

Kindred Planning & Zoning Commission Meeting Minutes

Wednesday, October 19, 2022 ~ 6:30pm ~ Kindred City Hall

Members present: Kersting, Thompson, Woller-Cornog. Absent: Lammers, Mauch.

Others: Auditor Arnaud, PWS Schock, Marlowe Rud, Tim Hill, Gene Thompson, Mark Erickson, Nate Opgrand.

Member Kersting called the meeting to order at 6:33pm.

1. **Approval of meeting minutes**

Motion to approve meeting minutes of 09-28-2022 by Thompson, second by Woller-Cornog; Roll Call Vote (RCV) – Motion Carried Unanimously (MCU).

2. **Public Hearings: Preliminary & Final Plat and Variance request for Burner Addition**

Member Kersting opened the public hearings.

Kent Burner was unable to attend due to health reasons, so Auditor Arnaud presented the proposed plat for Burner Addition. At the southwest intersection of Dakota St and 5th Ave N, Mr. Burner owns two parcels at and adjacent to each other: Parcels 04-0300-00989-000 & 04-0300-00946-010, respectively. His objective is to reduce the length of the current residential dwelling parcel and combine that vacant area with the other vacant parcel to create a new vacant/buildable lot that would have Dakota St access. Arnaud stated that currently the property has a 40-foot right-of-way (ROW) easement recorded on the parcel for Dakota St and the proposed plat would properly dedicate the ROW to the City. This would effectively reduce the width/size of the parcel by moving the northern property line further south. Moore Engineering (ME) prepared the plat work for Mr. Burner and it was determined that the ROW easement was written on the property without properly identifying the location of the section line. Upon ME review of the area, it was determined "The city dedicated the North 40' of the SE1/4 of Section 29-137-50 in 1977 for road and utilities. It seems like this was done without knowledge of the actual ¼ line location since this 40' strip would include the majority of Kent's house." After reviewing the proposed plat with the City's Public Works Committee and City Engineer, it was decided that dedicating a 40-foot ROW from the center of the existing roadway would be best so the City would actually be giving some property back not being used as right-of-way. Essentially, this reduces the size of the Mr. Burner's property but also creates a non-conforming lot as the existing structure would have a setback on the north property line ranging from 9.8'-12.2'. A variance would need to be considered for the existing structure as well as any new construction in the future because the new proposed property line would make the lot unbuildable without a variance. Current side yard setback requirements for an SFR-2 zoned corner lot is a minimum of 20' on the street side and 10' on the other side; with the proposed new lot width at 55.93', the total buildable width would need to be less than 25.93'. That is the reason for the City's Variance Request of a 10' setback on the north property line for the lot with the existing dwelling.

Neighboring property owner Tim Hill expressed concerns with the plat and asked why the City does not consider platting this entire block. He stated the whole area is "a mess" and asked if the City could approach all 10-15 property owners to be sure all the properties are updated. He stated he does not want irregular lots and would like to keep straight property lines. He understands that this would require the cooperation of all property owners, but would like it considered. Mr. Hill stated he has had no problem with Mr. Burner as a neighbor over the years, "he is wonderful, but the block is a mess." Mr. Hill said he had his lot surveyed in June 2022 by another surveying company and that when Mr. Burner's survey stakes were installed, they did not line up and there was a gap in between the properties. He said this needs to be fixed and is willing to invest in a project to help remedy the issues. He said the City has known about the issues in this area for 2-3 decades and would really like the City to consider a plat of the whole area.

Arnaud noted that there are other properties along Dakota St that have issues with the ROW not being properly dedicated and the ROW is recorded on the property as an easement instead. This shows the parcel lines extending into the street, but use of that area by the property owner is actually not allowed. Platting the properties to properly dedicate the ROW would be a cleaner way to go, however, Arnaud said she was unsure of the ability to incorporate additional properties into the Burner Addition plat at this stage of his project. It would likely change the scope of the engineering agreement between Mr. Burner and ME. She also noted that if a plat of the area were to be done, there would be an advantage for property owners to cost-share the expenses of the plat project. However, every property owner would not only need to be in agreement, but it is most likely that many owners have mortgages, so working with each lender would add another level of complication. Every abstract would need to be acquired, examined for a title opinion, and then updated once the plat project was completed. This would be a lengthy and extensive project. She noted that there were no written or verbal concerns received on the plat, and only two requests for documentation.

Mr. Hill stated that he would consider a quiet title action to prevent the plat from proceeding if needed. He worried that he would eventually need a variance on his property too, if the one for Mr. Burner's property was approved. Arnaud said that would not be necessary; Mr. Burner's existing house is closer to Dakota St than Mr. Hill's, so even if Mr. Hill's property was platted and the ROW dedication changed, his house would likely still be setback far enough and would not require a variance. Mr. Hill said that it is the City's responsibility to consider future issues in this area.

Member Kersting said that Mr. Burner has invested his time and money in this plat. She asked present neighboring property owners of the block that were present (Arnaud and Thompson's) "Hypothetically speaking, if the City were to seek interested property owners to partake in a plat of the block, would you consider including your property?" Both replied yes, likely. Mr. Hill stated that he does not have concerns with possibly losing a few feet of property, but that he wants his parcel prepared so that selling the property in the future is easier. He offered to personally write or reach out to the neighbors to see if there were enough interest for a plat project. He shared that leaving a space "unclaimed" is not ideal; he believes this plat benefits Mr. Burner but not the City and it would be in the City's best interest to rectify the misalignments in this area, noting "the time is now."

Mr. Hill noted that his offer still stands to reach out to the other owners, and that other surveyors may be less expensive (he used Neset). He said as an attorney, he prefers to avoid litigation and would work to resolve the concerns outside of a courtroom.

Member Kersting closed the public hearings. Board discussion: Member Woller-Cornog said she would like to see the topic tabled, would like more info on the unowned land. Member Thompson agreed and noted she would like to see if other property owners are interested. All agreed to table the plat and variance at this time.

3. **Public Hearing: Ordinance No 2022-100 – Proposed Revisions to Chapter 4 Definitions, Chapter 4-0502 & 4-0610 Ground Coverage and Setbacks for Accessory Structures, Chapter 5-0303 Moving Permit Requirements**

Member Kersting opened the public hearing.

Arnaud noted that the revisions to the Chapter 4 definitions were provided by Building Official Mike Blevins to more appropriately align the City ordinances with the State Building Code definitions for mobile/modular/manufactured homes and mobile home parks. The changes to Chapters 4-0502 & 4-0610 were to remove attached garages from the maximum ground coverage calculations and simply format these sections to be easier to read and understand, as well as change the rear & side setback of accessory structures from 3' to 5'. The change to Chapter 5-0303 was to properly identify that a Moving Building permit is required when moving a structure into city limits and only when the structure is above a certain size. Discussion on what size is appropriate for this process; smaller sheds that could fit on a standard size trailer could be exempt from going thru the Moving Buildings ordinance process. Arnaud noted that all buildings over 120 sq ft are required to have a building permit and that there have been previous instances of smaller preconstructed sheds (Northland Sheds, Home Depot, and Menards) being moved in the City without issues. These types of loads do not generally require any overweight or oversized load permits from the county either. She also said that most mobile homes are 14'-16' wide, and that the City of Fargo does not require a moving permit for single-wide mobile homes. The board agreed that anything smaller than a 12'x16' structure could be moved into the city without going through the Moving Buildings process. Discussed the definition of Manufactured and Mobile Homes regarding the foundation.

Member Kersting closed the public hearing.

Motion to recommend approval to City Council for Ordinance 2022-100 contingent on revisions to foundation definition in 4-0203.57 and including structures 12'x16' or larger in 5-0303 by Thompson, second by Woller-Cornog; RCV – MCU.

4. **Permit Report**

One new single-family residential and one accessory structure building permits issued since last month.

5. **Adjournment**

Motion to adjourn at 8:11pm by Woller-Cornog, second by Thompson; RCV – MCU.

(Minutes subject to board approval.) (Agenda deadline is noon Wednesday the week before the meeting.)

P&Z Board Member

Tabitha Arnaud, City Auditor

Date approved