

The Special Meeting of the Town of Meeker Planning Commission was called to order by Vice Chair Terry Goedert, Monday, May 24, 2010, at Town Hall at 5:31 p.m.

Members Present: Vice Chair Terry Goedert  
Martha Griffin  
Jerry Belland

Members Absent: Keith Rhol

Others Present: Anna Smith, Town Planner  
Sharon Day, Town Administrator  
Jerry Viscardi, Town Attorney

### **APPROVAL OF AGENDA**

Vice-Chair Terry Goedert asked for changes or revisions to the agenda with none noted.

A motion to approve the agenda as presented was made by Commissioner Griffin, seconded by Commissioner Belland. All ayes, motion carried.

#### ***Discussion with Town Staff on language for the covenant for 625 Garfield Street and 545 6<sup>th</sup> Street.***

Planner Smith stated this discussion was a follow-up from the Planning Commission's meeting of April 26, 2010; the approval of the Madisons' variance request and for Attorney Viscardi to draft language which would accomplish the Planning Commission's condition of approval. Attorney Viscardi stated the Planning Commission had a copy of the proposed agreement drafted from the minutes and conversations with Town Administrator Sharon Day and Town Planner Anna Smith. He stated he thought it would be best to bring it back to the Planning Commission for input. Attorney Viscardi stated he provided as much detail as possible in the "Where As" sections so both parties had a clear understanding of the situation. He stated the covenant wouldn't be recorded right away as the applicant was concerned about events which might occur prior to the applicant obtaining a building permit which might have a negative impact on the applicant (a death and not being able to sell separate parcels). Attorney Viscardi inquired of the Planning Commission members if they had any questions, observations or comments in regards to the draft document?

Commissioner Belland requested clarification that the document would not be recorded until the Madisons' are ready to obtain a building permit? Attorney Viscardi stated correct, as Mr. Madison had expressed concerns about something happening (i.e. health issues) and not being able to build as planned and not being able to sell the parcels separately. Commissioner Belland stated Attorney Viscardi had done an excellent job of capturing the intent of the Planning Commission in the document. He then asked Attorney Viscardi to explain the timeline about obtaining the necessary building permit on page five. Attorney Viscardi explained he was trying to develop a mechanism by which the agreement would become null and void at some point in time. He explained a variance is good for one year (by ordinance) and stated "if they do not obtain the necessary building permit by April 27, 2011 and they don't commence on-site construction" then the variance would be null and void". Day inquired if an extension could be obtained? Attorney Viscardi stated the code would need to be reviewed (Town Staff took a moment to review the code). Attorney Viscardi read "the variance shall terminate and become void upon the expiration of twelve (12) months except or unless the applicant obtains the necessary building permits from the Town within said twelve (12) month period and commences on-site construction within that time frame." He went on to read "The Planner shall inspect the premises 45 days prior to the expiration of the variance. If the construction for which the variance was approved has not been completed" Viscardi explained that a notice would be sent notifying the applicant of the expiration of the variance. He stated a notice had to go out notifying the applicant within seven days of the inspection and then the applicant

## Regular Planning Commission Meeting – May 24, 2010

may apply for an extension within fifteen days of the receipt of the notice. He added he had used calendar days in the agreement to avoid any confusion that might arise trying to count days in the future.

Commissioner Griffin inquired if the variance was transferable? Day stated normally it was, with Attorney Viscardi adding the Town had taken the stand in the past that they were. Discussion focused on if the variance should be voided if the Madisons sold the property, due to a buyer not being aware of the agreement or not understanding the variance. Vice Chair Goedert inquired if the Madisons were to sell within six months with the variance for the proposed addition, and the buyer stated it would be something they would like to do, could the variance go to the new owner? Attorney Viscardi stated it wouldn't be a problem if the buyer knew what it entailed. Commissioner Griffin inquired if the document would be recorded, with Attorney Viscardi stating not until Mr. Madison took the affirmative step to obtain a building permit. Commissioner Belland stated he understood that without the document in place (recorded), the Madisons could sell the parcel the house sat on with Planner Smith affirming the Madisons could sell the parcel identified as 625 Garfield Street or 545 6<sup>th</sup> Street. Commissioner Belland stated the variance and the proposed document should become null and void if the Madisons' sell any parcel except the ability to sell the parcel north of the alley to the adjacent property owner of Lot 1 only. Attorney Viscardi said the property north of the alley couldn't be sold separately from 545 6<sup>th</sup> Street if the property was sold separately from 625 Garfield, because the 545 6<sup>th</sup> Street parcel is currently non-conforming and could not be separated to make it less conforming, unless the properties (625 Garfield and 545 6<sup>th</sup>) were combined so that the parcel would be conforming. Trustee Viscardi explained that the covenant could have been written to be recorded immediately with a mechanism to end the covenant, but the applicant had requested that it not be recorded until a building permit was issued. Commissioner Griffin stated that would have been a good covenant to have with the PC members agreeing. Attorney Viscardi stated the applicant's concern was that someone could pass away a few months from now and the addition wouldn't be constructed. However, he was concerned about Town's position because there won't be anything in place that really binds the parties until just prior to a building permit being obtained.

Commissioner Belland stated the Planning Commission/Town should have the Madisons sign something immediately, and the agreement should state time begins when the Madisons obtain their building permit. Attorney Viscardi said the time began the day the variance was approved, by Town Code. The term of the variance is one year, with a possible extension if the project has begun prior to the expiration of the year. Vice Chair Goedert stated a challenge for the home owner was the ability to commit a specific amount of money to a project before it is known if a variance can be obtained and didn't want to see the Madisons coming later to a different PC board to request another variance and be denied. Day stated the PC should keep in-mind the Madisons could ask for an extension if they were in the process of building. Vice Chair Goedert read on page 5 paragraph C, Item b (the Covenant) "if the construction for which the variance was approved has not been completed, the Planner shall provide covenantors with written notice of the pending expiration of the variance by regular mail..." He stated it sounded as if the project wasn't completed, the variance would be withdrawn and Madison' would have to deconstruct. Planner Smith stated in the first two lines of Item C it states "in the event the covenantors obtained the required building permit for the addition but the construction hasn't been completed on or before the specified date, then the agreement expires." She added if construction was started but not completed she didn't know if the Town would want the agreement to expire. Attorney Viscardi explained they would have to apply for an extension, as stated in the document (and Town Code) and felt if an extension was requested and the applicant was actively working on the addition, the extension would probably be granted. Vice Chair Goedert inquired if the extension was for the variance or the building permit? Attorney Viscardi explained it would be both, as building permits were only good for 180 days and an extension under the building code is granted upon "demonstration of good cause by the grantee." Vice Chair Goedert said that the Variance Code may need to be looked at in the future concerning extensions, due to some apparent confusion which has arisen. Commissioner Griffin stated she would like to see the covenant stay in place

## Regular Planning Commission Meeting – May 24, 2010

until the single family residence on 6<sup>th</sup> Street was moved and the lot line adjustment accomplished. Day & Viscardi agreed it would stay in place with Commissioner Griffin replying it had stated somewhere in the document it would terminate. Viscardi stated that once the covenant is recorded it will be in place permanently and won't expire.

Day inquired of the Planning Commission if they wanted a section added to the document that would void the variance if the property was sold? Commissioner Belland agreed it was important to add. Attorney Viscardi stated he would develop a provision to address it which states that the variance is for the Madisons use only. He added it would have been easier to have the document recorded now and if the Madisons didn't move forward with construction and if the variance wasn't going to be used, another document would be recorded, for the removal of the variance. Commissioner Belland stated a paragraph should be added which states the variance would be removed if/when the Madisons are no longer the owners and should be done quickly so the PC could review the document again and provide it to the Madisons as soon as possible. Day stated the next draft could be emailed to the Planning Commission members, with the PC members stating that would be fine.

### **ADJOURNMENT**

Commissioner Griffin made a motion to adjourn the Planning Commission meeting, seconded by Commissioner Belland. All ayes, motion carried.

Planning Commission Meeting adjourned at 6:45 p.m.

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Terry Goedert, Vice Chair

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Martha Griffin, Secretary