Broitzman explained he's excavated and cut down several trees. He said he has tile and drain installed at the location. Broitzman said he had the building inspector there three or four times talking about it. He said he has at least \$7,000 in stuff that he bought, not to mention his labor. Broitzman said that's where his frustration is. He said if he could go back in time.

Broitzman explained he came to City Hall at least four or five times to see if it was OK and from everything he got it was OK so he continued. He said he didn't want to get the building permit right away because he knew he was doing it himself and the building permit is for a year. Broitzman said he will need all summer to construct the building because he's doing it himself. He said that's where he's at.

Beck said there's not much the Planning Commission can do at the October 7th meeting without a quorum present.

Maschoff apologized to Broitzman and said the matter would be discussed again at the Planning Commission's October 15th meeting.

Broitzman asked if there would be an answer regarding his variance on October 15th at 5:15 p.m. He noted he's to the point now where it doesn't matter because he doesn't have enough time to do any of it this summer. Broitzman said he's completely out of time.

Broitzman said the bank is not falling other than where the tree tipped over. He said he wants to be able to construct the building where he wants. Broitzman said he doesn't want to have to put a bunch of dirt up there that he's going to have to move again. Broitzman explained his footings are going to be 42 inches from the start on the northeast corner and work his way around. He said that's all the height he wants it to be. Broitzman said he's talked with the building inspector about it and he agreed with how he's going to do it. As far as any eroding over the winter, Broitzman said he just doesn't want to be forced to put dirt there and then have to move it again. He said he's waiting for a decision. Broitzman said if the Planning Commission says he can't do it, then he doesn't know what he's going to do.

Maschoff asked Broitzman if he placed his proposed building where he wants to, would that decrease the chances of the bank eroding?

Broitzman said exactly. He explained that's why he doesn't want to put dirt against the bank because he's dug it back. Broitzman said if anybody has ever dug a building or footings you need that extra room and that's why he went back so far. He said the only reason he went back that far is so he'd have room to work. Broitzman said he was working the morning Hargan's tree fell over. He said he realizes he shouldn't have dug all the way to the bank, but there was a lot of wind that night when the tree tipped over.

Beck said he could be wrong, but he doesn't think the Planning Commission wants Broitzman to do anything as far as putting dirt back until the Commission makes a decision one way or the other.

Broitzman said as far as talking with Hargan, they haven't talked. He said he went to Hargan's residence and was told to talk to Hargan's lawyer, so he did. Broitzman said Hargan did come to his residence once and they talked about it.

As far as whether Broitzman is going to have an answer on October 15th, Skaret said, if there is a quorum, the Planning Commission can make a recommendation to the City Council but his variance can't be approved until the amended ordinance is approved and that has to have two readings before the City Council.

Broitzman asked if that will happen by next spring.

Skaret said the second reading of the ordinance could occur by November 5th.

Broitzman said it's frustrating him. He said he wants to do it right.

Maschoff said Broitzman's hearing will continue on October 15th.

Broitzman said his construction would take place in the spring. Broitzman asked about the height of an accessory building in an area zoned residential compared to an area zoned agricultural.

Maschoff explained in a residential zone, an accessory building shouldn't be higher than what the roof of the residence is. He said where Broitzman is going to build is zoned Agricultural Residential, so then the restrictions are different.

Broitzman said he was going to offer to turn the peak of the proposed building the other way and have the trusses go the longest way of the building. He said the only thing is that the building would be two feet higher because it's a longer travel at a 4 -12 pitch. Broitzman noted it will be higher in the middle.

Maschoff said with Broitzman's original plan, the building would be actually lower.

Broitzman said the building would be two feet lower.

Beck said let's see what happens on October 15th.

Maschoff thanked Broitzman for attending the meeting.

Broitzman thanked the Planning Commission members for listening.

ADJOURNMENT

With no further business, the Planning Commission meeting adjourned at 5:44 p.m.

David A. Maschoff, Zoning Administrator

