

**PUBLIC HEARING AND
NOTUS CITY COUNCIL MEETING MINUTES**

Regular Session: **Monday, April 19, 2021**

7:00 pm @ NOTUS COMMUNITY CENTER

389 1ST STREET, Notus, ID 83656

SOCIAL DISTANCING PROTOCOL IN PLACE:

Mayor Porterfield informed audience of the public hearing and the need to sign in if they wished to speak.

1. Meeting Called to Order

Meeting was called to order at 7:03 pm by Mayor, David Porterfield.

2. Roll Call

Roll call was taken with the following results: Council President Bonnie Emly and Council woman Michelle DeGiorgio, present. Councilman, Steve Ahlborn, present. Mayor, David Porterfield, City Attorney's Joe Borton and Stephanie Hansen present. Councilman Devin Krasowski absent.

3. Pledge of Allegiance

4. Public Hearing for the purpose of receiving public comment regarding Z & H Construction General Contracting, LLC, applicant, and property owner seeking approval of a Variance on residential zoned R-2 property located on the northeast corner of 1st Street and Fargo Ave., known as 422 1st Street, Notus on Canyon County records. Owner is asking for approval to reduce building setbacks.

City Attorney, Joe Borton instructed the attendees of public hearing procedures. Mayor asked Council if there were any conflicts of interest to be declared. None were declared.

4.1 Mayor opens Public Hearing

Mayor Porterfield opens public hearing.

4.2 Verification by City Clerk that Public Hearing was correctly advertised

City Clerk, Loretta Vollmer, confirms that the hearing was correctly advertised and the application is complete.

4.3 Presentation from Applicant and questions from Council

Applicant, Zane Shippy stated he owns lot at 1st Street and Fargo Ave. and is seeking a variance for 3 homes or two if variance is not approved. 2 homes will be 1400 sq ft the other will be 1297 sq ft. All fully landscaped and fenced.

4.4 Written Correspondence submitted

City Clerk read a letter submitted from resident, Jack King in support. A neutral letter from absent Councilman, Devin Krasowski was also read that referenced Idaho Code conditions of approval for a variance and those not being met. DeGiorgio commented that seems unfair almost since he (Krasowski) is not here to answer questions (regarding letter) that Council or others may have.

4.5 Public Testimony from those in Support

Mayor recognized Jack King. Mr. King asked if Council had any questions regarding his letter. There were none.

Randall Taylor of 348 Elgin Ave. commented that approving this request would be more inclusionary than exclusionary to new development in the older part of town. The physical characteristic of the block will not be changed by this variance. He stated that no other residents in the area meet the 10ft setbacks. Commented we need more businesses and residents in town.

4.6 Public Testimony from those Neutral

None

4.7 Public Testimony from those Opposed

None

STAFF REPORTS

City Clerk read the City Staff report for the record. "After researching records from 1995 these are my findings:

Meeting minutes reflect that Mr. Taylor came before Council in a regular session meeting on July 17th, 1995 and requested a variance that encompassed several parcels that he owned at the intersection of 1st Street and Fargo Ave. He wanted to join all the parcels into one large lot and then split that one into 3 equal but undersized parcels of 48 ft by 144 ft, with lot lines running east to west. No required public hearing was held. His request was granted by a 3-council vote. Hutchison, Kadel, and Green. All 3 in favor. Research indicates that the next step to finalize that decision was never completed. To finalize the action the owner should have had the property surveyed, moving the lot lines as approved by Council along with a metes and bounds property descriptions and recorded that survey with Canyon County. This action was never taken by Mr. Taylor. As such Canyon County Assessor office records indicate that these parcel lot lines, running north and south, stand as the original deed describe.

Local Land Use Planning Act indicates that any Planning and Zoning permit approvals terminate after one year if no substantial action has taken place. This timeline can be extended by the City Council for one additional year.

In 2018 in preparation for our sewer main line update, I researched several unused/abandon parcels in town regarding sewer connections. After researching records, these are my findings on 352 Fargo Ave and 422 1st Street:

Canyon County confirmed 422 1st Street was parcel R18850-000 consisting of entire lot 6 of block 7 of Notus original. 352 Fargo Ave, parcel R1885010-010 was Notus Original lot 5 & NW5' of lot 4, block 7. Two separate parcels with lot lines running North to South.

422 1st Street (lot 6) was quitclaim deeded to Southwind Management from Randall and Renee Taylor on August 22, 2014 and recorded with Canyon County.

352 Fargo Ave (lot 5 and NW5' of lot 4) was quitclaim deeded to Southwind Management from Kimberly Hubbard on August 22, 2014 and recorded with Canyon County.

On April 22, 2016 Randall Taylor, as an agent of Southwind Management filled out a Canyon County "in office use form only" to merge parcels R18850-000 and R1885010-010 for taxing purposes only. According to Canyon County, property owners request this for assessment and taxing purposes to be combined on one bill. They are informed that a title company will not view this parcel as one if they ever deed out, it will show as 2. Jacob King of Canyon County stated that these are 2 parcels under one tax account and in his opinion the "in office form to merge" should have no bearing on land use issues or determinations.

On February 25th, 2021 Kimberly Hubbard, representative of Southwind Management, requested Title One to prescribe a warranty deed selling the 2 parcels to Z&H Construction General Contracting LLC. As per the Escrow agent, Title One combined the property descriptions because it was one seller, selling to one buyer for both parcels."

Current Code versus proposed setbacks are:

Current Code	Proposed
Zoned as R-2 (medium density up to 8 units per acre)	Parcels total .35 acre
Minimum lot size for one home, 6,500 sq ft	3 lots at 5,040 sq ft each
Max.40 % of lot can be covered by structure = 2,600 sq ft home/garage/structure	40% = 2,016 sq ft can be covered by structure, homes are 1,837 or less.
Street frontage property lot width is minimum of 65ft.	48 ft
Setbacks:	
front yard 20 ft.	20 ft.
side yard 10 ft.	8 ft.
side yard, street side 15 ft.	10 ft
rear yard, 20 ft.	Homes #1 & #2 is 18'8", Home #3 is 20 ft.
Alley way easement width is 16 ft	

1st street road right of way is 80 ft.	
Fargo Ave road right of way is 60 ft.	

4.8 Applicant Rebuttal

Applicant, Zane Shippy responds. He asks if this lot can't have 3 homes on it, that if they are not 3 lots, why are we here? Mayor responded that we are not ready to say that yet. City Attorney stated that Mr. Shippy was informed of the plat procedure but that he had wanted to see if Council would approve the variance for setbacks before taking that step (of survey and plat). There is only his variance of setbacks application before Council today. To do them both, the City would need a plat application at the same time as a variance application but instead you have asked for a variance of setbacks first. If it gets approved, then you would file your plat application that would require a second public hearing. You broke it up into two. Mr. Shippy questioned that he needed 2 public hearings for one variance, that does not make sense since it is one variance. He is asking for a variance and 3 lots because you cannot have one without the other. "So, you're going to waste more of my time by having another public hearing." He doesn't understand why we need another public hearing. He is asking for 3 lots plus the variance. Mayor commented that the plat has not been done and that would have been the first initial step to be done. Mr. Shippy agreed that a survey should be done. Mayor then stated that a variance and plat would be submitted at the same time to get it done in one meeting. Mr. Shippy asks Council if they believe that it is fair of him (City Attorney) to require a second public hearing on something you already have in front of you? "This doesn't make sense to me. We are asking for 3 lots with the setbacks that I gave you, it shows all of it on there. Why don't you just decide today? What do you think City Council?" DeGiorgio stated she doesn't know why either. Mayor commented that the Idaho Land Use Laws has to do with the steps we are asking the applicant to follow and if he understands this correctly the platting of the property is the prior step. We can't grant variances on something that doesn't exist. City Attorney states there is two things that will need to happen for this to go forward, if Council so chooses. A variance application, which is before you, which asks for adjustments that the clerk has read, adjusting the setbacks. The second application that could have been here tonight, could have been filed at any time but has not yet been filed, is the plat application which comes from a survey which has not yet been done. So, the second application is not a second variance request. It is to approve the plat. A second hearing will be for the plat application. The plat application is the plat showing the 3 lots. More discussion. City Attorney stated, You (Mr. Shippy) do not have a plat application before the City today. Because you don't have it today, they (Council) can not approve the plat today. Mr. Taylor commented that they (council) did approve it for him in 1995. City Attorney stated that he doesn't see a plat with 3 buildable lots with legal descriptions. Attorney stated he has given him (Mr. Shippy) the answer how procedurally he could have all of this approved. Its due process. It's not one that is made up. Its not discretionary. It's the requirement to get the approval you want. And what is not yet done is the survey, that's about to be done on the 3 lots. That will be the second step should Council approve tonight. More discussion. DeGiorgio motioned to approve the variance. City Clerk declares she is out of order. Mayor stated that is not the next step. More discussion. DeGiorgio motioned to close the public hearing. Ahlborn seconded. Roll call was taken with the following results: DeGiorgio; yes, Ahlborn; yes, Emly; yes. Motion carried.

Mayor calls for a 10-minute recess and City Attorney reminds Council to not discuss the hearing topic.

Mayor calls the meeting back to order at 8:19 pm

5. Consent Agenda, ACTION ITEMS

5.1 Disbursement List

Emly motioned to approve the disbursement list for a total of \$4,124.69. Ahlborn seconded. Roll call was taken with the following results: Emly; yes, Ahlborn; yes, DeGiorgio; No. Motion carried.

5.2 Council Meeting Minutes

Emly motioned to approve the meeting minutes from April 5th, 2021 as presented. Ahlborn seconded. Roll call was taken with the following results: Emly; yes, Ahlborn; yes; DeGiorgio; yes. Motioned carried.

5.3 Committee Meeting Minutes: Library
None

6. Staff Reports

6.1 Treasurer

Treasurer, Marie Eilers gave Council revenue and expense report. She stated that budget preparations is under way and workshops will be needed. Public Works Supervisor, Tyler Martin has some items he would like to get into the budget.

6.2 Public Works

A written report was given to Council from Public Works Supervisor, Tyler Martin for their review.

7. Business

7.1 Variance Application for 422 1st St., ACTION ITEM

DeGiorgio motioned to approve the variance application for 422 1st Street. Emly seconded. Emly has a question of the Applicant. Attorney stated the hearing would need to be reopened to ask questions.

DeGiorgio motioned to reopen the public hearing. Ahlborn seconded. Roll call was taken with the following results: DeGiorgio; yes, Ahlborn; yes, Emly; yes. Motion carried.

Emly asked Zane Shippy where the irrigation ditch would be in relation to his proposed property fence. He responded that the irrigation ditch runs along the alley and his fence would be on his property side of that. Emly motioned to close the public hearing. DeGiorgio seconded. Roll call was taken the following results: Emly; yes, DeGiorgio; yes, Ahlborn; yes. Motion carried.

7.1 continued,

Attorney reviews the action options with Council. Vote to deny with reason why, vote to approve with reason why, or you may choose to continue it at a future Council meeting.

DeGiorgio clarifies her motion to approve all of the variances that were applied for in the application from Z&H Construction. Roll call was taken with the following results: DeGiorgio; yes, Emly; yes, Ahlborn; yes. Motion carried.

7.2 Code and Law Enforcement Agreement with Parma Police, ACTION ITEM

Mayor reviewed Parma-Notus code and law enforcement agreement with Council. DeGiorgio asked about prosecution costs. Mayor stated that would be handled by the prosecutor office. Mayor stated that on 1.1 the hours of service will vary but "not to exceed" was suggested to be 16 or 20. At 1.3 we would ask for a report of activity, hours spent and citations issued. Ahlborn suggested that at 2. Compensation of \$1,250.00 should have some minimum of time spent here monthly. Citizens will still call 911 for police emergencies. (This would be for code violations and traffic only) DeGiorgio asked what does the City get for the violation fines. Mayor stated that part of those come back to the City but misdemeanor prosecution will cost the City. Ahlborn stated that 8. TERMINATION covers both parties should this not work out for the City. So, he is good with that. Mayor will take this back to Parma Police Chief.

8. Mayor & Council Comment

City Clerk, Loretta reminds Council of the AIC Spring Conference and also let them know that there is a place available since DeGiorgio will not be able to attend.

Adjournment

DeGiorgio motioned to adjourn at 9:25pm. Ahlborn seconded. All in Favor. Motion carried.

Respectfully submitted by Loretta Vollmer, City Clerk _____

Approved by David Porterfield, Mayor _____