

Addenda
Minnetonka City Council Meeting
Meeting of August 28, 2023

ITEM 14A – Items concerning Greystar, a multi-family residential development at 10701 Bren Rd E

A public comment was received after the city council packet had been published. That comment has been attached.

The developer has indicated a desire to continue working with the adjoining property owner on measures to ensure safety.

The city's consulting attorney, Rachel Tierney, Kennedy and Graven, will be available via phone to address any legal questions presented by the letter from the adjoining property owner's attorney.



14600 Minnetonka Blvd. | Minnetonka, MN 55345 | 952-939-8200 | minnetonkamn.gov

TO: City Council
FROM: Loren Gordon, AICP, City Planner
DATE: Aug. 28, 2023
SUBJECT: Change Memo for Aug. 28, 2023, City Council Meeting

Item 14A Items concerning Greystar, a multi-family residential development at 10701 Bren Rd E:

- A public comment was received after the city council packet had been published. That comment has been attached.
- The developer has indicated a desire to continue working with the adjoining property owner on measures to ensure safety.
- The city's consulting attorney, Rachel Tierney, Kennedy and Graven, will be available via phone to address any legal questions presented by the letter from the adjoining property owner's attorney.

August 25, 2023

Via Mail and E-Mail (acauley@minnetonkamn.gov)

City of Minnetonka
Attn: Ashley Cauley
14600 Minnetonka Blvd.
Minnetonka, MN 55345

Re: Greystar Development Central, LLC's application for approval to construct 275-unit apartment building at 10701 Bren Road E ("Project")

Dear Ms. Cauley:

I represent Lyn-James LLC, the owner of the office building located at 10901 Bren Road E ("LJ Property"), which borders the Project directly to the North.

The City should deny Greystar's application for the Project for a number of reasons. First, the administrative record makes it clear that there is no factual basis for the City to grant the requested variance from its tree protection ordinance.¹ The purpose of the tree protection ordinance "is to encourage tree preservation by reasonably limiting the removal of trees during construction, site work, and land development activities, as well as to mitigate for the loss of trees due to these activities while maintaining the rights of existing homeowners to use their private property." Ordinance 314.01(1).

Greystar's Project is inconsistent with that purpose and it has not established a factual basis for a variance. Specifically:

- Greystar made no attempt to preserve any trees; it plans to remove *every* tree from the site, a total of 38 trees, including 15 protected under the Ordinance.
- Greystar did not explore opportunities to treat ash trees around the perimeter of the site to protect from emerald ash borer.

¹ In prior memoranda, City Staff explained in detail why Greystar failed to satisfy the variance standard. See Staff Report to the Planning Commission, dated May 4, 2023, and the Staff Report to the City Council, dated May 22, 2023.

- There is nothing unique about Greystar's Project that justifies the grant of a variance as the circumstances necessitating the need for the variance is simply a result of Greystar's site design.
- Removal of all mature trees would have a negative impact on the essential character of the locality.
- Removal of all trees will have detrimental impacts on future developments and be seen as setting a precedent for future developments.

Frankly, it is unclear why the City would maintain a tree protection ordinance if it is willing to grant a variance authorizing the removal of all protected trees.

In addition to Greystar's failure to establish factual support for the grant of the variance, the City should deny Greystar's rezoning request because the Project, as currently designed, is not "consistent with the public health, safety or general welfare," and because the building and site plans do not afford sufficient "protection of adjacent and neighboring properties." City Ordinance 300.09(1); 300.27(5)(g). The Project does not meet these standards because Greystar makes no effort to protect and preserve the safe and quiet use of the adjacent office building owned by Lyn-James and occupied by its tenants.

To ensure that Greystar satisfies the standards in Ordinances 300.09(1) and 300.27(5)(g), Lyn-James requests that the City condition any approval, assuming Greystar offers new evidence to establish factual support for the grant the variance, on Greystar installing a boundary fence between the LJ Property and the Project. The need for a fence is not based on speculation, but on the documented problems Lyn-James incurred when a multi-family development opened at 10901 Bren Rd E.

After that development opened, without adequate parking and a fence, Lyn-James and its tenants encountered:

1. Residential tenants parking on the LJ Property.
2. Residential tenants calling Lyn-James to rent parking spaces because the project did not have "enough parking."
3. Children playing in the parking lot.
4. Children playing near the pond on the LJ Property.
5. Catalytic converter theft and attempted vehicle break-ins.
6. Abandoned vehicles on Bren Rd.
7. Random vehicles and people hanging out in the parking lot and partying in the lot overnight.

Lyn-James made the City aware of these repeated problems, and it would be unreasonable for the City to approve another multi-family development adjacent to the LJ Property without imposing conditions, including a fence and additional parking spaces, to minimize the risk of these same problems with Greystar's development. The City knows that a fence will minimize the risk of the

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same problems occurring because the problems caused by the development at 10901 Bren Rd. E. dramatically decreased after Lyn-James installed a fence on that boundary.

Despite these documented problems with the prior development and the deterrent effect of that boundary fence, Greystar's updated site plan includes the removal of a boundary fence that it had planned to install within a drainage and utility easement that lies between the Project and the LJ Property. Lyn-James understands that the City directed Greystar to remove the fence.

There is no reason to remove the fence from the site plan. The fence will not impact the City's ability to exercise its rights under the drainage and utility easement nor will the fence impact drainage on the site in any way. There is also nothing in the drainage and utility easement that prohibits the fence, and the fence will go a long way in preventing the problems Lyn-James would encounter without a fence. Accordingly, if the City were to approve the Project, it should require Greystar to install the fence as initially planned.

Under the current plans and given the adverse impact on the adjoining LJ Property, Greystar has not met its burden justifying an amendment to the City's Zoning Ordinances.

For any one of the above-reasons, the City should not approve Greystar's Project.

Please place this letter in the administrative record.

Very Truly Yours,

STINSON LLP

/s/ Timothy M. Kelley

Timothy M. Kelley