

PUBLIC HEARING

August 28, 2014

1 The Public Hearing of Macedonia City Council was called to order on August 28, 2014 at 7:23pm by
2 presiding officer, Mayor Donald Kuchta

3
4 **Present:** Council members' Rita Darrow, David Engle, Sylvia Hanneken and Nicholas Molnar: ;
5 Law Director Joseph W. Diermert Jr. and Council Clerk Josephine Arceci

6
7 **Absent:** Councilor Janet Tulley

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9 **Purpose of PublicHearing:** **ORD. NO. 82-2014; AN ORDINANCE AMENDING CODIFIED**
10 **ORDINANCE SECTION 1171.15(b) TO ALLOW A STORAGE BARN AS A NON-RESIDENTIAL**
11 **USE IN A RESIDENTIAL DISTRICT (First reading, July 24, 2014)**

12
13 **Public Comments**

14
15 Barb Dlugoz, a Valley View Road resident stated she came for the purpose of speaking on the subject
16 tonight but has been informed the issue has been settled. If it had not it is her opinion that a residential
17 property with a storage barn should also have a home. And if the law is going to change in that regards
18 she feels someone like her cousin who is looking at purchasing a lot in one of Macedonia's residential
19 subdivisions should be allowed to park his camper while the home is being built.

20
21 Mayor Kuchta informed Ms. Dlugoz that the issue has not been settled. The Mayor explained that it was
22 conditionally settled but the conditions of the settlement were not met.

23
24 Shirley Koth, an Eileen Drive resident stated she is familiar with background relative to the specific
25 property at issue and the reason for this legislation. Ms. Koth questioned however whether Ordinance
26 No. 82-2014 doesn't actually address more than the question of that property. She presented the
27 following scenario and questioned how it would be handled if Ordinance No. 82-2014 does not pass. She
28 purchases the vacant half acre adjacent to her home to expand her ownership to a full acre. Would she be
29 prohibited from building a structure on the vacant portion of her expanded, on the lot she purchased? Her
30 intent in enlarging her property was to add a shed or barn. Would she be allowed she asked?

31
32 Mayor Kuchta said Ms. Koth she raises a good point. The scenario that the administrative has been
33 concerned with is an accessory building being constructed on a vacant non-adjacent, non-contiguous,
34 stand alone lot without a residence being on that same lot. Mayor Kuchta asked Ms. Koth if there was a
35 vacant lot next to her property would she mind if someone built an accessory building without a home
36 being there?

37
38 Ms. Koth responded Mayor Kuchta's question is not what has occurred. There was a house on the
39 property where there is now only a storage barn. She is aware the house was raised because it was
40 condemned. But feels that situation places the entire issue into a different category because previously
41 there was a legal house and the barn was built legally. One structure coming down shouldn't mean the
42 other structure must be torn down as well. Expanding her property by more acres shouldn't prevent her
43 from building on her additional land. Ms. Koth is concerned that Ordinance No. 82-2014 really doesn't
44 address the current problem but creates other issues.

45
46 Mayor Kuchta agreed with Ms. Koth to the extent he appealed to the Board of Zoning and Code Appeals
47 on behalf of the specific property owner. The BZA granted a variance. This issue would then have been
48 settled had the property owner complied with the settlement agreement, i.e., an inspection of the storage
49 barn. But the property owner chose not to comply.

50
51 Ms. Koth feels the current situation should be considered a grandfathered issue. Ms. Koth does not agree
52 that a property owner should be allowed to purchase a vacant lot in a residential neighborhood for the sole
53 purpose of building a non-residential structure. This should not to be confused with a property owner
54 being allowed to purchase adjacent, contiguous property to his own and build a structure on the adjacent
55 property.

56
57 Law Director Diemert told Ms. Koth she has analyzed the situation very well. Mr. Diemert explained that
58 normally when adjacent or contagious property is purchased it is merged to create one parcel. The
59 property owner then has full use of their acreage as one parcel. Non-residential structures such as sheds
60 and barns could be built. However, in all probability if those additional parcel(s) were sold off the non-
61 residential buildings would have to be removed because under Macedonia's current zoning code non-
62 residential structures cannot exist alone on a residential lot without a single family home also being on
63 that lot. As Ordinance No. 82-2014 is written it allows anyone to purchase a residential lot anywhere in
64 Macedonia and erect a non-residential structure without erecting single family residential home.

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66 Ms. Koth interjected that if the storage barn is allowed to remain without the presence of a home she feels
67 strongly that the property must be keep-up and well maintained as if a home was still on the property. In
68 Ms. Koth's opinion this one specific situation on Valley View Road exploded into something that should
69 have never been.

70
71 Councilor Hanneken read aloud the following from proposed Ordinance No. 82-2014 in pertinent part:
72 "*(5) "storage facilities, barns, sheds, or similar such structures, as stand-alone structures when accessory*
73 *to an adjacent or nearby sub lot or parcel with a permanent chief main use, and common ownership, or*
74 *when the chief main building use has been demolished or otherwise removed from the parcel leaving a*
75 *nonconforming structure.*", which means Councilor Hanneken told Ms. Koth that since a structure started
76 on a legitimately approved property the property owner is not required to demolish their barn because
77 their house was removed.

78
79 Mr. Diemert told Ms. Hanneken that is not the total meaning of the paragraph. The paragraph allows for
80 non-residential structures on any "*near-by sub lot or parcel*". These words don't mean adjacent and they
81 don't mean a house had to be there before. This means anyone can buy a sub-lot and build a non-
82 residential structure on it without ever building a residential home

83
84 Ms. Hanneken suggested Ordinance No. 82-2014 be modified to correct the misinterpretation.

85
86 Councilor Engle agreed.

87
88 Ms. Koth agreed. The ordinance is just not clear she added

89
90 Mayor Kuchta interjected that because the matter became explosive as Ms. Koth described he went to the
91 BZA on behalf of the property owner in an effort to resolve this matter. The BZA granted a variance to
92 relative to Valley View Road storage barn. The variance allowed the non-residential structure to remain
93 on the property even though there is no longer a home as long the existing structure and the property were
94 maintained. This was precedent setting Mayor Kuchta stated. A condition of the variance was an
95 inspection of the structure which later the homeowner vehemently denied. So as it stands Mayor Kuchta
96 stated there is no variance.

97
98 Mark Farley, an Atterbury Drive resident and member of BZA agreed. The variance the BZA granted
99 would have set a precedent had it been in compliance. Mr. Farley explained everyone attending the July
100 14 hearing about the barn was diligent regarding information gathering. There was a lot of thoughtfulness
101 during the thinking process as well as careful reasoning. The rationale of the BZA was a complaint
102 generated the stem of subsequent actions. There was total agreement among everyone at the hearing that
103 there would be an inspection oat anytime. But as it turned out BZA members were not allowed to the see
104 inside the barn. There are many items outside the barn which some BZA members feel create a safety
105 hazard. What caused the detail in the inspection, why didn't the inspection even come to fruition Mr.
106 Farley asked?

107
108 Mayor Kuchta informed Mr. Farley that the barn owner asked for four weeks in which to comply in order
109 to clean the barn and area. The Mayor thought allowing him additional the time was fair. At the end of
110 the four weeks however, when the City went to inspect the barn, the property owner forcefully refused
111 access.

112
113 The BZA was not made aware of the extension Mr. Farley stated. The BZA hearing was July 14th and
114 now it is six weeks later and nothing has been done. Would the new ordinance be the reason for the delay
115 he asked? In Mr. Farley's opinion the July 14th findings by the BZA precedes Ordinance No. 82-2014.

116
117 Mayor Kuchta thought it was only fair and courtesy to property owner to allow him time to clean-up he
118 told Mr. Farley. The Mayor thought for certain this issue would have been resolved following the
119 inspection. The Mayor never thought the property owner would deny the inspection after he was granted
120 the variance. Mayor Kuchta agreed with Mr. Farley in that the July 14 ruling by the BZA supersedes
121 Ordinance No. 82-2014. Mayor Kuchta said Ms. Hanneken testified during the July 14 hearing that had
122 the variance been denied she was going to introduce legislation.

123
124 Mr. Farley interjected what Ms. Hanneken stated was she would move forward with her legislation had a
125 rational decision not be made. In Mr. Farley's opinion the BZA made a rational decision. Mr. Farley
126 asked Ms. Hanneken if she thought a rational decision had been made to which she answered yes. But,
127 she added, she also supports Mr. Engle's Ordinance No. 82-2014

128
129 Councilor Engle interjected that he requested this ordinance quite some time ago well before the BZA
130 granting the variance. Regardless of the variance the BZA granted Mr. Engle said he still feels this issue

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131 needs to be addressed so there are no future problems regarding similar issues In Mr. Engle's opinion a
132 pre-existing legal structure shouldn't have to be moved or destroyed because the residential structure on
133 the same lot no longer exists. The pre-existing legal structure must still be compliant with law however.
134 The structure cannot be used for anything other than intended.

135
136 Mr. Farley questioned Council in general regarding barns on vacant lots. Everyone is going to what
137 something larger than the Code allows he said. Everyone is going to have to come to the BZA for a
138 variance. Speaking personally Mr. Farley said he sees nothing good coming from Ordinance No. 82-
139 2014. What is Council's opinion, what good does Council think will come from this he asked?

140
141 Councilor Engle opined that a legal barn meeting all code requirements should not have to be removed
142 because a residential dwelling is no longer on the same property. That was the intent of Ordinance No
143 82-2014. He agrees some corrections are now necessary as evidenced by observations and comments
144 made earlier. But it a waste for an absolutely good barn to be demolished he stated. That is not to say the
145 barn can be used for farming. The barn cannot be used for anything other than the storage it was
146 originally intended.

147
148 Mr. Farley informed Mr. Engle that BZA came to the same conclusion that is, the barn shouldn't have to
149 be removed if it is in good condition, if it remains in compliance and if was there prior to the house being
150 removed. Mr. Farley does not see this situation, that is, the stand alone barn like the barn at Valley View
151 Road location as being a regular occurrence in Macedonia. Mr. Farley added, not meaning to offend but
152 the City Council could be spending their time on more important issues than this issue.

153
154 Councilor Hanneken does not feel Ordinance No. 82-2014 is wasteful. In her opinion it provides clarity
155 to the zoning code.

156
157 Mayor Kuchta informed Mr. Farley the impetus behind the barn issue was a complaint received by a
158 neighboring property owner. The City never bothered with the barn owner until the complaint.
159 Councilor Engle interjected the complaint was about chickens. And has Councilor Darrow has pointed
160 out when the former rectory for Our Lady of Guadalupe was removed the garage was allowed to remain.
161 Should the garage have been removed as well Mr. Engle asked?

162
163 Mr. Farley told Mr. Engle that the BZA would have come to the same conclusion about the garage as it
164 did the barn because the members are competent people.

165
166 Councilor Engle interjected that five, ten, fifteen years from now that may be different. The same
167 competent people may not be around thus the reason in Mr. Engle's opinion there should be an ordinance.

168
169 Councilor Hanneken stated the ordinance is for the purpose of clarifying the law. The legal opinion was
170 the barn had to be torn down. Ordinance No. 82-2014 amends the law so that in certain circumstances
171 that it not necessary.

172
173 Councilor Darrow interjected the chicken coup is being torn down to which Ms. Hanneken responded the
174 chicken coup is not being removed, it is a grandfathered structure built in 1934.

175
176 Mr. Farley said the BZA did everything reasonable. The BZA felt it had a common sense resolution to
177 the problem. Mr. Farley asked Mr. Havlicek who was sitting in the audience why he didn't allow the
178 inspection to which Mr. Havlicek responded, " At this time I have no comment."

179
180 Mayor Kuchta thanked Mr. Farley and the other members of the BZA for taking the matter seriously and
181 acting upon it reasonably.

182
183 There being no further comments, the public hearing adjourned at 7:40pm