

CITY OF MEDINA
PLANNING COMMISSION
Meeting Minutes
Tuesday, March 11, 2014

1. **Call to Order:** Commissioner Nolan called the meeting to order at 7:00 p.m.

Present: Planning Commissioners Charles Nolan, Robin Reid, Randy Foote, Robert Mitchell, Victoria Reid, Janet White, and Kent Williams.

Absent: None

Also Present: Mayor Liz Weir, Councilmember Kathleen Martin, City Planner Dusty Finke, and Planning Assistant Debra Peterson.

2. **Public Comments on items not on the agenda**
No public comments.

3. **Update from City Council proceedings**
Weir updated the Commission on recent activities and decisions by the City Council.

4. **Planning Department Report**
Finke provided an update of upcoming Planning projects.

5. **Approval of the February 11, 2014 Draft Planning Commission meeting minutes.**

Motion by R. Reid, seconded by White, to approve the February 11, 2014, Planning Commission minutes as written. Motion carries unanimously.

~~6. Property Resources Development Corporation—Comprehensive Plan Amendment to change future land use from Rural Residential to Low Density Residential—East of Homestead Trail, Southwest of Deerhill Rd (PID 28-118-23-24-0001).—Hearing postponed upon request of applicant~~

7. **Kristin Chapman – Conditional Use Permit (CUP) to convert existing accessory structure to an Accessory Dwelling Unit.**

Finke presented the application explaining the property is located at 1910 Iroquois Drive and that the request is for an accessory dwelling unit (ADU) and is the first application before the Commission since the creation of the ordinance allowing ADU's in 2009.

Finke explained the surrounding properties are also zoned Rural Residential. The principal structure is located further to the rear of the property with the ADU closer to the road. The ADU has similar architectural elements as the principal structure, which is a requirement of the CUP. The existing structure is non-conforming with regards to the side yard setback to the east being 20 feet. The current requirement is 50 feet and the ADU proposed does not meet that setback.

Finke explained the sewage treatment proposed for the ADU has holding tanks. Building Official Loren Kohnen accepts the holding tanks only until the home is sold. Staff recommends a septic

system that meets all relevant state and local regulations, but to be installed to serve the ADU within six months from approval of a sale.

R. Reid asked if the property (ADU) would have a separate address. Finke said no. Nolan asked why the holding tanks are alright now, but once it sells it isn't acceptable. He questioned why it's alright to wait, but then said maybe Kohnen's thought was that it was temporary in nature. He questioned that if it never sold then they wouldn't have to install a septic system and would that be alright. Finke said that allowing the holding tanks until sale of the property was requested by the applicant to Kohnen. Finke noted Kohnen may be more at ease because the current owner fully understands the requirements for pumping and so forth, and that a future buyer may not know what they are signing on for. Nolan asked Finke if the property never sold for 25 years, could the current system sustain that time period. Nolan said he's assuming Kohnen looked at the system on that time frame rather than two years. Finke stated that as long as the tanks were pumped appropriately, there is no reason it wouldn't work longer into the future, but noted that it is not ideal to need to constantly pump. Nolan asked if we would ever allow it as a solution for a new home. Finke said we would not. Nolan asked then why would we be accepting it for this application. Finke stated he would inquire of the building official.

V. Reid asked if there could be a condition that it be replaced within 5 years regardless. Nolan asked if space was available for its own septic system. Finke said Kohnen had indicated there was space to expand the current principal structure system to expand.

White asked if the ADU was approved with the current holding tanks what mechanism does the City have to enforce pumping. Finke said we'd work with the City attorney to have it be part of an annual inspection. The City would have the requirement recorded against the property. Williams said the purchaser would see that requirement and would only have themselves to blame if they received an enforcement action against them. Finke said one of the requirements would be that the seller notifies the City of the sale. White asked if, after the sale of the property, it would still be a requirement that the owner occupy one of the buildings if they were renting. Finke said yes, the CUP goes with the property.

Mitchell asked if under the ordinance an ADU could be rented. Finke said yes. William asked as a condition that the owner has some sort of a contract. Finke said as a condition of the CUP it could be required. Nolan said the City sends notices for pumping and Finke confirmed. R. Reid asked if a contract was in place for pumping. Finke confirmed a letter was received from a pumping contractor that the property owner is working with that they would notify us if the property owner didn't pump the tanks per the agreement.

Finke explained the ADU ordinance discussion in 2009 and why rentals were allowed. He said the Ordinance requires the property owner to live in either the principal structure or the ADU, which would reduce the amount of rental ADU's. Also, if the ADU or principal structure was rented, the property owner would have more of an interest in who they were renting to if they were living on the same property. The Commission agreed that this decision had been made back in 2009.

Mitchell said that when they originally built the building, if we would have known it was going to be an occupied dwelling, would the setback still have only been 20 feet. Finke said yes it would have been 20 feet, since that was the requirement at the time for the principal structure also. Finke said lots less than five acres still have a 20 foot setback.

Kirsten Chapman of 1910 Iroquois Drive, the applicant, explained that before she built the building she made sure to reserve space to build a mound system. She said she worked with Rusty Olson to identify two septic locations on-site in addition to her existing drain field. She said she has two alternative sites and Kohnen said she would only have to add the ADU septic system to her existing system and not install a completely separate system. She said she believes her septic system is designed for four bedrooms since she has four bedrooms in her house. In addition to that, she had a mound system designed so it shows how that would work to connect the ADU building to the house system. The design was done in April 2006 and she was very careful before she built the accessory building.

Chapman said she wouldn't normally address this, but she felt there had been some reckless and inaccurate accusations that had been said in a memo that was sent to the City. She said she does a lot of work on the internet and that's part of her business. She said she knows how these documents are public documents because they reside out on the internet and some of these things are inappropriate and don't belong in this discussion. In fact with them being published out on the internet it is a very negative thing. She stated that the memorandum sent by four neighbors accuses her of being deceiving and questionable in what she was doing. When she built the building it was for a greenhouse, hobby, house and storage and since it's been built it's been used for what was intended. It has stored lawn and gardening things, window boxes she doesn't want to water. The greenhouse was used to raise seedlings. She said you can't just plant the plants outside in the spring; they need to be weather hardened since it can get very warm during the day and very cold at night which can actually kill your seedlings. So she had the building insulated and had the building with windows facing south and west and raised them in the greenhouse by allowing them to be weather hardened before putting them into the ground. She said she specifically had the building insulated for that purpose so in the spring she can put them in this building before planting them in the ground. The specified use is exactly how it's been used and she was not part of any discussion of using it as an additional dwelling unit or zoning laws back in 2009, or has an interest in it. She saw in the Medina Newsletter back in 2009 that property owners can construct or convert ADU's. She said the building looks like it does because she is very picky about architecture and her own property. She said she has to drive by it every day and worked hard with the contractor. She said it wasn't some conspiracy back in 2006 and 2007. The second thing is that it states in the letter that the building didn't have a final inspection. She said she checked with Finke and Metro West and it has a final inspection. Lastly, the memo from the neighbors states that this could never have been classified as a greenhouse. The south and west windows are very large and don't have UV protection and it's for a reason. She said for her plants she needed as much light and doesn't want UV blockers. The building is also tilted 20 degrees to the west. She said for green houses you have to either tilt the building either 20 degrees to the east or west and she chose to the west. So she just wanted to point out what and why she did what she did for construction of the building. She asked that all details mentioned be part of the public record. The bigger point of the memo is that neighbors weren't familiar with the 2009 ordinance allowing ADU's, which is a broader issue since they are now permitted. She said she was happy to answer any questions.

Foote asked about the inspections for the two septic holding tanks. Chapman said the building had a final inspection in 2009 and the holding tanks did not get a final inspection. Foote asked if the tanks were part of the final inspection and Finke said it was a separate permit which wasn't closed out.

Nolan asked about screening to the east and wondered if Chapman had talked with the neighbors or if they've raised any concerns for a need for screening. Chapman said when she built there wasn't any requirements. She said she asked the neighbor if he'd like screening and he said "no". She said she planted shrubs that grew up to the roofline to cover the stucco. On the rest of the

building there are shrubs that go up to the bottom of the windows to soften the stucco. Also in the larger area of stucco she planted a larger shrub next to the building to break up the stucco and then planted six fruit trees. She said she offered the neighbor to help himself any time to pick fruit. Other than that she hasn't heard anything stating they were unhappy with this or that. She said since she built, she has not heard of any complaints. She said if the neighbor would like something additional to be done she wouldn't find that unacceptable.

Nolan said the size of the unit is 643 square feet. Finke said habitable square feet. Nolan asked what habitable means. Finke explained what was excluded such as bathrooms, closets, mechanical rooms, hallways, which he said is defined in the Code Book.

Williams said he wanted to follow up on the question Nolan didn't ask. It's the case concerning an existing accessory structure and he had gone out to take a look at it and found it to be compatible with the Principal structure with similar architecture. The outside is going to stay the way it is and the remodel is all enclosed and the footprint is going to stay the same as it is now. He asked if anyone had ever complained and Chapman said "no." Williams asked if there was anything in the City address file and Finke said he didn't see any complaints in the file.

Public Hearing opened at 7:42 p.m.

Nolan said he wanted to include two pieces of correspondence that came via email as part of the record, but was not going to read them out loud. One of the emails came from a group of neighbors, William & Patricia Velch, Thomas & Nancy Malik, Jay & Jo Anne Nelson, and Dennis & Monica Lonergan. The second email was from an individual Kathy Taylor.

Freeman Wong, neighbor to the immediate east, said he has two concerns and one is a question. The relationship between a renter and rentee is not all clear to him. It appears to be undefined for a long period of time. The intention of the property owner is to rent the Principal structure and live in the ADU. He requested clarification of what the property owner can do as it relates to renting out the Principal structure and the ADU. He asked how long he would have to live with rental uncertainty. He's heard the word subdivision used and wants to make sure if the ADU is approved that they can't subdivide. With the addition of rental property he would like an opinion with how it will impact his property values. He asked if the other land owner could build similar ADU's. He said he doesn't care for the additional density or septic systems in the rural area. He said the building went without comment in the past because it was already there. He asked if he can put up a similar building to increase density and a fundamental change with implications down the road regarding property values and taxation.

Finke explained that other property owners can propose to build a new ADU, subject to setback requirements. Nolan said there is also a long list of requirements required of the CUP. The property can't be subdivided. The owner has to live on the property in one of the two residences. Nolan said ADU's are subject to CUP's and the tighter the density the more regulations are required. He said the use to allow ADU's has already been decided. Finke said the values of properties are not part of the process when reviewing a CUP. He said conceptually when the City was looking at zoning across the entire City it was discussed. He said as to whether neighboring property owner's properties reduce in value, it is not his authority to determine.

Nolan explained to the public that the issue of ADU's was discussed back in 2009 and rentals were part of that discussion and decision made by the Commission and Council. All the issues that Freeman asked were addressed at that time, such as property tax values, allowing two residential structures on one lot, ability to rent and who can use it. He said the City determined it

was acceptable in Medina and is allowed in most zoning districts, though the smaller the parcel the more restrictive it gets. In some zoning districts the secondary unit is required to be within the Principal structure and not allowed to be detached. He explained the issue of whether it's permitted or not permitted has already been decided. Now the City looks at the CUP criteria to make sure the application meets the requirements.

Freeman said the effect on the land valuation has not been answered. Nolan said when the City passed an Ordinance to allow the use; the values and tax implications were considered at that time. Williams said the issue of property values was considered and in some cases it would go up and or down. So to avoid values reducing, the City placed conditions to reduce any negative impacts such as requiring the property owner to live on the property, require additional parking, and limiting the number of bedrooms and square footage of the ADU. Williams said he can't say how his property values will be impacted, but Nolan incorporated the fact that the use is a Conditional Use with restrictions and allows the Commission and Council to examine each CUP requirement. By reviewing the list of requirements, each application can be looked at individually and custom conditions can be placed on the property. The owner will have to continue to abide by the conditions if they want to continue the use. Freedman said the owner plans to move sometime in the near future and he is concerned with new owners renting both out. Nolan said the CUP conditions would be placed on the property and the new owners are required to follow the same requirements. Nolan said it is possible that new owners could violate the requirements, but that is where staff looks to the neighbors to inform us of any violations, along with having staff inspection requirements. Williams said the regulations follow the property even when it is sold.

Jay Nelson lives to the east of Freeman Wong. He said he's had good relations with all his neighbors. He wasn't happy to see the accessory building built, but didn't complain to anyone. He said he knows Kirstin has had her home for sale in the past and that she intends to sell, and he is opposed to the increased density. She may meet all the criteria, but that means that Freeman can then build a house, and he could do the same thing, which would increase density and that is not why he moved to his current residence. He said he has lived in Medina for 30 years and has been happy and doesn't want to see more density. He said other than that, he agrees with most everything else Freeman said.

Weir said she was on the Council in 2009 and explained that during the time the ADU ordinance was being created the economy was in a recession and adult children were moving back in with their parents due to losing their jobs and not being able to find work. She said there are also people that are aging who want to have mother-in-law units. She said we are assuming in this case that the proposed ADU would be rented when it may not be the case. She said these units are small based on the regulations, yet it would be nice to be able to accommodate an elderly person or a child that comes home with a new wife with maybe one baby and so the intention was to accommodate things that were already happening in the community. The Commissioners adding "caretaker" and "nanny" accommodations are also an option with the ADU. She said she didn't want them to only think in terms of rental and profit and increasing density. She said very few of us would want another house on our property.

Nancy Malik lives directly to the north of the property at 1925 County Road 24. She has lived in Medina for 34 years and moved out to the area for the space and not to have a subdivision or multiple dwellings. She asked for clarification of what was just discussed and specifically asked if renting out an ADU was allowable as long as it met requirements and criteria. She asked if it meant she could first build a greenhouse and then later convert it to an ADU. She said the applicant started work without a permit and was caught, and that's what started this application.

She said her actual visual was that the builder was building on the inside before it got shut down. The devaluation of hers and neighboring properties are a concern with rental property next to them. She said “we” have the concern and no one else does and that’s why they were present at the meeting. She asked if there is a reason it is needed. She said an ADU has to be affixed to the Principal structure. R. Reid explained it depends on the zoning district and in some zoning districts it is required to be within the Principal structure, but in this case it isn’t.

Williams said all the issues that Malik is raising have really all been discussed, such as renting. Williams explained that the “concern” of rentals was thought through by requiring the owner to live on the property. He asked if there are any conditions that aren’t being met. Malik asked if the Watershed would want to know about more dwelling units. Nolan said there is no reason the Watershed would need to be notified. He said septic systems are enforced by the City and would be a condition of the CUP.

Ellie Crosby was present and spoke on behalf of Kirsten Chapman. Said she’s Kirsten’s neighbor and from her perspective she had been following the process to obtain a CUP as required. She said she supports the CUP for an ADU.

Public Hearing closed at 8:13 p.m.

Nolan explained that if the application was for a new structure, they would have the building moved further away from the side property line to meet setbacks and look at screening.

R. Reid said screening and the holding tanks are the two issues she has with the application. The Commission agreed. White said she’d be more interested on a time frame than a point of sale on a septic system. Foote said the building is already screened. R. Reid said with a row of arborvitae. Williams said the big issue is the holding tanks. Foote said he wasn’t sure how we really enforce the installation of the septic system. Nolan asked Finke if CUPs are inspected annually. Finke explained some of the CUP’s are inspected annually.

Mitchell said the applicant should work on a landscape plan to develop screening. We have to have an understanding that it will be sold someday. The second reason for screening is the setback rule. If you have a nonconforming use you can’t increase the nonconformity. He asked if the applicant was entitled to add a new use in a nonconforming building/location. He said the septic should be designed to meet minimum requirements and should be brought into 2014 standards. The condition should say the applicant must have the appropriate system installed by the summer of 2014 or 2015. He said, as an example, a family of three could buy the property and then if they aren’t able to afford the septic system it would be difficult to enforce. He said he isn’t opposed to temporary use of tanks as long as a date is established to install new system. He also said he feels sympathetic to neighbors and the Council dealing with it. It is regrettable that the building was built at a time the building only had to be at 20 feet, rather than 50 feet from the side property line. Foote asked Mitchell why he believed there was the need for a landscape plan. Mitchell said it could be minor, but a plan should be completed. Nolan said the building already looks like a residence and he was pleasantly surprised. Rather than making it a requirement by the Commission, he suggested the applicant work with the neighbors to satisfy them. V. Reid said she thinks screening is maybe needed because of the reduced setback.

R. Reid said what the applicant is proposing to do is how it’s written now and the conditions have been dealt with. She felt the sewer was acceptable and that it met all the criteria. Williams agrees with R. Reid that the replacement of the septic be triggered by the point of sale or within five

years. The applicant shall show that a septic system could be expanded at an alternate site prior to the use of the ADU.

Nolan said the item will be heard April 1, 2014, before the City Council.

Motion by Mitchell, Seconded by R. Reid, to recommend approval of the CUP for an ADU conditioned on 1) The single-family dwelling and accessory dwelling unit may not be conveyed separately and shall at all times be under common ownership; 2) A septic system including an alternate site meeting all relevant state and local regulations be installed to serve the accessory dwelling unit at point of sale or no later than within five years, or a lesser time period if determined by the Building Official to be more acceptable; 3) The property owner shall occupy either the principal single-family dwelling or accessory dwelling unit as their primary residence; 4) the property owner shall abide by all conditions of Medina City Code Section 826.98, Subd. 2(p); 5) The applicant shall meet with the neighbors to determine if additional landscaping is necessary; and 6) All existing and newly installed landscaping shall be maintained as part of the CUP requirements. **Motion carries unanimously (Absent: None).**

8. **Council Meeting Schedule**

White agreed to attend and present at the March 18, 2014 Council meeting.

Mitchell said a couple of months ago the following question was raised to him: If a small home was torn down, could a very large home be built to replace it? He wanted to provide the Commission and Council a summary of the ordinance. R. Reid said it's worth looking at. Mitchell said Minnetonka Beach has a lot of old small cottages and with the cottages and large homes side by side, the appearance is extremely different. He asked if this could be done in Medina. Finke said Independence Beach was the only area we'd have a concern with and the lots are limited hardcover requirements. He also added that building height regulations are in place. The Commission suggested staff review the existing rules.

9. **Adjourn**

Motion by Williams, seconded by V. Reid, to adjourn at 8:45 p.m. Motion carried unanimously.