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Minturn Planning Commission
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MEMORANDUM

Date: August 28, 2024
To: Minturn Planning Commission
From: Scot Hunn, Consulting Planning Director
RE: 161 Main & 161 Nelson Street Variance Request – Planning Commissioner Correspondence

On Friday, August 23, 2024, Planning Commission member Boyd sent an email correspondence (attached) to Michelle Metteer, Town Manager, and Michael Sawyer, Town Attorney, with several questions, concerns, and/or points of clarification related to the pending application for consideration of a variance request for two contiguous properties located at 161 Nelson Street and 161 Main Street.

In response to Commissioner Boyd's email, staff reviewed the Town of Minturn Municipal Code and conferred with the Town Attorney.

Because this communication came from a Planning Commission member and particularly because it relates to an active application where Commission members will act as "quasi-judges," staff is sharing the communication as part of the public record along with the following staff summary and response to Commissioner Boyd's questions and comments:

Question/Statement by Commissioner Boyd:

"I think the application is incomplete and I ask for clarity. My reason being is it is for two lots with different streets. First I would think a final plat eliminating the lot line would need to be done as required in the past historically and at that point determining the street frontage which would make the variance request for either a side setback or a rear setback and not as currently proposed as two rear setback's."

Staff/Attorney Response:

- The Minturn Municipal Code (MMC) does not require that the two lots be combined prior to or as part of the variance application(s).

- Staff's understanding is that the Applicant is requesting review of the variance request prior to spending additional time and resources on fully developing detailed plans for the property or taking the additional step of combining the two lots using an administrative subdivision process.
- For this reason, we asked the applicant to request a variance for both lots (until such time that they are combined properly) and to provide public notice for both lots.
- Per the MMC, the planning director is charged with determining the front, rear, and side yard setback areas of a lot or lots. In this case, the plans provided by the Applicant in support of this variance request are detailed and clearly show a proposed building (site plan, floor plans, building elevations and model) with a front entrance on Main Street, along with clearly dimensioned and labeled "setbacks." The planning director agrees with the Applicant's depiction of front, side, and rear yard setbacks and further clarifies that the variance request – on both lots – can be considered at this time without first combining the lots, and that the variance request concerns only the rear yard setback.
- Similar to a Design Review Board application for a new home or major remodel proposal on multiple lots, any re-platting can become a condition of approval. In this case, staff and Town Attorney suggest that the Planning Commission can recommend a condition of variance approval:
 - Requiring successful completion of a formal Design Review Board application; and
 - Requiring successful completion of an administrative subdivision process to eliminate the common lot line between the two lots and to combine the lots into one lot.

Question/Statement by Commissioner Boyd:

"In addition is a 15 foot clear vision variance needed with the property bordering 3 streets? Clarity is needed to review with an open mind."

Staff/Attorney Response:

- No – a variance application is not required for any proposed encroachments into the 15-foot clear vision area required at the intersections of Nelson and Williams, or Nelson and Main Street.
- The plans submitted by the Applicant show and clearly demonstrate that the proposed building (and permanent site improvements such as walls or patios) does preserve a 15' x 15' clear vision area at the intersections of Williams and Nelson, and at Nelson and Main Street.
- Any future, formal DRB application for a new building will include detailed site, grading, drainage, and landscaping plans where the Applicant will need to demonstrate that the clear vision area(s) are maintained.

Question/Statement by Commissioner Boyd:

"Also do variances transfer with property if building is not built and property is sold?"

Staff/Attorney Response:

- Yes, variances run "with the land" and are valid for one (1) year.

- Importantly, the variance is based on plans (site plans, building plans, etc.) that are required by the MMC and which have been provided. To be clear, there is no requirement that variance applications are to be accompanied by a formal DRB application. However, variance applications must include plans and other supporting documentation in enough detail to allow staff, the Planning Commission, and the Town Council to make findings.
- In this case, the Applicant has provided a fairly high level of detail on the plans submitted (similar to what the Town would receive as part of a full, formal DRB application) and, therefore, the variance, if granted, would be based on the representations made by the Applicant and their proposed plans for development.
- As such, the current owners or any future owners of the properties could benefit from the granting of a variance so long as any plans submitted for DRB (within the 1-year time frame) review and, ultimately, built upon the lot are in substantial conformance with the plans provided for this variance application.

Question/Statement by Commissioner Boyd:

“The posting changes made alone are questionable.”

Staff/Attorney Response:

- The Town provided notice in the paper, by mail, and by sign posting on the property.
- The public notice (in the newspaper, mailings, and sign posting) noticed the Planning Commission meeting of August 28th, as well as the Town Council regular meeting of September 3rd.
- Staff learned of an error with the sign posting (incorrect hearing date listed) on August 22, 2024.
- The Town contacted the Applicant the same day; and the correct sign was posted the same day.
- Signs are to be posted no less than ten (10) calendar days prior to a noticed public hearing.
- The signs were posted on Monday, August 19th; the error was discovered and corrected on August 22nd; and the public hearing was scheduled for August 28th.
- Therefore, this error caused proper notice (for the Planning Commission meeting) to be posted 3 days too late for the full 10 day posting. The posting for the upcoming Council meeting on September 3rd is still in compliance with the Town’s requirements.
- Historically, and from a practical standpoint, the Town’s primary obligation to provided notice is met by posting notice in a newspaper of general circulation. Other forms of notice are required to augment or supplement the primary notification.
- Additionally, the MMC contains language that specifically acknowledges that signs may be blown down, damaged, or otherwise rendered non-legible despite the best efforts of an applicant; and that such occurrences should not render all other forms of notification null and void or cause renotification.
- In this case, the Town Attorney advises that the Planning Commission has the discretion to determine if adequate public notice was provided.
- If the Planning Commission determines that adequate public notice was NOT provided, staff respectfully requests that the Commission table the request to a date certain.