

**CLAY COUNTY PLANNING COMMISSION MINUTES
7:00 PM TUESDAY, OCTOBER 15TH, 2024
THIRD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

Members Present: Ezra Baer, Joel Hildebrandt, Laura Johnson, Paul Krabbenhoft (for Commissioner Jenny Mongeau), Dave Steichen, Ashley Heng, Brad Eldred, Kurt Skjerven

Members Absent: Curt Stubstad, Brent Berg, Sebastian McDougall

Others Present: Matt Jacobson, Brian Melton, Erika Franck, Rita Rueckert, Kent Severson (by phone), Scot Manthe, Jenny Mongeau (by phone), Greg Krause, Lori Krause, Diane Zarling, Michael Zarling

ROLL CALL:

Attendance was recorded by Chair Ezra Baer and the meeting was called to order at 7:01 PM.

APPROVAL OF AGENDA:

On motion by Joel Hildebrandt, seconded by Laura Johnson, and unanimously carried, the Agenda was approved.

APPROVAL OF MINUTES OF SEPTEMBER 17TH, 2024:

On Motion by Laura Johnson, seconded by Ashley Heng, and unanimously carried, the September 17th, 2024 Minutes were approved.

CITIZENS TO BE HEARD:

There were no citizens wanting to speak about any items not on the Agenda.

PUBLIC HEARINGS:

MICHAEL AND DIANE ZARLING – REQUEST FOR INTERIM USE PERMIT

The applicant is seeking an interim use permit for a second dwelling on a parcel at 10738 19th St S, Moorhead, MN 56560, Parcel ID: 19.028.4201, in part of the W1/2 of the SE1/4 of Section 28, Township 138N, Range 48W, Kurtz Township.

On motion by Joel Hildebrandt, seconded by Ashley Heng, and unanimously carried, the Planning Commission opened the public hearing.

Director Matt Jacobson stated that this Interim Use request is for a second dwelling on a parcel with a principal dwelling. This parcel is near Rustad south of Moorhead. Rustad is zoned Agricultural Service Center (ASC). There is currently a primary residence on this property.

Applicant intent is to move into a double-wide mobile home to be placed on the property, and their son and granddaughter will move into the current residence. Per the Land Development Ordinance Section 8-5-6-E2:

2. A second dwelling on the parcel to be used by parent(s), grandparent(s), children, sibling(s) by blood, marriage, adoption or other special relationships consistent with the purpose that meets the following standards:
 - a. Said dwelling must be a manufactured home (single or double wide)
 - b. Dwelling must not be placed on a permanent foundation
 - c. Dwelling must have a septic system that meets County Health requirements
 - d. Dwelling must share a common well with the principal dwelling
 - e. No more than one (1) additional dwelling shall be allowed on a parcel
 - f. Parcel must be at least five (5) acres in size

There is an existing manufactured home on the property that will need to be removed. There are approximately 27 vehicles, boats and other odds and ends stored outdoors. As of 2005, aerial imagery showed there was not an excess number of vehicles being stored on the property. However, beginning in 2008, vehicles started accumulating on the parcel and imagery counts show the following:

2010	13
2014	12
2016	17
2017	20
2018	15
2021	22
2024	27

8-6-23: STANDARDS FOR OUTDOOR STORAGE OF AUTOMOBILES:

- A. Definition of Outdoor Storage: Outdoor storage of automobiles means the presence of any vehicles outside of a structure where such vehicles do not meet the following criteria:
 1. Licensed and Insured: The vehicle is currently licensed and insured.
 2. Roadworthy: The vehicle is roadworthy and in working order.
- B. Standards: Outdoor storage of automobiles that do not meet the criteria in A, above, shall conform to the following:
 1. Number Limited: The number of automobiles that are allowed to be stored under this section is (2) two.
 2. Setbacks from Property Line and Screening: All automobiles allowed to be stored under the section shall be set back twenty-five feet (25') from all property lines and shall be screened from adjacent residential properties by a six foot (6') tall solid fence.
 3. No Parts Stored: The storage of automobiles shall only include the storage of intact vehicles and shall not include the storage of automobile parts.

The National Wetland Inventory shows there is presence of wetlands on the property and it appears that the vehicles and potentially other materials are in the wetlands. This would need to be verified and any violations would need to be remedied.

Goals and Objectives from the 2045 Comprehensive and Transportation Plan were reviewed:

- Housing Goals and Objectives
 1. Support additional options that give people in all life stages and of all economic means viable choices for safe, stable and affordable homes.
- *Allowing for temporary second dwellings on a parcel supports this goal.*
- Land Use – Residential Goals and Objectives

3. Recognize the diversity of living and working arrangements in the unincorporated areas of Clay County.

- Family circumstances and situations may necessitate living arrangements not currently permitted by right in the Clay County Development Code. Permitting a temporary second dwelling on a single-family residential parcel provides a means for family members to live in close proximity to one another.
 - b. Recognize multi-generational and temporary agricultural worker living arrangements by permitting accessory dwelling units on properties that can adequately provide for water and sewer.
- This proposal meets the standards for a temporary second dwelling on a parcel. The second dwelling would need to share a well with the primary residence and have a separate permitted septic system.

Director Jacobson indicates that the current mobile home on the property is salvage. Paul Krabbenhoft clarified that the current mobile home would need to be removed before another mobile home would be brought in.

The Township had questions regarding residential density; however, this request made sense to them. The Township stated that if the County approved the request, the Township would also approve a Variance request.

Diane Zarling was present and advised she was going to be moving into the new mobile home. Chair Baer asked if there was a second septic system on the property and she advised she is working with Kent Severson but has not concluded that until this Permit would be granted.

On motion by Joel Hildebrandt, seconded by Laura Johnson, and unanimously carried, the Planning Commission closed the public hearing.

The Findings of Fact and Order were addressed by the Planning Commission as they pertain to the requested Permit. Any items of concern may be addressed through Conditions.

Minimum staff recommended Conditions:

1. Applicant must abide by provisions of the Clay County Land Development Ordinance: Zoning and Subdivision regulations.
2. Method of waste disposal approved by Clay County Environmental Health.
3. Existing mobile home to be removed from the property within 30 days of issuance of this permit.
4. Permit expires when any of the following conditions are met: change in parcel ownership, or second dwelling is no longer occupied by parent(s), grandparent(s), children, sibling(s) by blood, marriage, adoption or other special relationships consistent with the purpose.
5. Prior to placing the second residence on the parcel, applicant must reach out to the Wetland Conservation Act Coordinator to resolve any potential wetland violations.
6. Applicant to work with Clay County Planning and Zoning staff to determine whether property is in compliance with Section 8-6-23: Standards for Outdoor Storage of Automobiles. If property is found not in compliance with Section 8-6-23, the property is to become compliant within 1 (one) year of issuance of this permit.
7. Any other conditions as the Planning Commission deems necessary.

Chair Baer asked if the stipulation could be added that before the new mobile home arrives the old one has to be hauled off. Director Jacobson advised that could be added. Joel Hildebrandt asked why condition #6 couldn't be included to have clean-up completed before the placement of the second residence. Director Jacobson advised that, while other requests have included conditions that require compliance before the permit action, this condition would impact someone's living situation and he feels grace should be given in this

situation as the Applicants are experiencing health issues and need one-level living.

Chair Baer asked Diane Zarling if she has a septic installer and she advised she has been working with one. She was also asked about the wetlands and she advised she was not aware of wetlands on her property. Paul Krabbenhoft asked Applicant when she felt she would have the new mobile home delivered and she said it would be 7 to 10 days after her pillars are installed. She does have a sales agreement signed, contingent on being granted the Variance.

Chair Baer suggested including the mobile home salvage in the one-year time limit for cleaning up the vehicles. Mr. Zarling advised that several of the vehicles have forever collector car plates. But there are a lot of them that they could get rid of because they don't fit in the age range for collector. Director Jacobson advised he would be glad to work with the Zarlings to complete this clean up and determine what vehicles are compliant and which are not.

Commissioner Krabbenhoft confirmed that the new home will require a new septic system. Kent Severson advised that he has been in communication with the Zarlings and is working with them regarding a new septic system for the proposed mobile home.

On motion by Ashley Heng, seconded by Brad Eldred, and unanimously carried, the Planning Commission *GRANTED* with the following conditions:

- 1: Applicant must abide by provisions of the Clay County Land Development Ordinance: Zoning and Subdivision Regulations.**
- 2: Method of waste disposal approved by Clay County Environmental Health.**
- 3: Existing mobile home to be demolished or removed from the property within 1-year of issuance of this permit.**
- 4: Permit expires when any of the following conditions are met: change in parcel ownership, or second dwelling is no longer occupied by parent(s), grandparent(s), children, sibling(s) by blood, marriage, adoption, or other special relationships consistent with the purpose.**
- 5: Prior to placing the second residence on the parcel, applicant must reach out to the Wetland Conservation Act Coordinator to resolve any potential wetland violations.**
- 6: Applicant to work with Clay County Planning & Zoning staff to determine whether property is in compliance with Section 8-6-23: Standards for Outdoor Storage of automobiles. If property is found not in compliance with Section 8-6-23, the property is to become compliant within 1-year of issuance of this permit or this permit will expire.**

SCOT AND KRIS MANTHE – PETITION FOR REZONING

The applicant is seeking a petition to rezone a property from Agricultural General to Highway Commercial to continue to allow for a commercial business on Parcel ID: 04.050.0200, Lot 020 Block 001 of Auditors Subdivision CD 04050 Sublot D in Section 7, Township 139N, Range 44W, Eglon Township.

On motion by Joel Hildebrandt, seconded by Brad Eldred, and unanimously carried, the Planning Commission opened the public hearing.

Director Matt Jacobson stated that the request is to rezone this property from Agricultural General (AG) to Highway Commercial (HC). This property is located east of Hawley on the south side of Highway 10. The property has always been assessed as a commercial property. This original building was constructed in 1965,

with additions built in 1975 and 1999. It was originally opened as an electrical contractor shop/business. In 1999 a Conditional Use Permit (CUP) was issued to convert the building from one non-conforming use to a different non-conforming use – a floral business. Current business is Car King Auto which sells power sports and accessories.

Director Jacobson discussed “Non-conformities”. Definition: A structure or use or premises which was lawful before the passage or amendment of a zoning ordinance or regulation but is no longer in conformance with existing zoning regulations. They are allowed to be continued but may not be expanded or intensified in any way. Despite the regulation prohibiting expansion of a non-conforming structure or use, the previous property owner and operator of the floral business was granted a building permit for a 1500 sq ft retail addition in 1999.

Applicant is requesting to rent the property as a retail/commercial space. Rezoning would allow for the property owner to do this without requesting a CUP each time the business would change within the structure.

Rezoning to Highway Commercial would allow most uses to be allowed. The following Highway Commercial Standards were reviewed:

- A. Minimum Lot Size: The required minimum lot area for permitted and conditional uses of this district shall be the area necessary to meet the stipulated space requirements set forth for the particular use in this Ordinance.
- B. Yard Requirements:
 1. Minimum Lot Width: Every lot shall have a width of not less than one hundred feet (100') abutting a public right of way.
 2. Front Yard Regulations: There shall be a front yard setback of not less than fifty feet (50'). Where a lot is located at the intersection of two (2) or more roads of highways, there shall be front yard setbacks on each road or highway side of the lot.
 3. Rear Yard Depth: There shall be a rear yard having a depth of not less than forty feet (40').
 4. Side Yard Width: There shall be a side yard having a width of not less than twenty-four feet (24') from each side of the building to the side yard lot line. No building shall be located within thirty feet (30') of any side lot line abutting a lot located in any AG or UED district.
- C. Lot Coverage Regulations: Not more than thirty percent (30%) of the lot area shall be occupied by buildings.
- D. Access to Public Right of Way: No lot in the HC Highway Commercial District may have a building structure upon it unless it has access to a public right of way; provided, that direct access from the front yard of the lot to a principal arterial shall not be permitted.

Director Jacobson advised that although the rezoning would allow for a multitude of business options, those options are severely limited by the above requirements as set out and the expectation is that the building would remain as a small business building.

There are currently aspects of the business that is operating outside the property boundary and in the right of way:

- One off-premises sign
- Outdoor advertising and product displays
- The building does not meet several of the setback requirements

There have been no comments received from Egdon Township or the City of Hawley. There was a letter received from Minnesota Department of Transportation (MNDOT) regarding the business operating within the right of way. Director Jacobson advised he will be meeting with MNDOT tomorrow regarding these issues.

Rezoning would bring the *use* of the property into compliance; however, the structure itself would remain non-conforming as it does not meet the Highway Commercial Zoning setback standards. The property does meet all other Highway Commercial zoning requirements. If this building sustained significant damage and had to be rebuilt, any reconstruction would need to fall within the zoning requirements and regulations.

Director Jacobson affirmed that this rezoning request is only for this property and does not affect any adjacent or surrounding properties.

A City of Hawley Future Land Use map was reviewed. This property is classified as commercial if this parcel was ever annexed into the city of Hawley so this request would be compatible with that aspect.

Goals and Objectives from the 2045 Comprehensive and Transportation Plan:

1. Encourage commercial and industrial development that is in harmony with the agricultural and rural character of Clay County.
 - a. Promote value-added agricultural commercial and industrial development in Agricultural Service Center areas and along transportation corridors and hubs.
 - b. Avoid or mitigate against commercial and industrial development in and near environmentally sensitive areas.
 - c. Avoid or mitigate against commercial and industrial development that increases the potential for land use conflicts with rural residential or agricultural uses.

Chair Baer clarified that this property has been taxed as commercial and Director Jacobson advised he had checked with the Assessor's office and their records confirm the property's history as being taxed as a commercial property.

Kurt Skjerven expressed concern as to how to insulate the surrounding residential properties from future changes on this property. Director Jacobson advised that there would be screening required for outdoor storage and parking. He also felt that if the Planning Commission felt that they needed more oversight on this property, they could deny the request and keep it operating under a Conditional Use Permit. With this option, both the use and the building would be non-conforming and they would not be able to expand.

Paul Krabbenhoft inquired about the infringement on the right of way. Director Jacobson advised that it would not necessarily impact the rezoning but would impact the use; the business would need to move their display and products out of that area and parking would not be allowed in the right of way area.

Brad Eldred asked about noise and light pollution for the neighbors, and also limiting hours of operation. Director Jacobson agreed that these are issues to be aware of and rezoning to Highway Commercial would make enforcement difficult; however, continuing to operate under the Conditional Use Permit would allow the Planning Commission more oversight in mitigating potential future issues. The current CUP states the use as moving from an electrical business to a floral shop. Denying the request for rezoning and leaving the parcel operating under a CUP would require the Applicant to request a CUP to change the business from a flower business to a motor sports retail store. This would allow greater control for conditions such as lighting, hours of operation and other key details that could affect the surrounding properties.

Dave Steichen pointed out that this request shows the problem with spot zoning. He states he understands why they want Highway Commercial but feels that there needs to be oversight.

Director Jacobson reviewed the allowed uses in the Highway Commercial Zoning District. He discussed that there is another option which this use could be defined as Retail or Commercial Business. Under this scenario, the rezoning request would be denied and the structure would be considered non-conforming but the business

would be compliant. Director Jacobson advised that spot-zoning is illegal in Minnesota; however, it is very vague as to what would constitute spot-zoning.

Joel Hildebrandt inquired who has the responsibility to determine where the right-of-way boundaries are located. Mr. Jacobson stated that this parcel is platted out and the Applicant has found the pins. There are two right-of-ways and they were reviewed on an aerial photograph. There is a right-of-way for the roadway, and another for the State of Minnesota DOT.

Kurt Skjerven advised that there is a lot of use going on at this parcel and he has driven by and observed the current situation. Photos were reviewed of the property which were taken October 4th, 2024.

Scot Manthe advised he is the property owner and also owns the adjacent Auditor's Lot 24. Mr. Manthe presented history on the parcels in this area. He moved into this area in 2012 and purchased the property in question in 2016. In 1996 there was an Auditor's plat done. He advised if he knew he didn't own the property to the north of the building, he would have requested greater vacay of the right of way. He feels there was property missed in the survey done by Rob Roberts and that there is a gap in the parcels. He states that he has always been taxed as a commercial building. His son is starting to come into work with him and some day he may use this building to run their crop insurance business from, which is currently being housed out of their residence. Mr. Manthe uses the back garage stall for his own use and the renters – Car King Auto – rent the remaining part of the building.

Director Jacobson clarified that the parcels surrounding the building are platted right of ways and owned by the Township. The Planning Commission is not to determine ownership or properties or property lines. He confirmed that the request is for the building and property in question and not any of the surrounding lands. Mr. Jacobson also clarified that vehicle repairs are not currently allowed at the property.

Paul Krabbenhoft asked for clarification as to allowable use and non-allowable use. He asked Applicant what motivated the change. Mr. Manthe advised that the renter (the flower shop) felt they needed a smaller space with lower rent. He then had the building for rent for over a year before finding the motorsports renter.

Director Jacobson quoted the following Ordinance from the Development Code: If a non-conforming use is discontinued or abandoned for a period of one-year, further use of the structure shall conform to the Ordinance. Therefore, due to this information, Director Jacobson advised that if it has truly been a year between uses, there could not be a Permit issued from one non-conforming use to another non-conforming use.

Lori Krause lives just south of this property in question. She wants to remind the Planning Commission that this is a residential neighborhood with 20 homes. She states that the north strip has been surveyed 3 times that they have paid for, due to discrepancies. Last week she counted 30 vehicles and they were parked right up next to their trees. She doesn't feel this is an improvement for the way they live. She stressed this is a residential neighborhood.

Greg Krause is concerned about future use. There are junk cars being brought to this property and dismantled. He stated there is a safety concern as there are kids test driving these motor sport vehicles down this Township road. He stated that the renter at the property in question is cooperative when asked to make changes. Mr. Krause advised that there was a craft store occupying the space after the flower shop and then it sat empty a year. He states that Hawley has indicated they wouldn't be annexing in this area due to needing to run water up the hill to this subdivision.

Director Jacobson advised that if there would be any outdoor storage or displays would need a CUP, even if the rezoning was approved. He feels that based on the testimony given by the neighbors at this hearing, it appears there are more items being stored outdoors than would be allowed, especially given the small parcel in question. Director Jacobson pointed out that there would be parking limitations for Highway Commercial zoning.

Applicant Manthe advised that he could determine how long the building was vacant and Director Jacobson advised that would be good information. Mr. Manthe also offered putting up a fence on the south property line.

Greg Krause asked who will be monitoring the car count and stored items: The Planning Commission, the neighbors, the renter, the property owner or who? Chair Baer advised that the Planning & Zoning office would be the entity to enforce any restrictions or conditions on the property. Director Jacobson also added that if there are repeated violations, there can be a hearing to revoke any issued Permit.

On motion by Joel Hildebrandt, seconded by Brad Eldred, and unanimously carried, the Planning Commission closed the public hearing.

The Findings of Fact and Order were addressed by the Planning Commission as they pertain to the requested Permit. Any items of concern may be addressed through Conditions.

Minimum staff recommended Conditions:

- Based on the Findings of Fact, staff recommends approving the request to rezone the parcel from Agricultural General to Highway Commercial. Before the recommendation is brought to the Board of Commissioners for a final decision, the petitioner should work with the current business to address the following:
 - Relocate the off-premises sign in the right-of-way to the property where the business is located;
 - Move all other aspects of the business onto the property where the business is located.

Recommended Motion:

Move to recommend approval of the rezoning of the subject property from Agricultural General to Highway Commercial to the Clay County Board of Commissioners once all aspects of the business occurring in the right-of-way are relocated to the commercial property (Parcel 04.050.0200)

On motion by Joel Hildebrandt, seconded by Brad Eldred, and unanimously carried, the Planning Commission approved to recommend Rezoning to Highway Commercial to the Clay County Board of Commissioners.

UNFINISHED BUSINESS:

None.

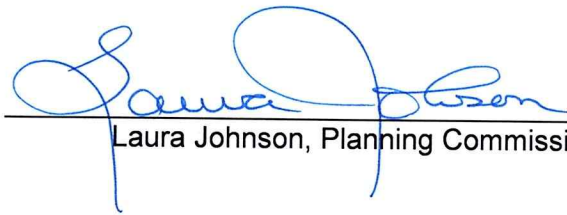
NEW BUSINESS:

Director Jacobson advised there are fully completed drafts of the Development Code update and he would like to start distributing those. Depending on November permit requests, he is hoping to have a few chapters of the Ordinance to review at the November meeting for discussion on the first four chapters. And then in December, review Chapters 5-8. He would like to have these meetings before having the public hearing. He reiterated that the Commissioners were looking to have a work group session to review the entire Code, possibly in January. If this timeline works, the new Code could be enacted by February or March 2025.

He stressed that, while reviewing the Code, it would be important to keep in mind the perspective of the citizens, the residents, and business owners in Clay County impacted by this Code update. There were 41 Public Input Surveys received, and the cumulative responses were reviewed.

ADJOURNMENT:

On motion by Brad Eldred, seconded by Ashley Heng, and unanimously approved, the meeting adjourned at 8:56 PM.



Laura Johnson, Planning Commission Secretary