

Approved: 8/19/19

**Meeting of
July 15, 2019**

Record of the proceedings of the Boyne City Planning Commission meeting held at Boyne City Hall, 319 North Lake Street, on Monday July 15, 2019 at 5:00 pm.

Call to Order

Chair Place called the meeting to order at 5:00 p.m.

Roll Call

Present: Larry Chute, George Ellwanger, Skylar MacNaughton, Tom Neidhamer, Rose Newton, Aaron Place, Jeff Ross and Joe St. Dennis

Absent: None

Vacancy: One

Jim Kozlowski submitted his resignation from the board, effective immediately. The board wishes him well in his future endeavors.

Meeting Attendance

City Officials/Staff: Planning and Zoning Administrator Scott McPherson and Recording Secretary Pat Haver

Public Present: Four

Consent Agenda

****Motion**

2019-7-15-03

Ellwanger moved, Neidhamer seconded, PASSED UNANIMOUSLY, a motion to approve the consent agenda, the Planning Commission minutes from June 17, 2019 as presented.

**Citizen comments on
Non-Agenda Items**

**Reports of Officers,
Boards and Standing
Committees**

None

Unfinished Business

New Business

**Edwin Street Vacation
Request**

Planning Director McPherson reviewed his staff report in the agenda packet. The Law Offices of Daniel J. Harris, representing Charles Johnson, owner of properties at 410 Jefferson, submitted an application to have approximately a 150.6 foot section of undeveloped Edwin Street between Union and Jefferson Streets vacated. The driveway to access the property is located within the ROW of Edwin St and appears to have been built when the house was constructed in 1992. The existing structure is significantly different than the plot plan that was submitted to obtain an approved zoning permit. The original plan showed a 24' x 34' 816 sqft structure accessed directly from Jefferson St. The existing structure appears to encroach into the required 10' setback from the north lot line. Staff checked prior records and cannot find any additional zoning permits or variance requests for this property, so appears that it is illegally placed within the setbacks. The city does plow the developed portion of Edwin Street, however, it is not listed on the ACT 51 maps. Adjacent property owners did not sign the petition for application. Because there is potential for future development, future access for utilities and parcels would become landlocked, the request is not supported by various department heads and staff members of the city who reviewed the plans.

Katherine Mott, representing Charles Johnson - My client is the first purchaser of this property after it was developed by Dino Franchino. The driveway is in the existing position as it was developed and purchased which was in the 1990s. My client did his due diligence at the time of the purchase with getting a property survey and appraisal, and none of those indicated that the driveway was outside of his property. He has

maintained it for 25+ years. The neighbor who lives at the corner of Vogel and Jefferson did not sign the petition, due to an issue, which precipitated the desire to install a fence due to a dog, and that is when he learned a property line was at issue. The other two developed properties with homes have access from Vogel. I don't see a need to have any property access from Edwin Street. There are properties at the end of Edwin St. that have been developed, and the areas in between, we are not asking to have that closed. He did not modify anything, he inherited this issue. We are only asking to have 50 ft x 200 ft vacated.

Place – During the purchase when the survey was done, it did not show any encroachment of Edwin street at all?

Mott - Through the title search, survey or initial appraisal should have indicated the encroachment. It was when he obtained a new appraisal in August of 2015, exhibit C that he was put on notice that a portion of the driveway was in the abandoned portion of the right of way easement. He had no reason to doubt it when he got his refinancing done in 2015.

Chute – When did the owner purchase the property?

Mott – June 28, 1994, soon after it was built

Neidhamer – Scott, when we have this situation that the owner is not a cause of the situation, is there a process to vacate the street; or other options?

McPherson – The primary issue with the property is that it is non-conforming with the encroachment into the setback. I'm not sure how it happened. The issue would be the illegal non-conformity at a transfer of property. The way to solve is a variance request, the hardship would be to prove that it was not self-created, even though he did not do it. I do not see how it would meet the criteria of the variance request that the Zoning Board of Appeals.

Public Comment opened at 11:12

With no comments closed at 11:13

Board Discussion

Chute – Should the owner have checked out the initial plans from the developer? This situation is unfortunate. It is a 50 ft ROW, the homeowner would be 12 to 15 feet into the easement; however it would still be non-conforming with the setback issue. Did the non-conformity hold up the refinance?

Mott – They were not aware of it, and no it did not hold up the refinancing.

Newton – In 1992 when this was built the driveway into the road access was created, would this not been approved “as built”?

McPherson – Do not see where the city signed off on the final permit. That is not generally done for occupancy. The County building department has final approval for occupancy.

Newton – State statute under Michigan law, is there not a provision that if someone was to take care of property considered abandoned that it reverts to that person taking care of it? **McPherson** – not public property.

Chute – It appears that with the abandonment of Edwin Street, a couple of properties would be land locked, and the street actually would need to be extended. 50 ft is quite a large easement, is there a method to reduce the width?

McPherson – No this street is only 50' wide and not the typical 66'

Neidhamer – The original hand drawing that was turned in for the permit does not show the garage.

McPherson – No it does not; the garage and driveway placement were added and/or changed after the permit was issued.

Ross – Setback is only 10' on frontage. **McPherson** – it is now, at the time it was built the setback was 20'

Mott – Asked if she could speak as she has a different exhibit that shows the garage on the building permit that is dated 7/24 (without a year) and turned it over to Chair Place for board and staff review.

McPherson was not aware of this document and indicated that something different was applied to the building department and was not in accordance to the city’s zoning ordinance with a 6’ setback. This was different than what was approved on the city’s zoning permit issued on 4-27-92. He is not sure what documents were looked at when it was approved by the Building Department.

St. Dennis – When the mortgage survey was done at the time of the appraisal, the owner would have prior knowledge of the encroachment when the stakes were put out.

Place – at the time of the 2015 appraisal, it was indicated that the street was abandoned, and that was false.

Neidhamer – Not everyone is knowledgeable about survey stakes

Newton – A survey is not required at the time of a mortgage.

Mott – I can’t speak if it was or was not surveyed at that time of an appraisal. I think he had it surveyed initially. After looking through her files, she was able to find a survey dated 1994. Not sure if he got this subsequent of learning of the issue, or got it at the time of purchase. She submitted the survey to Chair Place for board and staff review.

McPherson – This 1994 survey shows a 2’9” setback from the lot line

Chute – There are a number of streets in the TRD with a mixture of large and smaller lots, the streets are platted straight through, and some are not platted all the way. Is it the intent to keep the ROW clear for the possibility of future development?

McPherson - Department heads and staff look at all of that for future potential; and we do not like to limit future potential and routes for utilities.

Neidhamer – The driveway within the ROW is not as big an issue as there are other in the city that are the same, what is of concern is the garage is not built within the zoning setbacks, and was built not based on the plans approved by the city; you cannot have a fence within the right of way. I support staff conclusions to not vacate this street. He had no problems with refinancing, but could have problems if he chose to sell.

McPherson – The survey that was provided to the board tonight was dated June 15, 1994 and MBD Mortgage Company certified it at the time of purchase.

With no further board discussion, **motion by Newton, seconded by Chute**, to recommend to the City Commission not to vacate Edwin Street, based on owner’s prior knowledge and survey submitted for review by the applicant’s representative.

****Motion**

2019-7-15-7A

Roll Call:

Aye: Chute, Ellwanger, MacNaughton, Neidhamer, Newton, Place, Ross and St. Dennis

Nay: None

Absent: None

Vacancy: One

Motion Carries

Staff asked Kathleen Mott if the copies of the documents submitted for review tonight, were for the board, she said they were her file copies. McPherson asked for copies and she indicated that she would get them to him.

Balsam Street Vacation Request

Planning Director McPherson reviewed his staff report in the agenda packet. Law Office of Barron & Engstrom, PLC, representing, Final Mile Investments, LLC of 639 Woodland Dr. submitted an application for the vacation of Balsam Place from Woodland Drive to Shady Lane. Currently there are 4 properties that are accessed from Balsam Place and three parcels are bifurcated by Balsam Street. Two new driveways would need to be created with the vacation and the owners would create the driveways at their expense.

City sanitary sewer lines are located in the developed portion of the street. The portion of the street requested to be vacated is 33' by 200' and although a public thoroughfare, it is typically only used by the residents. It is designated on the City's ACT 51 map and is maintained by the city. All of the adjacent property owners have signed the petition for the application. This application has been reviewed by Department Heads and staff and they do not see any reason to grant the request.

Attorney Edward Engstrom, representing Final Mile Investments, LLC – A vacation has been requested in the past, and was denied. At the time of submission in 2002, one owner would not sign the petition. All of the owners at that time, put money into the upgrade of the street and the application has been resubmitted with all of the neighbors signing the petition. The street currently doesn't benefit the public, as it is essentially used as a driveway for the residents. Safety is of the major concern with running back and forth to the garages, kids running and playing in the area, the road divides the properties, it would benefit the city by increased tax revenues, they would no longer have to maintain the street, the current utility easements would remain, the lake access from Shady Lane would not go away, and it would not land lock any parcels. There is not any available lots to develop, so future potential is not there. If you were to send out notices to the neighbors within 300 feet, no one would care. The addresses for the effected parcels are Woodland Ave, and not Balsam Place, as placement of the mailboxes would indicate. It is common sense; if you lived here, you would want to have the street vacated.

Board Discussion

Chute – The parcels between Woodland Ave. and Balsam Street, would they be sold or built on?

Binder: 631 Woodland Ave. – No, that portion would be a part of any future sale.

Place – If this was vacated would the easement still remain to the sewer?

McPherson – The city would have to reserve an easement as part of the vacation for city utilities.

Engstrom – We are not going to take anything away from the public.

Ross – What way would you deal with the existing pavement? How would you indicate private and not the public?

Applicant - There is not a street sign, just used as driveways for the properties. The portion that is not needed for driveway access would be taken out, and lawn established. Live trees would be planted at the edge of Shady Lane.

Neidhamer – is the first part of Shady Lane paved? **Stockbridge** – No it is all grassy, with a sign indicating a road end public access to the lake.

St. Dennis – Why is staff against the closure?

McPherson – Department heads and staff are not comfortable with vacating established streets on Act 51 maps and where we have existing infrastructure.

Ellwanger – There is not a possibility of future development potential in this area, the city would no longer be required to maintain this street, however, we would still have access to maintain the utilities, seems like a win/win situation.

Newton – I almost hit someone when I was looking at the area, it makes no sense to me not to vacate it as it would streamline city utilities and give the city more tax revenue.

Chute - With the owners taking responsibility to remove the street at their expense, there would not be any additional cost to the city?

Stockbridge – No there is no additional cost to the city.

With no further board discussion, **motion by Ellwanger, seconded by Newton** to recommend to the City Commission the vacation of Balsam Street as presented.

****Motion**

2019-7-15-7B

Roll Call:

Aye: Chute, Ellwanger, MacNaughton, Neidhamer, Newton, Place, Ross and St. Dennis

Nay: None

Absent: None

Vacancy: One

Motion Carries

Review draft zoning ordinance amendments intended to eliminate unnecessary barriers to providing needed housing options.

Planning Director McPherson facilitated discussion on the proposed amendments to eliminate housing barriers. The amendments provided tonight are a starting point for discussion and began with several amendments to the definition Article I; amendments that would allow accessory dwellings and duplexes as a use by right and permit multiple family units with a maximum 4 units as a conditional use; change terminology from mobile home to manufactured home and park to development and make sure that the changes are consistent in Article VII; Article X amendments proposed would eliminate the setback requirements for apartment buildings in the CBD district and would permit dwellings on the ground floor of mixed use developments. With this discussion, the board felt things were moving in the right direction, so staff will continue to look at additional sections, however, felt that cluster housing should be looked at separately for any possible amendments.

Staff Report

- As we have several new planning commissioners, I have reached out to our RRC coordinator to see if it would be possible to schedule some training on a Monday night, sometime in September or October. We would open the training up to adjoining and neighboring communities, hopefully, we can have it hosted here.
- Tomorrow, Tuesday, July 16th at 10:00 am, will be a marijuana webinar on updated rules. All are invited to attend. This one is not a part of the MSU extension series.

Good of the Order

With the resignation of Kozlowski, the process will be the same as before, gather any interested applicants and make a recommendation to the City Commission.

Adjournment

****Motion**

The next regular meeting of the Boyne City Planning Commission is scheduled for Monday, August 19, 2019 at 5:00 p.m.

2019-7-15-10

Ross moved, MacNaughton seconded, PASSED UNANIMOUSLY a motion to adjourn the July 15, 2019 meeting at 6:21 pm



Chair Aaron Place



Recording Secretary Pat Haver