

EAST BETHEL CITY COUNCIL SPECIAL MEETING

September 25, 2013

The East Bethel City Council met on September 25, 2013 at 6:30 PM for a special meeting at City Hall.

MEMBERS PRESENT: Bob DeRoche Ron Koller Heidi Moegerle
 Tom Ronning

MEMBERS EXCUSED: Richard Lawrence

ALSO PRESENT: Jack Davis, City Administrator
 Mark Vierling, City Attorney
 Colleen Winter, Community Development Director

Call to Order **The September 25, 2013 City Council special meeting was called to order by Acting Mayor Moegerle 6:30 PM.**

Adopt Agenda **Moegerle made a motion to adopt the September 25, 2013 City Council special meeting agenda. Koller seconded; all in favor, motion carries.**

Zoning Text Davis as a result of a complaint to the City Council by Mr. Weldon Helstrom, 2459 224th
Amendment Ave. NE. at the September 4, 2013 Council meeting, Council directed Mr. Helstrom to present his concerns to the Planning Commission for a recommendation to be returned to City Council. The Planning Commission held a Special Meeting on September 23, 2013 to discuss this matter. Mr. Helstrom's complaint relates to the prohibition by City Code of exterior stairs on a detached accessory structure, Section 14 of the City Zoning Code. The Planning Commission forwarded to City Council a recommendation relating to this issue on Tuesday, September 24, 2013 for Council's consideration at this meeting tonight.

At the Planning Commission meeting, the matter was discussed and upon completion of the presentation and comments of the speakers, Lou Cornicelli made a motion to accept the changes as presented by staff to City Code Section 14, Accessory Structures with three additional modifications: 14. 2.F: to change the language from directly in front to offset from the main view off the principal structure, 14 2.L change that to no smaller than 3 x 3 to a maximum of 6 x 6 and section 14 2.4.A Remove shall not be the focal point. Terry seconded, all voted in favor, motion carried unanimously. At this point the Planning Commission is making a recommendation to approve the zoning text amendment as approved in the attachment.

Moegerle, "At the last meeting we started with Ron, so this meeting we will start with Tom for comments." Ronning, "Under 2.C, every exterior wall, you don't need to add an (s), every is every whether plural or not." Davis, "That was struck. There is a handout before you that shows all the changes. That was mentioned and struck to make it singular instead of plural." Ronning, "(F) why is it here? What caused it to be an issue?" Winter, "The Planning Commission had looked at accessory structures back in March. At that time we discussed it and there was no action taken. There were other issues that came up and the direction was to go back to the Planning Commission. Rather than look at one single instance we wanted to incorporate all the issues talked about in March. There are some lots that have a turnaround driveway as an example and maybe they want to put their garage off to the side. The original ordinance read that you could not put your accessory building to the

side of the house or in the front of the house, and you had to be behind the principal structure. Well, if your principal structure is 200 feet back and you have a lot that is 250 feet deep, we felt like there was an opportunity to be in front of that principal structure. Where this is very applicable is down by Coon Lake. It depends on how you define the front yard, it could be the lakeshore side, or the roadside. A lot of times the house is located closer to the lake and you have quite a bit of room in front of that, so you should be able to put an accessory structure there. That is kind of the thought behind that, but, also that is why some of the other language is there, so that it matches the structure, similar in design.”

Ronning, “I still don’t understand what causes the need for change. In particular, what is different from E, as far as the overall message? Where does the number 200 come from? I was at the March meeting. I don’t recall some of these things.” Winter, “I don’t think you have the most recent copy in front of you.” Davis, “The new change says you can have an accessory structure in front of your house as long as it meets the setback requirements and is offset from the main view of the principal structure.” Winter, “And, as far as E, we are saying a pole type/steel frame of structure it still has to be on three acres or larger. But it can be located, (as an example) if you have a wooded lot and you want to put the pole type structure off to the side, we didn’t want to prevent people from doing that.” Ronning, “Existing language J. The structure must not be designed or used for human habitation and must not contain sewage treatment facilities. No cellar, garage, tent, or accessory building shall be at any time be used as an residentially occupied space, independent residence or dwelling unit, either temporarily or permanently.” Colleen, “We struck the first part and put in the second part. We felt that was cleaner.” Ronning, “What is the difference?” Winter, “There isn’t a difference. We just wanted to make sure we defined all of those, cellar, garage, tent and accessory building.”

Ronning, “What is a cellar?” Winter, “An upstairs part of a garage.” Ronning, “No, a cellar is below the ground. I don’t understand why it is a cellar, garage, tent...” Davis, “In some cases you might have someone that has a cellar that is part of a building and someone is using it to store food or something.” Ronning, “Yes, root cellars. That is what people used to call basements. I prefer the language as it was in the first one, the second one doesn’t add anything besides words. The one here about Minnesota International Code.” Winter, “That has been struck. We made sure where we talk about that under item 4 and then under item 1.a “It shall be the minimum required by the Minnesota Building Code and similar building structure. Originally it was the Uniform Building Code, then it was the International Building Code and so we checked and when we referenced all our other parts of this code it was the Minnesota Building Code that we state. The Minnesota Building Code includes the International Building Code.” Ronning, “That seems redundant as well.”

DeRoche, “The write up on the code change itself, should we use more language than just Helstrom’s for a reason to be changing this. I don’t think they are the reason we are changing this. For someone to be reading this and to get the impression that we are changing this just because of them, I don’t want them to get the impression that we changed the ordinance for just the Helstrom’s.. And I think to get away from that we need to put in that there has been more than that the Helstrom’s that have requested this. In fact there have been a lot of others that have come in and have been complaining about this also. I would like the record to show that. As it is written now, the Helstrom’s came in and complained and we changed the ordinance for them.”

Winter, “And as I stated before, the Planning Commission had looked at this back in March, the language within the accessory structures. It was not only the language within the exterior

stairs that was a concern of some residents, but there were some other concerns within that portion of the code that we felt we needed to be changed and cleaned up. So that is why you have the full and complete document before you with all the changes. I agree, if we are going to change codes that we do it for the betterment of the whole community.” DeRoche, “Under 2.A, the part that says “Without prior approval of City Council”, I am wondering why that has to be omitted?” Winter, “It was felt does that come under some subjectivity? How do you make that determination? If you are going to allow it for one person, how do you allow it for one and not another without setting a precedent. So, to kind of clean that up and make it straightforward, we simply shouldn’t allow accessory buildings particularly in residential areas prior to any construction of the principal structure.”

DeRoche, “Again, we are East Bethel, we are not Blaine, we are not some metropolis. People move up here and want to put buildings up, they want to do certain things, and now we are coming into these financial issues. And some of this stuff to be politically correct with another City, I don’t really care to do that. A lot of this stuff has been on the books and it kind of makes sense. To me I think it is not the Planning Commissions job, I think it is the City Council’s job to make the determination one way or the other. And that way if enough times it comes up, then the City Council can say, “Maybe we need to look at changing this.” If it is just not there, and someone comes in, then it is just the language isn’t there and down the road they go. I don’t have a problem with them coming before the City Council.”

Davis, “This is another one of those things where it is a redundant statement because the City Code specifically states that you cannot build an accessory structure unless a principal structure exists on the property, with some exceptions in agricultural districts.” Winter, “There are other parts of our code under zoning sections for R1, Bob, where they talk about this. So, this was contrary to other sections. We wanted to make sure it was the same in all.” Davis, “I would like to add one thing that reinforces your point you made earlier about this as the range of benefits. There was an email that I think you were all forwarded by a resident that expressed some opposition to the ordinance. His was basically concerning the location of accessory structures basically in front of a dwelling. And this takes care of his complaint and issue.”

DeRoche, “We have got to remember that if someone wants an accessory structure and they have stuff in their yard and we have people complaining. The City inspector goes out and cites the guy and says, “Yes you have too much junk in your yard.” And he says, “Well you aren’t going to let me build what I want to build here, so what am I going to do with my stuff.” Davis, “That is what this does, it gives you much more latitude to build an accessory structure. Now you can build it in front of the structure, to the side of the structure, as long as you meet the setback requirements.” DeRoche, “I am talking more about the Council having the authority to do it, it just seems that since we have come in we are pushing more and more off to make it staff decisions. And I don’t think that is right.”

DeRoche, “My next question is the height on the sidewalls. In the R1 and R2 districts.” Winter, “That has always been in there Bob. That has been in this code, we didn’t propose any changes, we just added it to the table so it was easier to find. Because before that the only place we had it was under item A. So we just put it up in the table so it was consistent with the other zoning. So you can look at that table and find where you can have the 10 foot side walls.” DeRoche, “Again, so I live in R1 or R2 and I have to put up a 10 foot wall. Maybe I have a camper, if you put up a 10 foot wall you can’t put up a 10 foot door.” Winter, “Again it is what was in there before, I haven’t changed anything.” DeRoche, “I am not beating anyone up about anything. As long as we are looking at this thing, maybe we

need to look at that. Because I am R1 and I have 13 foot walls and that did go before the Planning Commission and the City Council.” Winter, “And this is before you and if you want to make changes, as a Council you feel you want to see changes, this is the time to do it. That is why it is before you. It is your prerogative as a Council.”

DeRoche, “Minnesota Codes, are they carved in stone? This is a legal question. Or is it Minnesota has codes and then the City can have a variation?” Vierling, “The state has statutes and they have regulation. Both of those are superior to the City codes. If your code is in conflict with a State Statute or regulation of any one of the departments, your code is effectively repealed or modified.” Davis, “We can be more restrictive, but we have to meet their basic minimums.” DeRoche, “Why the three acres?” Davis, “That is in the existing ordinance. That is already there.” DeRoche, “But, is that something we can change? If it is two acres and it is woods and you want to put a pole barn up? I think it should be two, but it is a round table discussion.”

Koller, “The only thing I have been looking at is 2.J Fish Houses. Fish houses must meet all required accessory structure setbacks. Most of them are on skids or wheels. And a lot of people park them next to their garage or in front of their garage during the winter. They would be in violation of this code.” Davis, “That is part of the existing code, the way it is now. If you have a fish house, you are not permitted to park it in front of your house, it has to be in the side or the rear. Here again, we can change this. It is not static.” Koller, “Fish houses shall be included to in the gross calculation for accessory structures.” DeRoche, “I think we need to change that. I don’t think it should be included in the square footage.” Koller, “A lot of people over the years will buy bigger and bigger fish houses and then you aren’t in compliance.”

Moegerle, “Thank you for changing this from the International Building Code that was unnecessarily complicated. With regard to 2.E Pole type, steel frame or any other accessory structures that contain exterior siding or roof of sheet metal must be on lots more than three acres. First of all they don’t contain exterior siding or roof of sheet metal. Change that to **“with”**. And I think you mean, **“with a minimum of three acres.”** Right here in 4.A1 we are striking Residential design and then in 4.A we are striking rule 1 and rule 2. Can you clarify that for me?” Winter, “Accessory structures have always been allowed in all of our districts, whether it is R1, R2, agricultural. The issue has always been more with the size of the parcel and so the square footage is there and the underlying zoning and then the side wall height. The R1 and R2, it would seem that you wouldn’t be able to put an accessory structure in them, because they weren’t included in the table. So unless you looked for it. We thought it made sense to put it all in the table so you can clearly see that you can have an accessory structure. And then it goes to the parcel size and square footage size and side wall height. And I think the reasoning for having the height at 10 feet in R1 and R2 if you are in a higher density area, maybe it is views or whatever the case may be. An area with a lot of townhouses, you only want a certain height on those buildings. That would be my thought, but again that is not something that the Planning Commission changed at all, we just made it easier to read.”

Moegerle, “So for an example, if someone has an RV and wants to put one in, they would have to come in and get a permit? Is that right? That is the difference? This is what you can do automatically?” Winter, “No, all of this requires permits with the exception if it is 120 square feet or less. But, all accessory structures require a building permit.” Moegerle, “So, what is the value of saying maximum side wall height? Are we really talking maximum or are we talking minimum? Because the example where they could get a permit to have a 14

foot side wall.” Winter, “I don’t know why they were given a permit for that, the maximum is 10 feet.” DeRoche, “Because when I came in I said I wanted a 10 foot door and there was no way that I was going to do that with a 10 foot wall.” Davis, “The way this reads for R1 and R2 the maximum heights for the walls is 10 feet. That has been in the code for a long while. If you wanted to change that, you would have to increase those maximum heights allowed.”

Moegerle, “I thought the Planning Commission did a good job. One question I had and they kind of parsed the words on this, in regards of the location of the stairs. There is the discussion of whether the accessory structure should be behind the house and those kind of things. I am wondering whether there shouldn’t be something in here that says that the stairwell will not be, “The run of the stair will not be on the street side.” So that it will be on either the side or the back. I can’t imagine someone wanting it on the street side, it makes it vulnerable to visitors wanted and unwanted. But, I was thinking if we added that it is a side not on the street, and of course with corner lots that might be more helpful as well. Other than that, I did want to go over the e-mail questions and have them answered, because I am sure the rest of the public would like to have those answered. And the other message, if this proposed amendment is approved, when will it take effect? From Jason Pauly.”

Vierling, “Any ordinance at this stage and then adopted by the City would have to go through publication. It would normally be effective immediately following publication, unless the Council in the amending ordinance specifies a different date later than the date of publication for effectiveness.” Moegerle, “It also asks will existing homes be grandfathered in to the prior codes?” Vierling, “It would automatically be part of statutory law in the State of Minnesota. Accessory structures that were completed under your previous code that were complaint, are automatically grandfathered in whenever a City does an amendment that would render them non-compliant.” Moegerle, “If this amendment is approved, can I submit a permit to build an accessory building in front of the home?” Winter, “That is where we added that language we talked about before under item F. You have the ability to put the accessory building on your lot wherever you want as long as you meet the guidelines.”

Moegerle, “I think that we are faced with this issue with the Helstrom’s and others that have come to us before. So I think that we are not going to be able to solve all the issues we see with this. Maybe we can pass some of the changes and then direct it to come back for other changes. I think the idea of the 10 foot maximum side wall is something that I would like some more information on before we change it. I am not informed enough to set any of that.” Winter, “I am happy to get back to the Council on whatever you would like. In terms of getting back to you, what sort of information are you looking for?” Moegerle, “Maybe circumstances where deviation from the 10 foot side wall would be appropriate? The RV example is one. Issues about home occupations and accessory structures is that an instance.” Vierling, “It is good for the Council to work through that, but do keep in mind that such a structure such as the 10 foot wall is subject to your variance law as well.” Winter, “And going off of what Mark is saying, I don’t think you want to grant variances. If 12 foot makes sense then do that. Or, have it if you have 1 acre or less it is 10 feet, 1 to 2 acres it is 12 feet, 2 to 3 acres 12 feet, and 3 acres or more it is 14 feet. Then you are very consistent and there is not that distinction being made.” Moegerle, “I appreciate that, but, I know of people on Coon Lake with small lots that have RVs that sit out. So they would have to get a variance or something to do this and I am not sure we want to put people through that. If we could be educated a little more?”

Ronning, “Monday a couple zoning people made a comment that we would rather not make

this complicated or more restrictive than it has to be. I am thinking after Bob made the comment about 2.A, "Without prior approval by City Council" what that essentially does is takes away the ability to accommodate if there is a reasonable request. It is just a dead issue." Winter, "Again, we can go back and look, but I don't think you can add the accessory structures because it is under different parts of our ordinance."

Ronning, "The wall height is also a stickler for me. When I came in and asked for a permit, they all gave me this handout. Going by this, there are some conflicts. Height of structure from grade, height of structure from eave. We used this as directions and away I went. Rather than make what we have been doing non-compliant, we should make it more compliant." Winter, "Tom, the way it reads from here is maximum height is measured from the floor surface to the underside of the ceiling." Ronning, "I understand that, but the City has used a different definition of that with their brochure and this is what everyone is using." Davis, "Is there a difference between this and what is in the brochure?" Ronning, "Sure from grade might be below the floor, even with the floor or higher than the floor." Davis, "We certainly need to make a change to make those consistent." Ronning, "And as far as this wall height, it seems it would solve a lot of complaints to say variations will be considered on an individual basis." Winter, "How do you make that judgment call on what the variations can be. Because one of Bob's comments was, "We can't leave it up to staff to decide this stuff. So should everything that is above that go before Council?" Davis, "I think we need to go back and take another look at this and present some further options." Ronning, "Sounds good. When I was building mine it had a fine tooth comb looked at it. If there is an ability to have some latitude, we should do that."

Ronning, "I was at that March meeting, and I thought it was in broad terms that this was discussed. But, I didn't look at the minutes. The thing about the International Code, I would think we would take the State Code." Davis, "The City Code should be at least equivalent to the State Code, we can be more restrictive."

DeRoche, "As far as the wall height, I don't want people to have to come in here and get a variance unless it is a hardship. And in the past, people were picking and choosing what happened. I think we need to go with the 12 foot walls." Davis, "I think we need to come back and look at that. We need to eliminate any interpretation of intent. If it is appropriate, I would ask that Council approve what has been submitted and then send these other changes back to the Planning Commission for further review." DeRoche, "Yes, I definitely think we need to pass these changes so they can get on with their building, but there needs to be further review then." Ronning, "When these things come up, codes or whatever, I would like to see the history, what the problem is, and what justifies the change." DeRoche, "Is it our goal to go through City Code and make it like the State?" Winter, "When we refer to the Minnesota State Building Code that is referenced here to give them options."

Koller, "When you are discussing a side wall height of 12 foot, my current RV is 12 foot 6 inches. And, I have had RVs for years." Moegerle, "When I looked at this, the discussions that were made did not reflect any of the changes in the minutes. Is there a way that we as a Council could attach something to this so we could know what the purpose of the changes were?" Vierling, "You could attach a commentary section and indicate the intent."

Moegerle made a motion to direct staff to prepare information for us to review regarding Fish Houses, wall height limitations, the wording of section 14.2 e which is containing exterior siding/sheet metal, and also with regard to stairs the run not being on the side facing the street and look into a commentary section so we can discuss the

changes we make. Koller seconded. DeRoche made an amendment to the motion to look at 2.a leaving that in, Without prior approval by City Council. **All in favor, motion carries.**

Moegerle made a motion to approve the zoning text amendment as presented: City Code Section 14, Accessory Structures with three additional modifications: 14. 2.F: to change the language from directly in front to offset from the main view off the principal structure, 14 2.L change that to no smaller than 3 x 3 to a maximum of 6 x 6 and section 14 2.4.A Remove shall not be the focal point. Ronning seconded. Ronning, “The purpose is to implement immediately and then have the Planning Commission address our issues.” **All in favor, motion carries.**

Adjourn **Moegerle made a motion to adjourn at 7:24 PM. Koller seconded; all in favor, motion carries.**

Attest:

Wendy Warren
Deputy City Clerk