

EAST BETHEL PLANNING COMMISSION MEETING

July 23, 2013

The East Bethel Planning Commission met on July 23, 2013 at 7:00 P.M for their regular meeting at City Hall.

MEMBERS PRESENT: Lou Cornicelli Randy Plaisance Tanner Balfany
Glenn Terry Lorraine Bonin Brian Mundle, Jr.

MEMBERS ABSENT: Eldon Holmes

ALSO PRESENT: Colleen Winter, Community Development Director
Tom Ronning, City Council Member

Call to Order & Adopt Agenda Terry motioned to adopt the July 23, 2013 agenda. Bonin seconded; all in favor, motion carries unanimously.

Public Hearing, Conditional Use Permit request – TinMan Fabrication, Inc., Jim Crews, 21461 Aberdeen St NE, East Bethel, MN PIN 083323430009, B2 – Central Business District

Consider Granting a Conditional Use Permit (CUP) for James Crews, TinMan Fabrication (a custom fabrication and machine shop that specializes in customizing vehicles), in the B-2 – Central Business District.

Property Owner/Applicant:

James Crews
19470 Nightingale St. NW
Cedar, MN 55011

Property Location

08-33-23-43-0009
LOT 2 BLK 2 LINGES
21461 Aberdeen St. NE
East Bethel, MN 55011

The applicant, James Crews, is requesting a CUP to operate a fabrication and machine shop. Attached to this request is an explanation of TinMan Fabrication, Inc., along with a brochure. Staff has been to Mr. Crews' shop in Oak Grove. Mr. Crews has outgrown that facility and wants to be in an area that was located close to Highway 65. It is his intent to utilize his existing facility for storage and overflow parts. He has stressed that there will not be any outside storage of parts or vehicles at the proposed location in East Bethel and all storage will be inside the building. A couple of areas that were discussed were:

Noise – Noise levels when doors are closed and machines are operating will have minimal impact. Mr. Crews currently has neighbors right next door to his business and they do not have any issues with noise coming from the business. In fact his neighbor has stated that he would not even know Mr. Crews is running a business at the Oak Grove location. We discussed the noise level when the doors are open and that would be similar to the noise emitted from trucks driving on Hwy. 65.

Permitting for waste – The current septic system is compliant and TinMan does not do any painting, oil changes, engine repair, etc. They fabricate, customize parts, and add on to existing engines, etc., so there is no additional waste generated. They also recycle as much as possible and there is very little waste in the business.

The proposed location is an existing building in the B-2 (Central Business District). The building has been previously used as a veterinarian clinic and a heating/AC business. There was also before you last year a request to use the property for Pavement Resources. Mr. Crews has indicated that he and his employees will utilize the back parking lot. He does not generate a lot of walk-in traffic at this time as he does not sell retail parts. He has an office and does internet sales along with sales generated by advertising and word of mouth. His clients range from individuals to other shops. He also makes parts that are marketed by distributors.

Recommendation(s):

Staff requests Planning Commission recommend approval to City Council for a Conditional Use Permit to James Crews of TinMan Fabrication, Inc. to operate as a builder/fabrication shop for rods, custom and classic automobiles at:

21461 Aberdeen St. NE
East Bethel, MN 55011
08-33-23-43-0009
LOT 2 BLK 2 LINGES EAST BETHEL CENTER
SUBJ TO EASE OF REC

Subject to the following conditions:

1. No outside storage of vehicles or other parts.
2. Signage to comply with all applicable codes and regulations of the City of East Bethel.
3. Building to be issued a Certificate of Occupancy for the proposed use once all applicable State and fire building code requirements have been met.
4. Comply with City of East Bethel Code of Ordinances – Zoning, Appendix A, Section 27 Landscaping Requirements.
5. Comply with City of East Bethel Code of Ordinances – Zoning, Appendix A, Section 22, Off Street Parking and Loading Requirements.

Failure to comply with the above stated conditions will result in the revocation of the Conditional Use permit.

Winter wanted to provide examples of what Mr. Crews does in his shop. She provided some pictures of after-market changes. Mr. Crews can explain the photos.

Jim Crews - 19470 Nightingale St NW. This is an engine in the '69 Camero. Another company builds the engines and they assemble the car. They do everything but the finish paint and upholstery. His biggest selling product is about 250 items. He also showed pictures of a door and also a picture of the shop. They don't do oil changes. We might take an occasional motor out and

remove the oil, but all the scrap metal and cardboard goes to recycle. The pictures were of the Oak Grove shop.

Public hearing was opened at 7:08 p.m.

Public hearing was closed at 7:09 p.m.

Mr. Crews said on the map, Winter didn't show the parcel north of the property is also part of the purchase; it is just a vacant lot.

Terry motioned to recommend approval to City Council for a Conditional Use Permit to James Crews of TinMan Fabrication, Inc. to operate as a builder/fabrication shop for rods, custom and classic automobiles at:

**21461 Aberdeen St. NE
East Bethel, MN 55011
08-33-23-43-0009
LOT 2 BLK 2 LINGES EAST BETHEL CENTER
SUBJ TO EASE OF REC**

Subject to the following conditions:

- 1. No outside storage of vehicles or other parts.**
- 2. Signage to comply with all applicable codes and regulations of the City of East Bethel.**
- 3. Building to be issued a Certificate of Occupancy for the proposed use once all applicable State and fire building code requirements have been met.**
- 4. Comply with City of East Bethel Code of Ordinances – Zoning, Appendix A, Section 27 Landscaping Requirements.**
- 5. Comply with City of East Bethel Code of Ordinances – Zoning, Appendix A, Section 22, Off Street Parking and Loading Requirements.**

Failure to comply with the above stated conditions will result in the revocation of the Conditional Use permit.

Cornicelli seconded the motion; all in favor, motion carries unanimously.

Will go before the City Council on August 7, 2013.

**Public Hearing,
Variance request –
Donald Wargin, 324
Dogwood Rd NE,
PIN 363323240034
and 363323240035,
Rear yard setback,
R1- Single**

**Background Information:
Property Owner/Applicant:
Donald Wargin
324 Dogwood Rd. NE
East Bethel, MN 55092**

**Family/Shoreland
Management****Property Location**

324 Dogwood Rd. NE
PIN 36-33-23-24-0035
Lots 925-929 Coon Lake Beach

The applicant, Donald Wargin, is requesting a variance from the rear yard setback to construct a new home. On Mr. Wargin's property there was an existing cabin which, according to Mr. Wargin, he planned on redoing the bathroom and installing a new shower. Mr. Wargin proceeded to demolish the existing cabin and put in a new larger foundation without obtaining any building permits or checking with the City of East Bethel regarding code requirements, property setbacks, and septic system requirements. The City of East Bethel saw that Mr. Wargin was working and placed a stop work order on January 25, 2013. Since that time the Building Official and Community Development Director have met with Mr. Wargin on several occasions and explained to him what is required for a new home permit, as well as septic work, etc. Mr. Wargin has a large lot and has room to set the home closer to the west or front property line and comply with all existing setbacks as required in the R1 – Single Family and Shoreland Management Overlay District. Mr. Wargin insisted that he stayed within the existing footprint of the old cabin. Section 2 and Section 4 in our Code are applicable as follows:

2. - Nonconforming use.

A nonconforming use may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion unless:

- A. The nonconforming [use] or occupancy is discontinued for a period of more than one year.
- B. Any nonconforming use is destroyed by fire to the extent of 50 percent of its market value, and no building permit has been applied for within 180 days of when the property is damaged. In such a case, any such building permit shall be subject to reasonable conditions in order to mitigate any newly created impact on adjacent property.
- C. A nonconforming use may not be changed to another nonconforming use.
- D. When any nonconforming use has been changed to a conforming use, it may not be later changed to a nonconforming use.
- E. A nonconforming use may be changed to lessen the nonconformity, but once lessened, the use may not be changed to increase the nonconformity.

4. - Nonconforming structures.

- A. Nonconforming structures may not be enlarged or altered in a way that increases their nonconformity. They must comply with the following:
 - 1) Expansion or alteration of a nonconforming structure may be

permitted provided the expansion meets the required setbacks from the public right-of-way, side and rear lot lines, wetlands, lakes, sewer treatment system, well, and all other requirements of this chapter.

- 2) Long-term sewage disposal needs can be met on lots that are not served by public sewer.

Mundle asked if the home was non-conforming. Winter said yes. She said it was within a couple of feet of the setback. Because it is several lots, there is room to be in compliance. He is requesting a variance to put it back 19 feet closer. Previously it was 21 feet from the rear set back. He would be within 17.4 on the side yard. It was 19.3 on the rear set back.

Staff has advised Mr. Wargin as to what his options are and explained that he will need to remove the foundation that he put up without obtaining a building permit and set it so that it complies with the setback requirements for R-1.

Mr. Wargin maintains that he should be allowed a variance. Staff explained to Mr. Wargin that a variance requires a hardship related to high water table, geography or other issues out of the control of the landowner, and shared with him the variance process and language regarding proving of a hardship as follows:

D. *Procedure.*

- 1) The planning commission shall not recommend approval of any variance application unless it finds that failure to grant the variance will result in undue hardship on the applicant and, as may be applicable, all of the following hardship criteria have been met:
 - a. To hear requests for variances from the literal provisions of the ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance. "Undue hardship" as used in conjunction with the granting of a variance means the property in question cannot be put to a reasonable use if used under conditions allowed by the official controls, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance. Undue hardship also includes, but is not limited to, inadequate access to direct sunlight for solar energy systems.

Mr. Wargin requested the opportunity to go through the variance process.

All documents are included in the packet.

Recommendation(s):

Staff recommends that the Planning Commission deny Mr. Wargin's variance request, as he does not meet the hardship requirements to grant a variance.

Winter presented the Planning Commission with pictures of Mr. Wargin's property. Winter explained that Mr. Wargin's existing structure is older and she pointed out on the pictures where the new foundation was started. This is another picture where they are starting to redo parts of the structure and there is the poured foundation on both sides. Here is another picture – these are pictures that the building official took when he put the stop work order in place. This was all done without obtaining a building permit. Balfany asked if everyone had time to read Mr. Wargin's letter.

Public hearing was opened at 7:18 p.m.**Public hearing was closed at 7:19 p.m.**

Plaisance asked if there is anything on record as to where the original cabin was located and its dimension. Winter said what we have to go on is the aerial photography and stated it is not 100% accurate. Mundle asked if there is a survey on file. Winter stated that there was not a survey on file in the original building file, but the survey that has been given to the Planning Commission as part of the packet, was one that Mr. Wargin did after the fact. Cornicelli said do you know where the foundation was? Winter stated based on the building official's observation and review on site. Bonin said how did they know it is larger and not in same place. Winter said because some of the demolition was not completed and the original foundation was still in place when the building inspector was on the site.

Don Wargin, 324 Dogwood Road. He has a picture of the old foundation from the back yard. There weren't any footings. He fell through the shower because there was no real existing foundation. There were 8-inch blocks below the house. The house just lay on the ground. He lifted the house up 34 inches. The house almost fell apart. The whole floor was about rotted.

Balfany asked didn't he think about pulling a permit. Wargin said it only took two days to tear the house down. Balfany said then you should have come to the City at that point. Cornicelli asked how long did you live there. Wargin said he lived there for 14 years and raised his boy there. He was trying to replace it right where it was. The basement would have been increased, because it was just a crawl space at best. The 2x4 in the walls weren't even a ¼ of an inch thick. There were so many ants in there. He thought it was bat crap but it was ants. It was something he had to do, but went about it the wrong way.

Bonin said you put a foundation underneath it now. He said when he set it down it wouldn't level out. Plaisance asked who did the work. Wargin said it was just him. Balfany said he indicated that he had a carpenter friend. Wargin said yes, I had a friend and he said it would be easier to tear it down then to do what he was doing. Balfany said the friend didn't recommend coming to the City to get a permit. Wargin said no. Cornicelli said what is there now, just the foundation?

Wargin said yes, just foundation. Balfany said what kind of work it takes to move the structure. Mundle said before the existing structure, he should have come up through the permit process. More than likely if this structure sat where it was directly inside the 19 feet and he had pulled a permit and shown that he had to make repairs, it might have gotten through and he would have had a legal non-conforming structure. But because he tore down the existing structure without obtaining a permit, he now has to follow the rules.

Wargin said to move it forward 6 inches he will have to tear down a large white pine. Mundle said he doesn't like to cut down trees. But you will be able to expand to the front, yes the tree will have to go, but you will be able to use the existing foundation from his understanding. So you would now be compliant without having a variance. Wargin said that is a lot of work. He can go down the road and buy another house for a lot cheaper. He will just leave the lot there and use this lot as a recreation center. There are people living in their garages and everything around there.

Balfany said we have to follow code and precedent. Wargin said we have a friend that is 9 feet off his lot line. It was meant to be a fixing of the shower. He doesn't know how he got this far – it might have something to do with his medications. Mundle said some communities require a permit for removal of sheet rock. Wargin said some of the communities don't require permits for anything like Cass County. He would like to remain here, but it isn't feasible to remove the tree. That isn't going to happen. Balfany said there is also the option of shrinking the structure. Wargin said he wasn't trying to change anything. Mundle said if something happens to the structure, that legal non-conforming use goes away. Now if you want to build anything more, it has to be conforming. Balfany said the walls were already down, and it was no longer a structure.

Cornicelli said you are contending you are using the same footprint and it isn't the same footprint the City says. If the footprint changes it is no longer non-conforming. Balfany said once the structure is down, it is no longer covered by non-conforming. It is the same adage that you have to leave part of the structure up. Wargin said he has seen that happen before. They start out with a little cabin then they have a mansion. He wasn't going to building a mansion. Balfany said unfortunately with the structure coming down we couldn't authorize a variance.

Bonin said you could build something there, and if didn't want to build forward, you could make it wider, more of a square building, without having to go back forward. You would still have to change multiple walls. Wargin said that is so involved. He hand dug that. He is shot. He isn't doing any more digging, he is done. He is going in at the end of the month for surgery. He could make it smaller, but then it might not be conforming. His roof is for 33. Terry said if this rotated 90 degrees, it would work in the yard. Mundle said that would be a lot of digging. Terry said could you do post footings. Balfany said you would have to make a three-season porch. Wargin said I would be cutting into that tree. He has looked at it and measured it many times. The one area is where he parked the motor home. That is all class five there. He already has to move the garage to put the sewer where the garage was. With all the trees. He has already taken down 6 trees, now there are only 11. Originally there were 18 trees. Balfany said

unfortunately taking down trees happens with construction. Wargin said you and I together couldn't put our arms around it.

Cornicelli asked about the pictures - if it was old structure or new structure. Wargin said it was before it was torn down. The floors were all rotted and if you jumped on them, you might have fallen through. Cornicelli said is there septic. Wargin said there was well and septic. But now it has to be redone. He didn't want to go through all that. Bonin said you mentioned that you could buy something else. Is there something you were looking at? Wargin said he could buy something cheaper, somewhere else. The house down the street went for \$40,000. He did most of the building himself. The only reason it got done is because he wasn't paying someone to do the work.

Plaisance stated to Mr. Wargin that he appreciates all the work he has done, that you wanted to upgrade your home, but unfortunately, you have taken that decision out of our hands. Had you come to us, from the beginning we may have been able to advise you, but unfortunately, he doesn't see how we can give you this exception with the way the property is currently sitting. At that point you have to conform. He doesn't know how we can do that. He also has other concerns. Even if they were rotted still standing, and you were replacing it, you would have fallen under the rules that you were fixing up the place. There is no way to verify that. There is no way to say it was the same footprint. He also has other concerns. You have done the work yourself. He is looking at some of the things here and when you did take down the building did you talk to the electrical or gas company about moving the meter. All the piping that goes up to the meter is theirs and you can't move that without their approval. Wargin said he never moved it, he dug around it. Plaisance said did you find out where that meter would have to be with regulations. Wargin said there is plenty of room there. Plaisance said there needs to be a minimum of three feet. Wargin said there are two egresses in the basement. There are four small windows. The meter has plenty of room. It is still sitting in its original position. He would have contacted them in the future. Balfany said there are still plenty of things that needed to be done correctly. Having all the companies out to mark where the wires, gas, cable are. The proper things needed to be done to build. We cannot create a precedence of where someone starts a project, and says I didn't know.

Bonin said what we have to protect against someone with the attitude of 'I will do whatever I want, and I will pay a fine. Somehow maybe I will be able to get by with it.' That is part of the reason we have to stick to the rules. Otherwise we would be telling people to come in and say I am sorry.

Wargin asked if he could have the lot re-designated as recreational property. Balfany said I don't think we can do that. Bonin said you don't have to build on a property. Balfany said if you chose to do nothing with it.

Wargin said he would pull a permit going forward. Balfany said if you move that wall within 25 feet. Mundle said you would have to pull a permit, and it would have to be approved by the building official. Wargin said I couldn't move the wall without approval. Mundle said you would come in with a blue print and a survey to show them this is what you would do. They will look at the plans and

review it. Wargin said he couldn't move it all of the directions because of the trees. The tree is the focal point of the lot. He bought it because of those trees. It gives him the feeling of being at Chippewa National Forrest. Balfany said he could appreciate that. Wargin said no you don't appreciate it. He said he has a lot of money into the tree. You haven't seen the lot; you don't know what it looks like. Balfany said you say you are not going to build to the size you need to unless you remove the trees. If you aren't willing to remove that, and you are not willing to build the house to be conforming, then you are limiting yourself. In order to build to what the City code requires, that might be the option. Wargin said I guess these trees aren't important and no one cares about the tree. White pines are uncommon. Wisconsin wants the pinecones. Because they are a rare tree.

Balfany said we have to conform to what the law is. Wargin said it is a lot of work. He did most of it himself. Because he can't afford it. Terry asked what the issue is if you expanded to the north. Wargin said he could only go 7 feet. Terry said then what? Wargin said he would then be going toward the mobile home. The tree is still there and the root structure. Cornicelli said we are talking one tree. Bonin said if you build part of the house to the north, you wouldn't have to dig out that foundation that you put there. Wargin said he would still have to remove part of it. He would still be putting in 2/3 of the basement. That is a lot of work. Balfany said we aren't going to be able to approve the variance with what we see here. Obviously it wouldn't hurt to find another option. Terry said if you find a way to make it fit, maybe an L shape structure. If it conforms, you don't need to see this committee.

Plaisance asked what the minimum size is. Winter said she thought 1,000 feet. With a full basement that would be two storied. Plaisance said if you do 1,000 square feet. Your current structure is only 814. Above ground would include to the 1,000. Terry said if that came back in for making it smaller, he thinks that would make it for a variance. Winter said the lot is quite larger. Wargin said it is 100 x 100. Wargin said it is five lots and he doesn't have that much. He had the house on top of the basement before. Balfany said if you shrink the basement, you might have a chance for a variance with a smaller lot. Mundle said you would have to bring it to an engineer.

Balfany said if you would have come before us before, we wouldn't be in this place. Winter said the minimum square foot on a single level house is 1,000 square feet. Balfany said there are options, some that you might not want to do. Cornicelli asked if we have the authority to issue a variance in this case. Winter said no. Balfany said he would recommend working with the Building Official and staff to work through a solution. Mundle asked if they would give him some ideas. Winter said the Building Official has worked with him on a few occasions. Mundle said if the Official could say some options that he could -- say like putting a split level home on the lot, how he could do it. Plaisance said we don't want to design it. Balfany said foundation does need to comply with the building code. Winter said you do need to make a motion.

Mundle motioned to deny Mr. Wargin's variance request as he does not meet the hardship requirements to grant a variance. Plaisance seconded; all in favor,

motion carries unanimously.

**Comprehensive
Plan/Zoning/
Ordinance Changes**

Winter stated that Mr. Wargin's issues, and others in and around Coon Lake such as the one on Dogwood that we reviewed last month, are going to become more common place. There are a lot of homes on small lots and individual septic and wells and the City may have to consider some alternative plans for this area. The other area that warrants discussion is the Hwy 65 corridor. The suggestion is the City Council, EDA and Planning Commission all meet to discuss these two areas. That meeting would take place in September. If the Planning Commission were amenable to that, we would work through the City Council to schedule that. The Commission believes it is a good idea.

Cornicelli said we all empathize with this guy. Mundle said if he came in, it would be a different story. Winter said it is always suggested, people need to check the rules. It is certainly education, Plaisance said, working with the City Council and the EDA. We do need to look at Coon Lake Beach; some of the current ordinances that we have on record don't fit. We might have to have some new ordinances for that area. Balfany said that is what the joint meeting would be about. Bonin said the issue we just dealt with wouldn't be addressed in a meeting. Others don't have that space. Plaisance wasn't specifically talking about that piece. Balfany said the Dogwood Street property would have needed a specialty system. That is a property that might need to be addressed. Mundle said there are a lot of homes in Spring Lake Park that are in the same situation. Plaisance said he understands that, but with septic systems, how do you comply. Cornicelli said not all may be able to conform. Winter said with the Dogwood property, they did decide to tear down the house. The trend we are seeing is that people are buying those lots. Bonin said that should be our goal, to get rid of the tiny lots. Balfany said that shouldn't be our goal. Bonin said as the opportunity arises, there is no sense in perpetuating the past. Balfany said that is not going to be the priority. If they come in, we aren't going to say 'you're a small lot, and we are going to get rid of it.' Winter said to Lou and Lorraine's point, we might not be able to make it work. Cornicelli said how he would interpret it as the smaller properties get vacated, they will be twice the size of what they were twenty years ago. Bonin said especially when you are talking very small lots, in bankruptcy. That is a perfect situation for us to say this is what you want to happen to this property. Mundle said they would pay people for green acres. Couldn't we have a system in our system where if people bought the property we would allow them to not pay taxes? Winter said these are perfect discussion points. She would like to have the discussion on the corridor first, MIDS and then Coon Lake.

The meeting would be after Labor Day if we can.

**Approve June 25,
2013 Planning
Commission Meeting
Minutes**

Terry said he has two changes - if these weren't verbatim he wouldn't have to make changes. Page 6/8 he would like to change the sentence, in the larger second paragraph, in the middle of that. He would like it to read: Glenn said we should talk with developers and ask about the impact.

On page 3rd paragraph, page 8/8, in the middle of that third paragraph – all you need is simple backgrounds and larger letters.

Terry motioned to approve the amended minutes. Mundle seconded; all in favor, motion carries.

Other Business/City Council Report

We did have a work session of the budget with the City Council. She presented the Planning, Economic Development and Community Development budget. She did include money for comp plan work. It would be enough to get us started with the corridor. So we will see. Mundle said so that means big raises for all of us.

Adjournment

Councilmember Ronning was not present, so there was no Council report.

Bonin made a motion to adjourn the meeting at 8:20 p.m. Mundle seconded; all in favor, motion carries.

Submitted by:

Jill Anderson
Recording Secretary