

**City of Benton City
Planning Commission Board Meeting Minutes
July 22nd, 2013**

CALL TO ORDER – (27/1/707*Audio recording begins) Commission Chairman Norris called the July 22nd, 2013 Planning Commission Board Meeting to order at 6:00 p.m.

ROLL CALL – (28/4/117*) **Commissioners Present:**

**Commissioner Don Allen
Commissioner Ivan Howard
Commissioner Linda Lehman
Commission Chair Kyle Norris**

Commissioners Absent:

Commissioner J.D. Howard (Unexcused)

City Professionals Present:

Stephanie Haug, Clerk of Board

Other Professionals Present:

Patrick Galloway, City Attorney, Kerr Law Group

PLEDGE OF ALLEGIANCE TO THE FLAG/U.S. – Commission Chair Norris led the Board and audience in the Pledge of Allegiance - (37/2/875*)

APPROVAL OF MINUTES FOR JUNE 24TH, 2013 PLANNING COMMISSION BOARD MEETING
(52/2/675*)

Commission Chair Norris: Alright, I'd ascertain a motion at this time to approve or disapprove or amend the Minutes for June 24th, accepted, whatever...

Commissioner Allen: I make a motion that we accept the Minutes as written.

Commission Chair Norris: Is there a second?

Commissioner I. Howard: I'll second it.

Commission Chair Norris: It's been moved and seconded to accept the Minutes for the Meeting on June 24th, 2013 as written. All in favor? Opposed?

MOTION #1 - Commissioner D. Allen moved and Commissioner I. Howard seconded to approve the Minutes of the June 24th, 2013 Planning Commission Board Meeting as written.

VOICE VOTE #1 – C. K. Norris, C. D. Allen, C. L. Lehman, C. I. Howard
ALL YEAS. Motion carried.

VARIANCE APPLICATION – 1108 GRACE AVENUE - (70/3/768*)
(Remand from City Council)

Commission Chair Norris: Alright, we've got a remand from City Council. You know, that's the first time in ten years I've had something like this. Apparently, they didn't feel that we answered all their questions properly in our discussion at the last meeting. If you go to the meetings of the Council, or whatever, we got a deal of what we was supposed to cover, whatever, but there's doubt or whatever, from a number of the commiss...or the council members, I believe, as I read it. Anyway, so, let's try to go over this again. I believe it is, yeah, it is written in blue in your spiel about what we have to consider for the Variance.

Number one; how does the proposed expansion affect fire safety if the setback is reduced to ten feet? Having not heard from the Fire Department in the last meeting, I have no idea, other than...

Unidentified Male: We're here, Sir!

Commission Chair Norris: Excuse me.

Unidentified Male: We okayed it and everything.

Ms. Haug: (Inaudible)

Commission Chair Norris: According to the rules, I've been told that I can't accept any more information even though the City Council wants information. Now, to me...

Unidentified Male: We gave that to the City Council, Sir.

Commission Chair Norris: What?

Unidentified Male: We gave it to the City Council, Sir.

Commission Chair Norris: Okay, that's fine, but right now at this meeting, I've got a little note here on the back that says, oh, where is the little note on the back, that we can't accept any more information than what we had at the meeting.

Commissioner Allen: Right here

Commission Chair Norris: I guess we got a lawyer here to explain it to us, why we can't accept that, so, the problem I have is if they want more clarification or explaining for information, we can't accept any more information, where we're at, so, is that a fact that we cannot accept any more information at this meeting?

Mr. Galloway: Yes, that's a fact.

Commission Chair Norris: Alright, from where?

Mr. Galloway: That's just the appeal process that, you know, goes up to the City Council and they have options just like an Appeal Court would where they could overturn a decision or they could agree with a decision or they could remand it back for additional findings by the lower body and that's what they've don't, and so the...

Commission Chair Norris: Additional findings; clarify that.

Mr. Galloway: So, the, the legal reason why you're not supposed to have more testimony here tonight, because in land use matters, you send out the notices, people come to the meeting and they put their stuff on the record, and that's everyone's opportunity to have an equal opportunity to put their information on the record and then, it's only based on that initial record that's created, that all the decisions should be made. So my understanding of what the City Council's asked for and it is an appropriate course of action for them to take, is additional findings, essentially applications of the information, the factual information that you've heard at the first hearing, to those points that are contained in the Code, to the additional questions that they've asked, so...

Commission Chair Norris: Did the City Council get a copy of our Minutes?

Ms. Haug: Yes.

Commission Chair Norris: Okay, the City Council knows what happened in that meeting; why can't that be enough for them, I guess, is what I'm saying, I don't understand. When we...

Mr. Galloway: Well, (inaudible)

Commission Chair Norris: Uh! Let me talk first! When we have a meeting, we try to cover everything, okay, it was a split decision on the meeting, on the vote, okay? Fine, but the area was covered and we went over the information that we had at that time. Now, that was sent to the Council, the Council chose not to do anything with it. Now, personally, I don't understand why, they are the elected, they are the representatives of the people, we're just here as citizens. Okay, so now, we're back here for another meeting to go over the same things that the Council already had. Now what does the Council expect us to do with; they already have the information. What are we supposed to do? That is my point. There was a decision made. If they don't like it, that is their power to change it. They can either say yea or nay. That's not our decision, we made a recommendation. We sent a recommendation to them, now, I see the Mayor here, sitting here, I see you sitting here; now is that to intimidate us to change our minds, or, to me, it's a waste of my time to be here; we've already covered this.

Mr. Galloway: No, the reason I was asked to come was just to be able help her just explain the procedures, so...

Commission Chair Norris: Well, you said we can't accept any more information, so the procedures pretty clear, we have what the Council had in front of us, is that correct?

Mr. Galloway: Right, so...

Commissioner Lehman: Can I ask a question about this? I'm reading Mr. Kerr's testimony to the, to the City Council and it clearly says that the remand back to Planning Commission, more hearings, more evidence to assist the Council (inaudible) comes back. And I look under...I believe we are under a Public Hearing, under 2.70.170, "Remand", "In the event the Council determines the Public Hearing record or record on appeal is insufficient or otherwise flawed, the Council will remand the matter to the hearing body, which is the Planning Commission, to correct the deficiencies. Now, I believe that we have deficiencies in the information and that's why Mr. Kerr recommended to come back here and have more hearings. And now, all of a sudden, we find we can't even answer the questions, well, we can answer them to the best of our abilities, but it would be nice if we could have more information from the people that know it, from the source. Now, can you explain that discrepancy?

Mr. Galloway: Yeah, so you can have a remand or additional hearings or request it, but it's my understanding that no factual hearing was noticed for tonight, so if you're going to...

Commissioner Lehman: Well, wait a minute! Whose fault is that? That is not the City Council's fault that it wasn't. It clearly says here more hearings; we thought we were getting another hearing, but the City Clerk neglected to do that, then that's not our problem.

Mr. Galloway: I, you know, and I'll have to defer to Stephanie; I wasn't at the meeting, I don't know what the...

Commissioner Lehman: No, I don't want you to defer to Stephanie, this is a legal question.

Mr. Galloway: No! This isn't a legal question. This is a question of what the City Council directed you to do. In these cases, and I know you may be frustrated with them; I know you may disagree with them...

Commissioner Lehman: I have a copy of the motion; I know what they directed. It says, "Remand this back to the City Planning Commission for additional evidence"; that's what it says, right in the motion that was passed.

Mr. Galloway: Okay, well, if that's what they directed, then that's what we need to do, then...

Commissioner Lehman: Then that's what we need to do...

Mr. Galloway: A meeting needs to be noticed where all parties can have notice that additional evidence is going to be taken.

Commissioner Lehman: (Inaudible).

Commission Chair Norris: Well, that, that's, I agree with that one hundred and ten percent; if we're going to introduce more information or whatever, but as I read my deal here, we couldn't accept no more information, but how can we make a decision or a recommendation if we don't more information, a, a tool to get more information, I guess is what I'm saying, positive or negative, that, that is our problem that I, as I see it, so...show me in writing where that's at, other than my page right there.

Commissioner Allen: Yeah, that's what I'm saying; I agree.

Commission Chair Norris: I understand; if they want more information, that they should have this, is what I'm saying.

Commissioner Allen: (Yes), sure, I understand what you're saying...

Commission Chair Norris: Because I, I, you know, I...go ahead.

Ms. Haug: An action, so, so the way the process was explained to me from Attorney Kerr, that the Planning Commission has to have this meeting and if the Planning Commission wishes to call for an additional hearing, they can do so, it just cannot do so at tonight's meeting,

Commission Chair Norris: Good.

Ms. Haug: So then that will essentially delay this process another, another month.

Commission Chair Norris: Well, I'm, I'm, I'm sorry about the delay or whatever, but it should have been a considered, when we set this meeting, we should have had another Public Hearing if we need more information, is the way I look at it.

Ms. Cardenas: That's what my understanding was, because this is the, going back to the same thing, we understand we got referred back because they needed more information and that was the, initially, what we came back so that should have been done at the beginning; how are you going to get more information from us if you're not letting us speak, you know...?

Commission Chair Norris: Okay, yeah, that's my battle, let me fight that. Okay, so, do we have the option, as the Planning Commission to table this and ask for another hearing, a Public Hearing so we can get more information...?

Mr. Galloway: Yes.

Commission Chair Norris: At this time...?

Commissioner Lehman: Do we have an option to ask for clarifications on any of these issues that we already have evidence on?

Mr. Galloway: You mean, ask for...

Commissioner Lehman: Ask the applicant for some clarifications?

Commission Chair Norris: We would have to, I believe we would have to do that at another meeting, is what they're saying, we'd have to set up...

Commissioner Lehman: Well, I'm just, you know, time is money...

Commission Chair Norris: Well...

Commissioner Lehman: These people want to open a daycare for September; how in the heck, if we keep delaying this and delaying this, are we going to get them open by September. It may be too late now, I don't know...

Ms. Cardenas: It's been since March (inaudible)...

Unidentified Male: I need to say something. The Mayor was at the last City Council...

Commission Chair Norris: Excuse me, Sir, hold on...

Unidentified Male: Yes Sir!

Ms. Haug: At tonight's meeting, the Planning Commission does have the opportunity to look at the questions that the Council has brought back and review what has already been reviewed and possibly come out with, what the Council's looking for is, is clarification of Findings of Fact that the planning Commission found at the previous meeting, so in your decision, in your recommendation, you have reasons for making that recommendation, so that's what the Council is asking for the Planning Commission to explore tonight, some additional testimony might help with that, but that's what needs to be discussed at tonight's meeting.

Commissioner I. Howard: Then, then explain to me how I'm to know how neighbors feel about this?

Ms. Haug: You, you may not.

Commissioner Lehman: They testified last time, we have that (inaudible)...

Commissioner I. Howard: And, and I understand that, but they want us to go over it again? What do they want? Us to tell them the same thing that we already know?

Commissioner Lehman: I guess.

Commission Chair Norris: (Inaudible) my point, when we started. My, okay, we can go over this again, you know, you can talk about negatives or positives or whatever, we heard nothing negative against the people behind them, there was no comment from them; there was nothing negative from the Fire Department, we had no information from them...

Commissioner I. Howard: Yeah, wrap it up in a nice, little pretty package and sent it right back to them.

Commissioner Lehman: Well, we'll do that. Let's do that. Can we do that, Kyle?

Commission Chair Norris: Alright, we can, we can do that. Let's hit it.

Commissioner Lehman: Let's hit it.

Commissioner I. Howard: And I make a motion to send this back to the City Council.

Commission Chair Norris: Well, let's...

Commissioner I. Howard: Can I do that?

Commissioner Lehman: I, I would like to answer their questions.

Commissioner I. Howard: Oh, alright go ahead.

Commission Chair Norris: Okay, wait just one sec; is there a second to that motion? Hearing none, motion dies. Go ahead.

Commissioner Lehman: I'm just afraid if we don't answer these questions...that it's just going to come back again and just cause more delays, so I'd like to take a shot, from my own experience, my remembrances of what went on at the last meeting and the City Council meeting (**inaudible**) those questions.

Commission Chair Norris: Okay, Number One...

Commissioner Lehman: Just a minute, let me find it first here and then I'll...

Commission Chair Norris: Okay, we'll just kind of work down through right from the top, you know, once you get ready.

Commissioner Lehman: (**Inaudible**).

Commission Chair Norris: Anyway, I got, I can do Number One; at the meeting, there was no, nothing negative that affected fire safety in the setback. I can say that because there nothing said about it negative, alright? So...

Commissioner Lehman: Okay, yes, Number One, as we know, that all the inspections had been met and everything that was (**inaudible**) and also all of your...had been met, all your fire extinguishers, your sprinkler systems. I personally drove by the property, I can see how a fire truck would have no trouble coming up alongside the building on either side if they needed to but certainly we have longer than 20 foot fire hoses, so I believe that having the addition on the back is perfectly fine for fire safety. I also wanted to question why wasn't all the question, why weren't all the questions of City Council put into this, these questions?

Ms. Haug: They are in the Minutes.

Commissioner Lehman: They are in the Minutes...

Ms. Haug: (Yes).

Commissioner Lehman: But they're not on here?

Ms. Haug: They're in your packet.

Commission Chair Norris: Yeah, they're ...

Commissioner Lehman: So I can answer those questions as well.

Commission Chair Norris: Well, yes, that's in this packet, yes.

Commissioner Lehman: Okay. Lisa Stade had a question; she wanted to hear more about hardship to youth, so from what I'm remembering from the last time, this, if this does not, if this Variance is not passed, it's going to be a hardship to community youth, for several reasons. One is that it is limiting the number of students that, that could be in there. We heard testimony that this is a terrific opportunity because it gives some of them a chance to be bilingual, and myself, I had to pay \$40,000 a year to send my children to Spanish immersion school, they're getting it free here. There are jobs. That may not be youth, but certainly jobs in the community are at stake. I think that there's problem, there's hardship to some of the teachers that teach at that school because they can now drop their children off right here instead of driving to West Richland. So I think that the earlier testimony that we've heard firmly establishes that there's a hardship, not to the Applicant but to the community (inaudible) so I'd like that to be on the record. Can we jump, then, to Number Three and Number Four and I'll come back to Number Two?

Commission Chair Lehman: Yes, I see no problem.

Commissioner Lehman: Okay, how do the neighbors feel about the land use in action? We had a number of people, Mr. Gorman; several others (inaudible) remember that (inaudible) testimony before about how they had absolutely no problem with the daycare and they lived either behind it or right behind it, so I think that one can be one (inaudible) can be answered by the previous testimony that the neighbors want this variance. Number Four: What is the addition used for? I believe that, and I don't know this for a fact, but I believe it is going to be used for classrooms. I see affirmatives nods here, so (inaudible). Okay, so then, I guess the only remaining questions that we have to deal with is Item Two, and I guess I'd like to start with B because the City Clerk already answered E this a not applicable. Presumably, this Variance, the Comprehensive Plan is, is met by the Conditional Use Permit itself, and all those things that are related to that are already covered by the Conditional Use Permit, so that's my understanding why that that is not applicable. Number Four, or D; it must be shown that a material hardship unwarranted within the intent of this Code will exist if this Variance is not granted, and I think we've established that material hardship is in fact, present, and I do believe it is unwarranted within the intent of the Code. I don't think this Code, written back in the early part of last century was all-foreseeing and all-knowledgeable; so I think that this is unwarranted within the intent of this Code, it's an unwarranted hardship, and that the hardship cannot be remedied by other means. The hardship demonstrated must not be self-created, and I don't believe that it is and I will get to that in a moment; and must relate to the land itself and not to problems personal to the Applicant. So if you will look at the site plan that was handed out on the last Council Meeting, let me find it, I understand we have a twenty-five foot property setback on the front as well as the rear. We also (inaudible) Council packet, we also have a parking requirement I saw that there were required to have eighteen parking spaces, so I'm going to assume that turning radiuses, items like that, were used when they constructed the parking spots that are here now and that parking space took a fair amount more than the original twenty five foot setback, in fact it's more like fifty-two foot setback from the road. Also, on the side, we have some interesting topography which when I drove by did not seem to be present in the other lots in the area. They have a retaining wall, about a four foot retaining wall that's runs the length of the property and there's numerous shade trees right adjacent to the play area of the building, large, mature trees so I'm sure that some of that was considered when they put the building where they did, but nevertheless, the front placement of this building, I'm certain, has been dictated by the City Code for parking and not by the Center themselves, so therefore, it's a function of the land, it is not a function of the building; and this is, they're, started so far back that there isn't sufficient land to include the addition without going into the setback; and as I said, it is not self-created, it is created by the Codes. That's my analysis of that (inaudible). Number C, granting of the proposed Variance will not materially, not be materially detrimental to property within the vicinity, traffic, noise, etc., and I don't believe that it would. (Inaudible) to

have change in hours of operation, it does not constitute a special privilege inconsistent with the limitations on other properties, so from what we've heard, noise, safety, none of the testimony we heard, had anything to, against that, so therefore that one is met. B: I think likewise, like E, they're, all of these things, property rights, are taken care in the Conditional Use Permit, this things were considered, property rights, the right to conduct a daycare, or giving them the permit and so therefore that one is not applicable as was E, and A, exceptional or extraordinarily...ordinary circumstances apply to the property itself such as lot size, shape or topography; as I mentioned we have unusual topography there, and also we don't want to be in business of cutting down large, mature shade trees I don't believe, that result in a situation over which the applicant has no control, and I believe that one also is met because of the topography, so that's my analysis of having to...

Commission Chair Norris: Does anyone else have anything they want to say? Okay, let's move right to, I'd like a motion to...

Commissioner Lehman: I, I would like to, to move that we grant a Variance, as we did last time...

Commission Chair Norris: And send it to the City Council.

Commissioner Lehman: And send it to the City Council.

Commission Chair Norris: Is there a second?

Commissioner I. Howard: I'll second.

Commission Chair Norris: Okay, it's been moved and seconded to grant the Variance and send it to the City Council as before. All in favor? Opposed? Motion carries.

MOTION #2- Commissioner L. Lehman moved and Commissioner I. Howard seconded to grant the Variance Application for 1108 Grace Avenue and forward to City Council with recommendation to approve.

**VOICE VOTE #2 – C. K. Norris, C. D. Allen, C. L. Lehman, C. I. Howard
ALL YEAS. Motion carried.**

**CONDITIONAL USE PERMIT APPLICATION – 1108 GRACE AVENUE - (794/3/330*)
(Remand from City Council)**

Commission Chair Norris: Do we have to do anything with the other part there, since this is the same as it was before, or just, on the...?

Ms. Haug: They, they remanded both back because the Conditional Use is contingent upon the Variance.

Commission Chair Norris: (Yes), so now that the Variance is the same, the Conditional Use would be, it needs to have a motion sent back to the Council also? Alright, at this time I'd ascertain a motion on the Contish...Continual...Conditional Use Permit application.

Commissioner Lehman: I would like to move that we approve the Conditional Use application to expand the daycare.

Commission Chair Norris: Is there a second?

Commissioner Allen: I'll second.

Commission Chair Norris: Okay, it's been moved and seconded to send the Conditional Use Permit to the Council with a positive recommendation. All in favor? Opposed? Motion carries.

MOTION #3- Commissioner L. Lehman moved and Commissioner D. Howard seconded to forward the Conditional Use Permit application for 1108 Grace Avenue to City Council with recommendation to approve.

VOICE VOTE #3 – C. K. Norris, C. D. Allen, C. L. Lehman, C. I. Howard
ALL YEAS. Motion carried.

Commission Chair Norris: Is there anything else we have to do tonight?

Ms. Haug: No.

Commission Chair Norris: Okay, thank you. Meeting is adjourned. (824/1/000*)

Commissioner Lehman: Kyle (inaudible). Sorry.

Commission Chair Norris: Oh! Yes, sir?

Mr. Adams: Sir, my name is Bill Adams, and I just want to say that my daughter goes to that daycare, excuse me, I'm just a little public stage fright, but she goes there, she's learned Spanish, the meals are healthy, I've been through parties and everything else, and it's a great place. The opposition that you're getting from this addition is, you got two people on the City Council that are members of the School District, and...

Commission Chair Norris: Okay, Sir, I, I, I'm just trying to say...

Mr. Adams: Let me, let me just finish, let me finish! Come on now! You talked.

Commission Chair Norris: I know I talked and it's my meeting.

Mr. Adams: I understand that.

Commission Chair Norris: Okay, but what I'm trying to say is, probably what you're going to say would be better at Council than it is here...

Mr. Adams: The Mayor won't let you talk at City Council.

Commission Chair Norris: Well, you know, there are...

Mr. Adams: He wouldn't let me talk last week.

Commission Chair Norris: There are ways to get around that if you know your Parliamentary Procedure.

Mr. Adams: I, I don't.

Commission Chair Norris: Okay, you need to brush up on that because you can have your voice heard through the Parliamentary Procedure process and I know that.

Mr. Adams: All's I wanted...I wasn't going to mention anyone's name...

Commission Chair Norris: So, but I understand it's a positive thing is what you're saying and we apparently agree with you because we're sending it back to them. Now, when you go to the Council meetings, they can, they have their parliamentary procedures but there are tools in Roberts Rules of Orders, if you do a little research, that they will have to hear you, whether I as the Chairman here or the Mayor as the chairman there, there are rules that we have to follow, okay, if you know what I'm saying.

Mr. Adams: Well, I, I'm familiar with Roberts Rule of Orders, I've been in law enforcement for a long time. The City Attorney and the Mayor wouldn't let us speak last time.

Commission Chair Norris: Did you ask for a question? Did you ask for a point of interest or a point of information?

Mr. Adams: Thank you.

Commission Chair Norris: Okay, is there anything else? Yes?

Unidentified Male: Mr. Comm...or we going to have the opportunity if there is an open hearing again, to speak on behalf of the expansion?

Commission Chair Norris: If there would be a, if there would be another hearing, then testimony would be accepted.

Unidentified Male: Thank you.

Commission Chair Norris: Well, and if, like I say, if there is another hearing. I don't know if there will be. This is going to Council; hopefully they will deal with it.

Unidentified Male: Thank you.

Commission Chair Norris: Yes, Sir?

Mr. Gorman: My name's Mike Gorman and I happen to be, own one of the properties that adjoin the daycare. I spoke last...I spoke last, last time. I happen to have the hard copy here if you would like to have that in your files, signed both, by both myself, my wife and Wes Roberts, who is the direct, he has the property that is directly involved with the fence line, so I have this hard copy here if you'd like to, if you'd to have that.

Commission Chair Norris: Well, I believe that we're handcuffed with that. We can't accept any more information, is that not right, Sir? At this time?

Mr. Galloway: That's correct. You wouldn't want to expand the record.

Commission Chair Norris: We can't, we can't expand the record at this time unless we have another Public Hearing.

Mr. Gorman: Oh, okay.

Commission Chair Norris: Okay? That, that is, that is what we was talking about when we started this, because, you know...

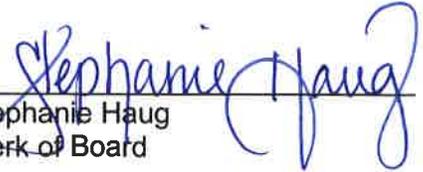
Mr. Gorman: Right, okay, okay.

Commission Chair Norris: Okay, is there anything else?

Ms. Cardenas: Thank you.

Commission Chair Norris: Meeting is closed. (938/2/865*)

Planning Commission Meeting ended at 6:30 p.m. (941/4/240*)


Stephanie Haug
Clerk of Board


Kyle Norris, Commission Chair
Planning Commission Board

Date: 4/29/14