

**Minnetonka Planning Commission
Minutes**

July 21, 2022

1. Call to Order

Chair Sewall called the meeting to order at 6:30 p.m.

2. Roll Call

Commissioners Waterman, Banks, Hanson, Maxwell and Sewall were present. Powers and Henry were absent.

Staff members present: City Planner Loren Gordon, Assistant City Planner Susan Thomas and Senior Planner Ashley Cauley.

3. Approval of Agenda

Maxwell moved, Banks seconded, a motion to approve the agenda as submitted with a minor change provided in the change memo dated July 21, 2022.

Waterman, Banks, Hanson, Maxwell and Sewall voted yes. Powers and Henry were absent. Motion carried.

4. Approval of Minutes: July 7, 2022

Waterman moved, second by Hanson, to approve the July 7, 2022 meeting minutes as submitted.

Waterman, Banks, Hanson, Maxwell and Sewall voted yes. Powers and Henry were absent. Motion carried.

5. Report from Staff

Gordon briefed the commission on land use applications considered by the city council at its meeting on July 18, 2022:

- Adopted a resolution approving items for a daycare at Grace Apostolic Church at 4215 Fairview Ave.
- Adopted a resolution approving items for a mosque with childcare services and religious studies at 11503 and 11543 K-Tel Drive.
- Adopted a resolution approving a conditional use permit for an aggregate of accessory structures in excess of 1,000 square feet at 12015 Glendale Lane.
- Introduced an ordinance concerning items for Amavida, a residential development at 3928 and 3939 Shady Oak Road.

There will be an Everything Electric event at the community center parking lot on July 24, 2022 from 2 p.m. to 5 p.m. A speaker will present at 3 p.m.

The next regular planning commission meeting is scheduled to be held on Aug. 4, 2022.

The annual bus tour of the city for commissioners and council members is scheduled to be held on Aug. 25, 2022.

6. Report from Planning Commission Members: None

7. Public Hearings: Consent Agenda

No item was removed from the consent agenda for discussion or separate action.

Banks moved, second by Hanson, to approve the item listed on the consent agenda as recommended in the staff report as follows:

A. Repeal and replace Resolution No. 2018-037 approving a conditional use permit for CREO Arts and Dance Conservatory at 15000 and 15100 Minnetonka Industrial Road.

Recommend that the city council adopt the amended resolution for CREO Arts and Dance Academy at 15000 and 15100 Minnetonka Industrial Road.

Waterman, Banks, Hanson, Maxwell and Sewall voted yes. Powers and Henry were absent. Motion carried and the item on the consent agenda was approved as submitted.

8. Public Hearings

A. Side yard setback variance for construction of a new home at 2203 Windsor Lake Drive.

Chair Sewall introduced the proposal and called for the staff report.

Thomas reported. She recommended denial of the application based on the findings listed in the staff report.

Chair Sewall confirmed with Thomas that if a variance would be approved, then the McMansion policy would apply to the proposal. The current house plan would not meet McMansion policy requirements.

Don Meier, 2203 Windsor Lake Drive, applicant, stated that:

- He plans to demolish the existing house. The finished area of the existing house is 2,300 sq. ft. The current width is 61.2 feet. The proposed house

would have a finished area of 3,521 sq. ft. The width of the proposed house is 71 feet.

- The existing house has an approved variance to allow the side setback to be 12 feet. He provided a letter from the building inspector, James Tobias, from March 23, 1979 that approved the structure being located 12 feet from the property line.
- The survey identified the property line in the wrong location.
- The property at 2201 Windsor Lake Drive received a setback variance in 1998.
- The houses on one side of Windsor Lake Drive are evenly positioned. Three of the houses do not meet 10-foot setback requirements.
- The house south of his property is located 5.5 feet from the property line which impacted his decision to rebuild instead of adding an addition.
- His preference is to stay seven feet away to stay out of the utility and drainage easement. He was concerned that an aerial photo would show that the property would be crowded because the house at 2201 Windsor Lake Drive is set closer to his property.
- The proposed house would be 10 feet wider than the existing one.
- The houses looked pretty well balanced in 1963.
- The proposed house would have no basement. The water level is high and his sump pump runs most of the summer. He elected to do a slab on grade.
- With no variance, the proposed house would be about 14.5 feet closer to the north property line. The proposed house would be close to the neighboring house. His measurements may be off either way by a foot.
- The existing house is currently 53 feet from the neighbor on the south and 51 feet from the neighbor on the north. The proposed house with the proposed variance would bring the neighbor on the south side to 57.5 feet and the neighbor on the north side to 31.8 feet.
- If the proposed house would meet the 10-foot setback requirements, then the proposed house would be 18 feet from the property line on the north side.
- He and his neighbors in the area like the aesthetics of evenly balanced houses.
- His house is currently 5.5 feet from the south property line.
- He presented an aerial photo of the area.

The public hearing was opened.

Marsha Wiest-Hines, 2201 Windsor Lake Drive, stated that:

- She strongly supports the variance.
- The houses were built 60 years ago and were spaced out nicely. The problem is that all of the living area is located almost on the property line.
- Her property has an eight-foot variance which set a precedent.

- Without the variance, the new house would be three feet closer to her house and make a big difference.
- She agreed with Mr. Meier's comments.
- She would like the proposed house set where the existing house is rather than moving it three feet closer to her property.
- The variance would benefit the common good of the property owners in the neighborhood. They will all need the same variance sooner or later.
- Approving the variance seems logical to her.

Jeffrey Muus, 2211 Windsor Lake Drive, stated that:

- He supports the applicant's proposal.
- The proposal would improve the neighborhood.
- The house placement would look odd if it would crowd the house at 2201 Windsor Lake Drive and have a big gap between the proposed house and his house.
- He wants to keep the neighborhood looking like it does now.

Josh Lynk, 2216 Windsor Lake Drive, stated that:

- He supports the variance request.
- The remodel is very appealing to the neighbors.
- The house sizes are typically 2,300 sq. ft. and the lot sizes are typically over a half acre in size. The lots have significant extra space in the rear of the properties to build a McMansion and still have a good amount of open ground coverage.
- He supports Mr. Meier's proposal.

Deb Herman, 2219 Windsor Lake Drive, stated that:

- She likes the aesthetics that would be created with the variance. The proposed house would fit nicely.
- The proposed house would almost match the house across the street that just had a huge remodel.
- She supports the proposal. It would be a good addition.

No additional testimony was submitted and the hearing was closed.

In response to Maxwell's question, Thomas explained that the city council approved a setback variance for 2201 Windsor Lake Drive in 1998 after the planning commission had a split vote and were unable to pass a motion. That variance request had two differences from the current one being proposed. The proposal was for an addition to the existing house instead of the demolition of the existing house and construction of a new one and the property at 2201 Windsor Lake Drive is a corner lot that has different setback requirements for the north and west sides.

Waterman confirmed with Thomas that commissioners would need to identify a practical difficulty to approve a variance. Thomas explained that the statutory language requires something unique about the property to be identified other than design preference to approve a variance. Neighborhood sentiment may create a fairness precedent. She explained that a legal precedent is defined as the exact same thing being approved within 12 months.

In response to Hanson's question, Thomas explained the history of the site.

In response to Maxwell's question, Thomas explained that there is a seven-foot wide drainage and utility easement along the property line. The current house is located within the easement. A newly constructed house could be located up to the easement and maintain a 10-foot setback without a variance.

Maxwell stated that:

- She appreciated Mr. Meier providing photos of the properties.
- This is the first time she has seen neighbors unanimously agree on a proposal. She appreciated everyone providing their support.
- She understood the frustration caused by the survey being incorrect.
- She would really like to approve the variance, but she agreed with staff that the proposal does not meet the practical difficulty ordinance requirement since there is nothing unique to the property.
- Difficulties unique to the neighborhood could include how the neighboring houses are positioned, the existence of other variances and the inaccurate identification of the location of the property lines.

Waterman stated that:

- He appreciated Maxwell's comments.
- The McMansion policy is creating a block for him to approve the application. That makes it harder. That is a bit of a sticking point.
- He would like to approve it, but it seems like the property could be shifted to the north three feet and meet ordinance requirements.
- He will probably agree with staff's recommendation to deny the application, but he is interested in hearing the discussion. He could be swayed the other way.

Banks stated that:

- He agreed that this is a tough one.
- The neighbors support the proposal.
- The design of the house took quite a bit of time.
- He agreed with staff's recommendation to deny the proposal because not all houses are evenly spaced throughout the city.

- If there was an issue with the property like drainage or a wetland to the north, then he could see a practical difficulty to meet the requirement to approve a variance, but evening out the appearance of the houses is not a sufficient enough justification to shift the house three feet.
- He appreciated the support of the neighbors and the great design.

Hanson stated that:

- He appreciated Mr. Meier working with the neighbors to create a proposal they would be happy with.
- The city and the previous property owner created the situation to some extent due to the previous error in locating the property line when the variance was granted in 1979.
- He supports the variance.
- The applicant is trying to do the right thing; the variance would improve the neighborhood, and the previous variance approval makes this property unique.

Chair Sewall stated that:

- He appreciated Maxwell going first.
- This is a tough one. The argument for the variance is reasonable, but the ordinances are quite strong. Moving the existing house three feet to the north would be fine. For him, it is the additional 10 feet on top of the three feet that causes the burden.
- The burden is on the design of the proposed house. If the width of the house were made narrower, then the house could extend deeper into the lot.
- He did not have a problem with the size. A much larger house could be built if setbacks were met.
- He did not see a practical difficulty other than the design, which he loves. The design is causing the variance request.
- He did not have enough of a leg to stand on to approve the variance.

Waterman moved, second by Banks, to adopt the resolution denying a side yard setback variance for the construction of a new house at 2203 Windsor Lake Drive.

Waterman, Banks and Sewall voted yes. Hanson and Maxwell voted no. Powers and Henry were absent. Motion carried.

Chair Sewall stated that an appeal of the planning commission's decision must be made in writing to the planning division within ten days.

B. Conditional use permit with variances for Brito's Burritos at 11044 Cedar Lake Road.

Chair Sewall introduced the proposal and called for the staff report.

Cauley reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Chair Sewall asked if the Covid testing site could cause a parking issue if demand for its services increased. Cauley answered that the property owner stated that its lease expires in September and it is not expected to be renewed at this time. SRF included the testing site in its calculations when it determined that the number of parking stalls would be sufficient.

Brian Sanchez, the applicant, stated that his other location in St. Louis Park is doing well and he looks forward to operating in Minnetonka.

In response to Banks' question, Mr. Sanchez described the three seating areas and floor plan. Customers usually take orders to go.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Maxwell supports the proposal. She agrees with the staff's recommendation.

Waterman agreed with Maxwell. The parking study was a worthwhile investment. The proposal meets all conditional use permit standards.

Banks supports the proposal. He visited the St. Louis Park location, enjoyed the food and looks forward to having one in Minnetonka.

Hanson appreciated Chair Sewall asking about the parking and if the use of the testing center would increase. He looks forward to supporting the proposal.

Chair Sewall lives near the site. The parking lot is busiest at happy hour. The proposal's peak hours would probably be around lunch and happy hour, but even at happy hour, there are parking spots available.

Maxwell moved, second by Hanson, to recommend that the city council adopt the attached resolution approving a conditional use permit with variances for Brito's Burritos at 11044 Cedar Lake Road.

Waterman, Banks, Hanson, Maxwell and Sewall voted yes. Powers and Henry were absent. Motion carried.

Chair Sewall stated that this item is scheduled to be heard by the city council at its meeting on Aug. 1, 2022.

C. Conditional use permit with variances for First Light Donuts and Café at 11014 Cedar Lake Road.

Chair Sewall introduced the proposal and called for the staff report.

Cauley reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Thida Ny, the applicant, was present for questions.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Hanson expressed his appreciation of burritos and donuts. He supports staff's recommendation.

Banks appreciates the uses having different peak times. He supports the proposal.

Chair Sewall noted that the parking variance is significant, but the peak times will be opposite of the other uses. He supports staff's recommendation.

Banks moved, second by Waterman, to recommend that the city council adopt the resolution approving a conditional use permit with a parking variance for First Light Donuts and Café at 11014 Cedar Lake Road.

Waterman, Banks, Hanson, Maxwell and Sewall voted yes. Powers and Henry were absent. Motion carried.

Chair Sewall stated that this item is scheduled to be heard by the city council at its meeting on Aug. 1, 2022.

9. Adjournment

Hanson moved, second by Banks, to adjourn the meeting at 7:52 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary