

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING MINUTES
5:30 P.M., P.S.T., TUESDAY, MARCH 3, 2020
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

Jeff Dalling, Chairman of the City of Elko Planning Commission, called the meeting to order at 5:30 p.m.

ROLL CALL

Present: **Evi Buell**
 Giovanni Puccinelli
 Gratton Miller
 Jeff Dalling
 Stefan Beck
 Tera Hooiman

Absent: **John Anderson**

City Staff Present: **Cathy Laughlin, City Planner**
 Bob Thibault, Civil Engineer
 Michele Rambo, Development Manager
 Matt Griego, Fire Chief
 Shelby Archuleta, Planning Technician

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

APPROVAL OF MINUTES

February 4, 2020 – Regular Meeting **FOR POSSIBLE ACTION**

*****Motion: Approve the February 4, 2020 minutes.**

Moved by Evi Buell, Seconded by Tera Hooiman.

**Motion passed unanimously. (6-0)*

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible action on Variance No. 1-20, filed by Bailey & Associates, LLC, for a reduction of the required exterior side yard setback from 15' to 12' for the development of a duplex in an R (Single-Family and Multi-Family) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the south corner of the intersection of 8th Street and Elm Street. (APN 001-066-005)

Jon Bailey, 780 W Silver Street, explained that he worked with Ms. Laughlin on the parcel, which is a difficult parcel that is challenging with the width and the additional land that was dedicated to the City for the sidewalk. In working with Ms. Laughlin, they came up with a design that would accommodate this parcel and allow it to be developed. They ended up needing a variance on the 15' setback, which is why they are making application for the variance. It is keeping with existing parcels that have 12' setback. He thought it was straightforward to be able to get a 22.5' width for the building.

Dale Coleman, 831 Elm Street, said it was nice to see someone build on the property. Although the City has adopted increased regulations to improve both Building Codes and right-of-ways. Mr. Coleman felt that the contractor was well aware of the setbacks when he bought the property. He thought the contractor should be tied, or should maintain the setbacks that the City requires. If you don't make him maintain the setbacks then where does that leave everyone else? He thought the City needed a firm stand on where the setbacks are at, so that everyone builds under the same regulations.

Robert Wines, 761 Elm Street, stated that he was adamantly opposed to putting a duplex on the lot. Number one, he didn't think anything could be built on the parcel without a Conditional Use Permit, because it doesn't meet the City Code for lot area. He didn't think a 4,000 sq. ft. lot should even be considered for a duplex. Number two this is a busy intersection. Across the street is the central office for the Elko County School District. There is a lot of traffic there first thing in the morning. It is also a main thoroughfare for access to Great Basin College, and main access for children walking to Grammar School No. 2. He thought allowing a decrease in the setback would make the visibility around the corner questionable. He attempted to look at the initial City offering for this parcel, but he could not find it. A few years ago, the City offered to sell this property to the adjacent property owner. Everyone knew this was a small lot, and that it wouldn't support building a structure, City of Elko even advertised it that way. One of the requirements that they had for the adjacent property owner was that he was going to have to merge the parcel to his own. 8th and Elm is a busy intersection. Mr. Wines thought that reducing the setback was bad, and that there needed to be a Conditional Use Permit to use the lot for any kind of structure. He mentioned that he would probably not be opposed to a single-family residence being built. He also wouldn't be opposed to a minor reduction of the setback for a single-family residence. Putting two houses on that lot didn't seem to Mr. Wines like a smart move.

Greg Staszak, 1252 7th Street, explained that he was inquiring about a variance too, and he was dissuaded due to the usage of the word hardship. He needed to prove a hardship to be able to apply for one, or to be able to potentially have the opportunity of getting it. He saw a duplex as being a monetary benefit, and didn't see where that was defined as hardship. There are already a

lot of items parked on the street at that corner. If there is a duplex there, how much more is going to be parked on the street?

Cathy Laughlin, City Planner, wanted to give a little history on the parcel. Mr. Knight, who is the adjacent property owner, came to the City and asked the City to sell that piece of land. When he purchased his home, he was told that all of the fenced in area belonged to him, which was not the case. He came to the City for a fence permit, and staff told him that was the City of Elko's parcel, but he could ask to purchase the parcel. He asked to purchase the land and staff took it to City Council. Mr. Knight gave some testimony on what he planned on doing with the property, and provided testimony that it was not a viable use to anyone other than himself. City Council was skeptical at the time, but they were convinced by Mr. Knight and they agreed to sell the property under NRS 268.061, which allows the City of Elko to sell a piece of land directly to the adjacent property owner as long as there is no viable use, or value, to anyone other than the adjacent property owner. One of the conditions on the sale was that he was to do a parcel map to combine the two parcels. Sometime went along and staff was asking Mr. Knight when he was going to start the parcel map process. He would need to get a surveyor on board to get it started. He then came back and said that he changed his mind. He wanted to be able to buy it, but be able to sell it if necessary, or do something different with it. He didn't want to combine the two parcels, so staff took it back to City Council, told them that Mr. Knight changed his mind, and didn't want to comply with the conditions, and that the property would need to be sold by public auction. We went through the process of a resolution to sell the property by public auction. It was advertised properly and auctioned at a City Council meeting. City Council opened the bids for the property and Mr. Bailey was the only bidder. Mr. Knight had backed out the day of, and decided not to bid on the property. Mr. Bailey purchased the property. After he purchased the property and the deed was recorded, staff asked Mr. Bailey for a deed of dedication for 10' of property for the curb, gutter and sidewalk to be in the City right-of-way. Ms. Laughlin then went through the City of Elko Staff Report dated February 13, 2020. Staff recommended conditional approval with the findings and conditions listed in the Staff Report. Staff was focusing on the fact that anywhere else in the tree streets the exterior side yard setback could be 12', which is what the applicant is proposing. It is just not a residence in existence today. That's what staff based their justification off. Also on the site plan, you can see the 10' that was dedicated back to the City.

Chairman Jeff Dalling said the whole project seemed pretty slick. Mr. Bailey said he worked with Ms. Laughlin on this. It looks like he hit every kind of a trick to fit everything. It's a pretty slick little under the radar project, but it doesn't fit.

Ms. Laughlin pointed out that the building would be meeting three of the four setbacks. He's not meeting the fourth one, but had this been in existence prior to 2003 he would have met it.

Chairman Dalling asked why Mr. Bailey deeded back the 10' to the City.

Ms. Laughlin explained that it was for the sidewalk to be a part of the 8th Street right-of-way.

Chairman Dalling said he didn't have to if he bought the lot.

Ms. Laughlin pointed out that it was a condition of the sale.

Chairman Dalling asked how much the sale was. This is all weird how it all fell apart.

Bob Thibault, Civil Engineer, said it was very strange and that he wanted to shed some light on it. He pulled up the property on GIS and explained that the black lines are from Assessor's office and that the property is shown as 40' wide, and they have always shown the property as being 40' wide. When it was being appraised and surveyed, they surveyor asked Mr. Thibault why the property was being shown as 40' wide. The deed says it is Lots 1 and 2, and the original lots are 25' wide. Therefore, the deed described it as 50' wide, even though the Assessor and everybody always thought it was 40' wide. The sidewalk had already been built there, because that was what the records showed. The applicant's surveyor caught the error. He asked for a document that could show that the property was 40' wide. No one could find a document, so we created that document and after the sale, the applicant dedicated it back to the City. The property was appraised as 40' wide, the applicant paid for a 40' wide property, and in the end, he ended up with a 40' wide property.

Michele Rambo, Development Manager, had no comments or concerns.

Mr. Thibault recommended approval with no additional comments or concerns.

Fire Chief Matt Griego had no concerns.

Commissioner Stefan Beck said either Mr. Wines was wrong or the City was wrong. Mr. Wines thought it was illegal that the property exceeded square footage. He thought the City was saying it was not illegal. Commissioner Beck wanted to resolve that conflict.

Mr. Wines explained that Elko City Code 3-2-5(G) sets out that the zoning requirements for a single-family residence has a minimum lot size of 6,000 sq. ft. Ms. Laughlin read some comments that there is an exception if the lot has some developmental issues, as this one does. Mr. Wines asked Ms. Laughlin to read back into the record the exception.

Commissioner Beck asked if a single-family dwelling was not the same as a duplex.

Mr. Wines said it is not. He said the exception that he heard was for building a single-family dwelling. He stated that he would not oppose the request to do a variance for the setback for a single-family residence, but he is in opposition to them building a duplex on the lot because it does not meet the requirements. When Ms. Laughlin read the language it said residential only, it did not say duplex.

Ms. Laughlin explained that single-family residence and duplex are listed as a principle permitted use in the R Zoning District.

Mr. Wines asked Ms. Laughlin again to read the exception to the Board.

Ms. Laughlin said that the exception states a single-family dwelling.

Mr. Wines said it says single-family dwelling, not duplex.

The definition for single-family dwelling from Section 3-2-2 of the Elko City Code was then read into the record, which reads:

DWELLING, SINGLE-FAMILY: A building containing only one (1) dwelling unit and which is constructed under the Building Code in accordance with title 2 of this Code, and which also includes manufactured homes developed to specific standards in accordance with subsection 3-2-3Q of this chapter.

Mr. Wines wanted to clarify something that Ms. Laughlin said. When he was searching back through the records, he found that the deed to Mr. Bailey was dated July 1, 2019, recorded as Document No. 756226 on July 2, 2019. There is a set of minutes of the meeting from two weeks earlier where the issue of this setback was discussed, and Mr. Bailey said that he would agree to the 10' setback. The Easement setback was not recorded until January of 2020. Ms. Laughlin said the deed was recorded before the discussion was made about the easement. Mr. Wines said that was incorrect. The discussion was held and the deed, which included the entire 50' parcel, was recorded, then approximately six months later a deed back from Mr. Bailey for the 10' was recorded. Mr. Wines said he didn't disagree that it happened; he was just questioning the timing and the way it all fell out.

Ms. Laughlin said that was correct. She said she should have stated that the discussion on the deed of dedication back to the City of Elko happened after the auction of the property.

Mr. Wines stated that he would not be here tonight if a single-family residential dwelling were proposed.

Commissioner Beck asked Mr. Coleman to clarify his comments.

Mr. Coleman clarified that he requested that the Commission consider that there are regulations for setbacks for a reason and it is a standard of 15'. The contractor knew very well, when he dedicated that 10' back, what the setback was. He didn't think they should allow him to have it decreased to 13', so he could put a duplex on it.

Commissioner Gratton Miller asked if Mr. Bailey could buy the 10' back from the City.

Ms. Laughlin said that was not an option.

Commissioner Tera Hooiman said her only question was in regards to the hardship. Mr. Staszak had said that he was interested in purchasing the property and he didn't present enough of a hardship. The hardship that was presented from Ms. Laughlin's explanation was that he purchased this land and he's not able to profit off his purchase.

Ms. Laughlin clarified that the hardship was listed in the application. Mr. Staszak's condition was a complete different situation; he has a 10,000 sq. ft. lot and his hardship was that he didn't want to take up some backyard space.

Commissioner Hooiman read the hardship that was listed in the application: "Narrow lot that had an additional 10' dedicated to the City." Commissioner Hooiman said that his hardship is that he purchased it and gave it back.

Chairman Dalling added that he only bought the 40' wide, and he didn't know that he purchased the extra 10' when he purchased it. He said it sounded like this property should have only been sold to Mr. Knight and combined with his property.

Mr. Thibault explained that was the initial attempted plan, but Mr. Knight didn't care to follow through with that. When Mr. Knight decided he didn't want to merge this with his other property and he stated that he'd rather be able to sell or develop the property in the future, it meant that it was no longer a remnant that the City could sell directly to him without going to public auction. There are two different processes through NRS.

Chairman Dalling still felt that it should have been merged to the other property. He was trying to find the hardship. He said the pre 2003 didn't do anything for him. It is such a small lot.

Mr. Bailey felt it was a real hardship to have 51% of the property be setbacks and trying to develop a 19' wide footprint. There are all sorts of difficulties and challenges with getting that to work. This would be a difficult property. During the process of dedicating that back, he inquired on the reality of getting a variance and he had a lot of staff support for that based on the situation, so he felt comfortable dedicating the 10' back to the City. Mr. Bailey felt that the variance was critical for this property to be developable. He went forward and purchased the property under assurances that it was going to be a developable piece of property.

Ms. Laughlin asked Mr. Bailey if he would consider building a single-family residence on that property.

Mr. Bailey didn't think the zoning was in question here; it's the footprint. He thought they needed to be allowed to build to the zoning.

Chairman Dalling said they just went over some of that Code. The language does say single-family dwelling, not zone.

Mr. Bailey asked Ms. Laughlin if she could comment on that. He didn't understand if that had been established by staff.

Ms. Laughlin explained that if the property does not meet the lot area there is an exception in 3-2-5(G) that states that it can be considered buildable for a single-family dwelling. It does not say a single-family dwelling or duplex.

Mr. Bailey asked if Ms. Laughlin was saying, the lot under the code doesn't allow for duplexes.

Ms. Laughlin clarified that under the Code a principle permitted use under the R District is a single-family dwelling, duplex, triplex, or fourplex. Anything five or more is required a CUP. With the lot not meeting the area requirement for a single-family dwelling, there is that exception. Any lot of record with the Elko County Recorder prior to December 9, 1975, which don't meet the requirements of the lot area, shall be considered a buildable lot for a single-family dwelling.

Commissioner Beck asked Mr. Bailey if someone gave him assurances that he could build a duplex on the property.

Ms. Laughlin explained that a duplex is a principle permitted use in the R Zoning District.

Mr. Bailey explained that he worked with staff through the entire process. He had been very accommodating in making sure that he did everything in alignment with what staff would support, and that is what he has proposed. He said he would expect to get the Commission's support for something that has staff support. He said this was a very frustrating thing if they are going against the staff recommendation on the property.

Ms. Laughlin mentioned if this was an existing residence and he came to the City and wanted to convert it into a duplex. A duplex is a principle permitted use in the R Zone District and it would be allowed. If it was in existence prior to 2003 it could have a 12' exterior side setback.

Chairman Dalling said it didn't meet any of these things. Chairman Dalling pointed out to Mr. Bailey that he had a full audience of people that were not happy with the project either.

Mr. Bailey said they followed all steps to prepare a well thought out building plan that would add value to the neighborhood with the structure that they are proposing to build. Taking 51% of the property in setbacks after they dedicated back 10' to the City. He felt that was a hardship they met. Staff has shown that they meet all of the conditions, and he really wanted to get support from the Planning Commission.

Mr. Wines thought, even if the Planning Commission approved the variance, that Mr. Bailey would not be able to build a duplex on the lot. It does not meet the requirements. It is unfortunate that someone misread the Code. The Code specifically says that if the lot does not meet the size requirements in an R Zone, that the only thing you can build on it is a single-family residence. Mr. Wines again stated that he would not be opposed to a variance for the setback if it were for a single-family residence. He didn't think this Board could authorize a variance without having had a conditional use permit to allow the 4,000 sq. ft. lot to have a duplex on it that violates the Code.

Mr. Thibault said he would tend to agree with Mr. Wines, to a certain degree. Maybe it is an unfortunate wording in the Code. Mr. Thibault said he was under the impression that existing lots, regardless of their size, were considered buildable. Mr. Thibault said he would still support the variance, but he didn't think Mr. Bailey would be allowed to build a duplex on the property without an additional variance, not a conditional use permit as Mr. Wines suggested, for lot area and lot width.

Commissioner Evi Buell asked what the Commissioners were thinking on this.

Chairman Dalling didn't think it fit. He said he's going to deny it and that he wasn't going to vote for it.

Commissioner Miller concurred with Chairman Dalling. It doesn't fit within the Code.

Commissioner Buell stated that she wasn't in agreement with Mr. Dalling.

Commissioner Beck said he agreed with Chairman Dalling.

Commissioner Buell said it was inherently a mess. She thought that it was unfortunate for everyone involved. They are talking about a piece of land with notable setback restrictions that are overlaid on a neighbor that was parceled out under older standards. That is where she was sympathetic to the applicant's position. Looking at the neighborhood, she felt that this was a good non-disruptive fit. Commissioner Buell felt this was a good project that fit the character and the nature of the neighborhood.

Commissioner Hooiman agreed with Commissioner Buell to a certain extent. The only part that she was hung up on was the duplex aspect. Personally, she would also be in support of a single-family dwelling, with the definition that she read. Her interpretation of that was a single-family dwelling, not a duplex. She felt like it wasn't misread, she felt like it was misinterpreted to fit the situation.

Ms. Laughlin explained to Mr. Bailey that the issue was the duplex part of it. She asked him if he would want the Commission to consider taking no action on this item, or tabling the item, and coming back with a plan for a single-family residence.

Mr. Bailey said no.

*****Motion: Deny Variance No. 1-20.**

Commissioner Hooiman's finding to support the recommendation was the testimony provided during the meeting in regards to Section 3-2-5(G) of the Elko City Code.

Moved by Tera Hooiman, seconded by Gratton Miller.

**Motion passed (5-1, Commissioner Buell voted No).*

Chairman Dalling informed Mr. Bailey that he had the right to appeal the Planning Commission's decision to the City Council.

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported that at the February 11th City Council Meeting they approved the Planning Commission annual report of activities and some corrective deeds. At the February 25th City Council Meeting they approved Final Map 15-19 for Tower Hill Unit 3, along with the Performance Agreement. They also approved a Revocable Permit for a sign in the North 5th Street right-of-way for Edward Jones, they denied land sale of 8,000 sq. ft. behind Juneau Street, and they approved a Resolution for the Master Plan Amendment. They also approved Tentative Map 14-19 for Mountain View Town Homes and Tentative Map 16-19 for Ruby Mountain Peaks Subdivision. The election filings have begun for the two seats on City Council. If anyone is interested in running in the November election, they have until March 13th to file for City Council.

B. Summary of Redevelopment Agency Actions.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

NOTE: The Chairman or Vice Chairman reserves the right to change the order of the agenda and if the agenda is not completed, to recess the meeting and continue on another specified date and time. Additionally, the Planning Commission reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

ADJOURNMENT

There being no further business, the meeting was adjourned.



Jeff Dalling, Chairman



Tera Hooiman, Secretary