

Minutes of the Bicknell Planning & Zoning Commission

Tuesday April 4, 2023, 7:00 - 9:00 pm
Bicknell Town Hall, 64 West 100 North Bicknell UT

Welcome and Call to order @ 7:00 : Ellen Anderson

Roll Call: Katie McDonald, Gregg Anderson, Ellen Anderson, JaCee Johnson, Jim Dudleston present. Tony Jackson and Rhett Jackson were absent.

Public Attending: Laura Lasko, Tom Bower, Carolyn Mattingly and Brad Brinkerhoff.

Public Hearing: The Public Hearing was opened by Ellen Anderson to hear any input on the Talmage Mooseman variance application to transfer ownership of part of his property and adjust the boundary line. On his variance application it says "To transfer ownership and separate from its original deed due to a sale in 2005."

Because this was not clear, a site visit was arranged with Mr. Mooseman for the Planning and Zoning Commission to come onsite to talk to him and see first hand what he was requesting to do. He presented to us that he wanted to split his property and the reason he needed the Planning Commission is because he would be left with less than the required ½ acre after the split. Mr. Mooseman showed the commission where the proposed boundary line would go. Steven Mooseman (Talmage's neighbor) presently sits on .23 acre and Talmage Mooseman currently sits on .89 acre. The request was to allot it out differently so that Steven was able to acquire the sheds currently on Talmage's parcel. In order to give Steven the sheds, the side of the sheds became the new property line.

The variance being considered was just to allow Talmage to reduce his parcel below the ½ acre currently required. It was mentioned that the new line would be the side of 2 buildings and another building would be split in half by the line. The new line would also be along the door side of the shop. This would create a case where Steven Mooseman would need a variance for all of the buildings because no required setbacks would exist.

Ellen then opened the meeting for any of the public in attendance to speak.

Tom Bower asked if this would affect any other property or just the properties of Talmage and Steve Mooseman. Ellen responded that it was just the Mooseman properties.

Laura Lasko asked if he had neighbors and what their feelings were. Ellen explained that was what the public hearing was for and that Carolyn lived across the street and the neighbors were all sent letters containing information on the public hearing.

Ellen then asked if there were any other comments and if not, and the fact that Talmage wasn't in attendance to present, we would go ahead and close the public hearing.

There was a question from Brad asking what a variance was which Ellen explained and a follow-up question about the ½ acre requirement which was also answered.

Carolyn then asked a question regarding remodeling her garage into a living space so she had room for her kids when they come down. Gregg Anderson explained that she could but each dwelling would require ½ acre and separate septic. She would have to split her property into 2 - ½ acre lots because current ordinance only allows one residence per lot. Ellen also brought up that each dwelling had to be at least 600 sq. feet which may be moving to 900 in the future. JaCee brought up that the ½ acre split had to take into account the current Septic System so that it remained on the parcel with the existing house.

Ellen officially closed the public hearing.

Next on the agenda was to approve the minutes of the February 23, 2023 meeting; A motion was made by JaCee to approve the minutes and seconded by Gregg. The motion was unanimously approved.

Next item on the agenda was a discussion of the Talmage variance and the Planning Commissions decision and recommendation to the Town Council.

Gregg didn't think we could issue the variance because the ordinance states that it has to be something unique to the property and it can't be something that is self imposed or financial. 'His is all self imposed and financial so legally I don't think we can approve it.'

Jim stated that based on the ordinance there are 4 standards which have to be met in order to legally approve a variance. Ellen asked Jim to read the standards;

“The Town Council may grant a variance only if:

- A. Literal enforcement of the provisions of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of Bicknell Town's general plan or land use ordinances.”**

To expand on that, below it states;

“In determining whether or not enforcement of this title would cause unreasonable hardship, the Town Board may not find unreasonable hardship unless the alleged hardship:

- A. Is located on or associated with the property for which the variance is sought;and**
- B. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.**

Talmage’s property has the original 1 acre lot with a small piece (10,000 sq. ft) taken out. The request is to reverse that so Talmages home sits on the small piece and the current small piece consumes the remainder. There are 2 other parcels on that same block with exactly the same situation. There are also others around the town. In reading the first of the 4 standards which need to be met, the first standard is not met.

B. There are special circumstances attached to the property that do not generally apply to other properties in the same district.

This was talked about above; The circumstances which apply to this property are similar to other properties.

C. The variance will not substantially affect the general plan and will not be contrary to the public interest.

I believe this standard is met.

D. The spirit of the land use ordinance is observed and substantial justice is done.

Katie mentioned that this is kind of true because they are trying to improve the septic situation for the smaller of the 2 pieces.

C and D standards could be argued but A and B are not met. According to the ordinance, all 4 standards must be met and I feel 2 of them are not.

Ellen read further in the ordinance stating;

Self-imposed hardship or economic hardship: In determining whether or not enforcement of this title would cause unreasonable hardship, the Town Board may not find an unreasonable hardship if the hardship is self-imposed or economic.

He says he wants to split the land but the way he is splitting it is creating the hardship because he could split it into 2 -½ acre lots but he is wanting to split it so Steven gets the buildings. The only hardship would be Steven not getting the sheds and he is not even part of the variance. Talmage is the one requesting the variance to reduce his

acreage. Splitting it at ½ acre each would not be a hardship to Talmage. It may be an economic hardship if he sells because he would be getting a smaller amount.

Ellen asked if there was any other discussion or feelings?

Katie mentioned that if it were approved, the sheds would no longer meet setback requirements because they would be sitting on the new property line. Ellen agreed and stated that by approving the variance we'd create another problem which would require another variance. Ellen stated that she would love to help him but, she'd studied and studied the ordinance and the state ground rules and we have to follow the law. Jim stated that our recommendation is to the Town Board then read from the State Ground Rules book stating that we have the least amount of discretion on a variance because it must meet all the standards. Ellen reiterated that fact and asked if we were ready to make a motion on our recommendation to the Town Board; Jim made a motion that we deny the variance for a boundary line adjustment based on adherence to the ordinance. Gregg seconded the motion and a roll call vote was taken; Katie McDonald voted yea, deny the variance. Gregg Anderson voted yea, deny the variance. Ellen Anderson voted yea, deny the variance. JaCee Johnson voted yea, deny the variance and Jim Dudleston voted yea, deny the variance.

A motion was made, seconded and voted on and our recommendation to the Town Board will be to deny the variance.

Next on the agenda is Tom Bower. He hasn't had time to get his application in but Ellen has put him on the agenda under "Other Business".

Tom stated that he owned the property across from the school where he had recently planted ½ acre of grass. He wants to put in a fence along the wood chips from the neighbors corner heading East to Center Street and then South to the existing house. The fence would be 6' tall made of wood and galvanized tin. It would be a solid fence for privacy. He wasn't sure the fence would be solid on Center Street, it may be something see through depending on the cost. His concern is not blocking the line of sight at the intersection.

Ellen said she had done some research and with the fence being 6' tall, he didn't need a permit but needed to be aware of the 'Clear View Area'. If the fence goes all the way to the corner of the highway and Center street, it can't be any higher than 3' in the clear view area. The county requires 20' each way from the corner of the property to be the clear view area. It was brought up that the building setback requirement in Bicknell was 24' but Bicknell does not have a specific fence ordinance.

Tom was told that he did not need a permit, he just had to meet the “clear view” requirement.

Next on the agenda was Stella Edwards She had put in a request to be on the agenda but after some research on her annexation, the property she had questions on turns out to be just outside Bicknell Town limits and lies in the County. She will have to get her building permit from the County.

Next is the Building Ordinance 07-2020

We had made it to Section 9: B last meeting.

Katie started off by explaining what she had found during her research on “Detached accessory dwelling units”; The main thing is that they were consistent across the state, up north where housing is scarce, Moab had a very detailed ordinance because they have housing issues. It allows for long term rentals, family and friends. One thing that was always consistent is that it is always legally attached to the main home. It can never be separated off from the main residence or sold off as a separate unit. They always have to stay together.

Some municipalities require separate utilities (water, power & septic) while some require that they all use the same. All required the detached dwelling units follow all setbacks and building codes including 2 off street parking spots and disallowing it as a short term rental ever. Some towns or counties required the homeowner to be in residence of either the main home or the accessory dwelling so that they could not rent out both. Some limited the accessory dwelling to one per property so you could not have an attached and detached unit, 2 attached units or 2 detached units.

The last thing was the size of the units; It was sometimes capped at a maximum size so someone couldn't use the ADU code to build 2 huge single family dwellings to get around requirements. They would cap it at a certain size so that it would look like a guest house and didn't create visual congestion. Sometimes the size was set in sq feet and sometimes it was in relation to the main house i.e. the ADU could not be any larger than 50% of the main home. Those were the ideas that were found. Nobody talked about minimum lot size because it was considered an accessory dwelling.

There was some discussion on septic systems and Katie had contacted Colleen at the county and she said that the county required ½ acre because Central Health requires ½ acre. She then called Eric Larson and he said “Not technically.” This is something that he hears again and again and he thinks it was left over from his predecessor saying this to people because it was just an easy place to draw the line. He said that if it were something we were approving, he could come and consult on it to ensure there is proper room for septic but the Health Department doesn't specifically require a half

acre. He also said that if Tony Jackson looked and said there would be enough room, that would satisfy the Health Department.

Ellen brought out that she wasn't sure 'Detached Accessory Dwelling Units' would fit into the Town's General Plan and our zones. The general plan states that "an area where the primary use of the land is for single family home dwelling purposes and for small scale part time farming." The question is that if we allow them, would we have to revisit the General Plan and the zoning ordinance? She had talked to Noreen and she thinks we would, and the Town Council have voted not to review the General Plan at this time.

Katie brought up that we allow duplexes and fourplexes.

JaCee brought up the request by Carolyn in this meeting to convert her garage into a detached ADU. What is the difference between a detached garage and a detached ADU. It wouldn't look any different and if we are going to allow duplexes and fourplexes in the General Plan, what is the difference?

Katie mentioned that people are snatching up the starter homes around the county and turning them into short term rentals while families are living in trailers, unable to afford a first home. Bicknell has done a good job of restricting short term rentals to Main Street but the problem is county wide. JaCee mentioned that she thinks they should be allowed and we should find a way to make it work.

There was continued discussion on the merits of a detached ADU including home health care allowing people to stay in their homes and requirements on size and septic.

Jim said he thought it would have to be an ordinance unto itself. There are a lot of parts to the idea which need to be worked out individually and he didn't think it would be wise to delay amending the Building and Zoning ordinance for as long as it would take to develop and get approved the idea of a detached ADU. There was a consensus that we should complete amending the current ordinance and then start work on a detached ADU ordinance.

A motion was made by Gregg to table the detached ADU discussion until we finished amending the Building and Zoning ordinance. The motion was seconded by JaCee and unanimously approved.

Section 9 of the Building and Zoning Ordinance; D. was modified, minimum Family dwelling size was changed from 600 to 900 sq ft. and 'Single Family' was added to the paragraph. E. was removed from section 9 because it was felt it was unenforceable.

Section 10 "Multi-Unit Dwellings" was added.

Variances was renamed from section 10 to section 11 due to the addition of the Multi-Unit Dwelling section.

A. 3. requiring notarized letters from neighbors was removed. The town will mail letters for the public hearing to adjacent property owners.

C. was modified to remove the requirement for a public hearing by the Planning Commission. The law has been changed so that only one public hearing is required and the feeling was that it should be at the Town Council because they were the ones that made the final decision. We would like the Planning Commission meeting to be mentioned in the notice mailed out to adjacent property owners so they could attend the Planning Commission meeting if they wanted to provide any input. The requirement for a 'Site Visit' was also added.

A motion was made to adjourn the meeting at 9:00. Based on a unanimous vote, the meeting was adjourned.