

**Minnnetonka Planning Commission
Minutes**

July 21, 2016

1. Call to Order

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

2. Roll Call

Commissioners Odland, Powers, Calvert, Hanson, Knight, O'Connell, and Kirk were present.

Staff members present: Community Development Director Julie Wischnack, City Planner Loren Gordon, Senior Planner Ashley Cauley, Water Resources Technician Tom Dietrich, and Natural Resource Manager Jo Colleran.

3. Approval of Agenda

Odland moved, second by Hanson, to approve the July 21, 2016 agenda with the changes provided in the July 21, 2016 change memo including the removal of Item 8F in response to the applicant's request.

Odland, Powers, Calvert, Hanson, Knight, O'Connell, and Kirk voted yes. Motion carried.

4. Approval of Minutes: July 7, 2016

Odland moved, second by Calvert, to approve the July 7, 2016 meeting minutes as submitted.

Odland, Powers, Calvert, Hanson, Knight, and O'Connell voted yes. Kirk abstained. Motion carried.

5. Report from Staff

Gordon briefed the commission on land use applications considered by the city council at its meeting of July 11, 2016:

- Adopted a resolution providing preliminary plat approval for Fretham 18th Addition.
- Adopted a resolution approving rezoning of Highview.
- Tabled action on the adoption of the Glen Lake neighborhood study.

There will be a joint planning commission meeting with the city of Hopkins July 26, 2016 at 7 p.m. to discuss the Shady Oak station zoning.

The next planning commission meeting will be August 4, 2016.

6. Report from Planning Commission Members: None

7. Public Hearings: Consent Agenda

No items were removed from the consent agenda for discussion or separate action.

Odland moved, second by O'Connell, to approve the items listed on the consent agenda as recommended in the respective staff reports as follows:

A. Variances to allow construction of a mudroom at 3130 Shores Boulevard.

Adopt the resolution on pages A11-A14 of the staff report. This resolution approves a side yard setback and aggregate side yard setback variance for a mudroom.

B. Variances to allow construction of an attached garage at 3218 Shores boulevard.

Adopt the resolution on pages A17-A20 of the staff report. This resolution approves a side yard setback variance for an attached garage at 3218 Shores Boulevard.

C. Conditional use permit for telecommunications facility at 12475 Marion Lane West.

Recommend that the city council adopt the resolution on pages A13-A22 of the staff report. This resolution approves a conditional use permit for 26-foot tall telecommunications facilities on the property at 12475 Marion Road West.

Odland, Powers, Calvert, Hanson, Knight, O'Connell, and Kirk voted yes. Motion carried and the items on the consent agenda were approved as submitted.

Chair Kirk stated that an appeal of the planning commission's decision must be made in writing to the planning division within 10 days.

8. Public Hearings

A. Items concerning the construction of a new house at 2512 Bantas Point Road.

Chair Kirk 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.

Andre Latondresse, JAL Architects, representing the applicant, stated that he has been involved with two other projects on Bantas Point Road. He took into consideration the scale of the neighborhood. He provided views of the proposed house. It would be a story-and-a-half design with a floodable understory. The current house would be damaged every time there is a high water. The proposal would protect the house for the long term.

Knight asked how the house would be constructed to prevent water damage. Mr. Latondresse explained the anchor and hollow-floor system that would be water proof.

The public hearing was opened.

Lyle Scott, 2508 Bantas Point Lane, asked what could be done about the excess water that runs off buildings. He provided pictures that showed another lot he owns at 2507 Bantas Point Lane with standing water. His renters have to walk through water to get to their vehicles. It has been going on for 12 years.

No additional testimony was submitted and the hearing was closed.

Calvert asked how fill would impact the area. Dietrich explained that the structure would be built on grade beams, so the area below the garage and house would be floodable. It would be a vast improvement to what currently exists. The proposal would create space for water to be stored.

Cauley added that the proposal would decrease the amount of impervious surface on the property from 50 percent to 30 percent.

Odland moved, second by Powers, to recommend that the city council adopt the resolution on pages A38-A46 of the staff report which approves an expansion permit and variances for the construction of a new house at 2512 Bantas Point Lane and the resolution on pages A47-A50 of the staff report which approves a floodplain alteration permit for a new house at 2512 Bantas Point Lane.

Odland, Powers, Calvert, Hanson, Knight, O'Connell, and Kirk voted yes. Motion carried.

Chair Kirk stated that an appeal of the planning commission's decision must be made in writing to the planning division within 10 days.

B. Variances for a blade sign at 1700 Plymouth Road.

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

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

Ann Hurlbert, Landform Professional Services, and Paul Guidera, director of real estate for Caribou Coffee, representing the applicant, introduced themselves. Ms. Hurlbert stated that:

- The proposed sign would allow Caribou Coffee and Einstein Bagels to advertise on the same sign.
- It would provide movement, liveliness, and character.
- It would be compatible with other signs in Minnetonka in commercial areas.
- The location is important because it is the only representation of the coffee and bagel sign that would be visible to motorists.
- The code did not anticipate this type of sign. She appreciated staffs' open mindedness.
- There should be no distraction to motorists. There would be no flashing lights. It would move slowly. There would be no changing message. The inside 24 inch medallion part would move in two locations. It would be subtle, but allow both businesses to be advertised.
- She and Mr. Guidera were available for questions.
- The sign would be internally lit and not super bright. There would be no flashing.

In response to Chair Kirk's question, Mr. Guidera provided examples of the same sign on 11th and Nicollet in Minneapolis and one at a similar location in Edina.

The public hearing was opened.

Jonathan Kurlander, 1816 Fairfield Road South, stated that he was concerned that it would distract drivers. He was concerned other businesses would also want animated signs and there would be no limit. It would be a problem for motorists.

Jim Olson, 13420 Larkin Drive, stated that:

- The applicant presented the case that the code violations are reasonable and necessary. Staff found that the proposal meets variance standards and would be similar to other signs recently approved in the city. Staff deals with this stuff every day. Commissioners are volunteers who are bombarded with full agendas at meetings. Approval of the application may not be the wisest decision. Approval or denial of this application would set the tone for future decisions.
- He questioned how many of this type of sign would be allowed in the area.
- The application needs to be denied.
- The businesses in Ridgedale have a monument stating the tenant names. This would be a deviation from that. It does not fit the sign ordinance and does not fit the established look. It would set a tacky precedent for the highly-valued regional center. He favored quality fixtures to make people proud. Caribou's proposal would lower standards.
- Customers would find the new location. The traffic pattern is challenging.
- He believed that a variance did not stay with the building or future tenant.

No additional testimony was submitted and the hearing was closed.

Hanson asked how many of the proposed type of sign would be allowed in the area. Gordon explained that the code allows business identification on the face of a building or signs in yard space on the site. The variance would be given to the property for the particular condition assigned to it in the variance resolution. If the tenant would change, then the new tenant could use the new sign by refacing it.

The city cannot dictate what the sign says. The code restricts the speed at which dynamic signs can change to address distracted driving.

Powers noted that any sign would distract a person. After viewing it, he found the proposed sign minimally distracting. He did not think that it would set a precedent for future signs.

Odland was concerned with visual pollution. It might take a step back from tasteful signs.

Calvert thought the proposal would be a departure from the tasteful plans for the Ridgedale area.

Chair Kirk noted the business' difficulties with the site. He noted that a blade sign was approved for Bar Louie. Red Stone and Macy's received sign variances. The proposal would set a precedent since it would rotate. It is a final decision by the commission.

Calvert understood the practical difficulties of the shared businesses, but she agreed with Chair Kirk's comments. Calvert said that signs in the area are more for way finding than brand identification. She did not entirely support the variance. The signs are supposed to be located with the business.

Hanson was not against the proposal. He understood the argument for it. He did not think one set of code could cover hundreds of different retail tenants. It would be offensive to some, but not to others.

O'Connell did not think Time Square was being created. The sign would be tastefully done and rotates very slowly. He agreed that there is an issue of it being located on the opposite side of the building, but the city wants businesses to succeed.

Odland worried that the amount of signage in the area could grow to a point where it would not be tasteful.

Knight is not against the rotation, but is against the location of the sign so he supports denial of the application.

O'Connell moved, second by Powers, to adopt the resolution approving variances for a blade sign at 1700 Plymouth Road (see pages A22-A26 of the staff report). Powers and O'Connell voted yes. Odland, Calvert, Hanson, Knight, and Kirk voted no. Motion failed.

Odland moved, second by Calvert, to deny the resolution approving variances for a blade sign at 1700 Plymouth Road (see pages A22-A26 of the staff report). Odland, Calvert, Hanson, Knight, and Kirk voted yes. Powers and O'Connell voted no. Motion carried.

Chair Kirk stated that an appeal of the planning commission's decision must be made in writing to the planning division within 10 days.

C. Conditional use permit, with parking variance, for Eden Prairie Islamic Community Center at 5620 Smetana Drive.

Chair Kirk 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.

O'Connell confirmed with Cauley that the proposed use would utilize Lot 2. The adjacent lot may be used for parking. No legal agreement is required for the applicant to use another site for parking, but staff recommended to the applicant that an easement agreement may be beneficial.

Chair Kirk confirmed with Cauley that the parking requirements depend on square footage except for uses such as daycares, schools, and religious institutions which use the number of users. The resolution ties the approval to the standards and identified type of use. If there would be a change or intensification of use, then a review of the conditional use permit would be required.

Mohammad Ibrahim, board member of the Eden Prairie Islamic Community Center (EPIC), applicant, stated that he was present with Bilal Mamdani, Nemat Janetkhan, and Bilal Mamdani who are additional members of the board. He stated that EPIC hopes to foster a community that is engaged and vibrant rooted with a spiritual foundation. EPIC would host activities to better the community. He explained the floorplan. The first floor would be used primarily for prayer.

Hanson asked if the current location has multiple uses or if it is used primarily as a prayer hall. Mr. Ibrahim answered that the current building is only used as a prayer hall.

Powers asked about the daycare. Mr. Ibrahim explained that the daycare would not begin right away. When an operator is secured, then all requirements would be met. Powers asked if there would be an outdoor recreation area. Mr. Ibrahim said that would be taken into consideration at the time a daycare provider would be selected. The daycare plan would be submitted to the city for approval.

Chair Kirk suggested that the applicant research the regulations for a daycare because playground space would be required. Mr. Ibrahim agreed.

The public hearing was opened.

A resident of 5601 Smetana Drive, Cloud 9 Apartments, stated that:

- He thinks there are other issues than real estate. He was worried about security.
- The applicants are nice, local people.
- He is an immigrant himself.
- He would like to know the source of the money funding the project.
- Islam is a religion of peace.
- Radical organizations finance religious institutions.
- He is worried about neighborhood tension. Prayers start at 4:30 a.m. He did not want to see traffic driving at 4:30 a.m.
- There should be an outside play area for the children.
- He wanted to know the plan for the second building.
- He is not against the religious institute of Islam in Minnesota.
- He requested the proposal be rejected.

Matt Teplitski, 5601 Smetana Drive, Cloud 9, stated that:

- He was worried about noise outside of usual business hours.
- The daycare would not be feasible without an outdoor play area.
- There would be many visitors on holidays. The overflow traffic would use his building's parking lot.
- The city would lose the property tax income, so the neighbors would have to pay higher taxes.
- His property value would decrease because the building would be busier.

Alexander Teplitski, 2916 Plymouth Road, stated that:

- His children have apartments at 5601 Smetana Drive.
- He is worried about radical terrorists and the security of his children and grandchildren.
- He did not want the area to change. He would lose money.

Patty Aosse, 13501 Larkin Drive, stated that:

- She supports the good people submitting the application.

Karen Howe, 3528 Moorland Road, stated that:

- She was worried about people who have to worry about their safety because the color of their skin make them a target.

Chair Kirk instructed speakers to stay focused on the conditional use permit issues and not on race or religious issues.

James Kenser, Moorland Road, stated that:

- The applicants should not be alienated for the actions of others.

Bilal Mamdani introduced his wife, Mona Fahmy, Shakopee resident. Ms. Fahmy stated that she is part of the governing board of the EPIC Center. She stated that:

- She grew up in Iowa and is an optometrist. Everyone at the EPIC Center supports America.
- She works hard against negativity across the globe and teaches children to treat everyone with respect.
- Many Muslims are hurt by lunatics that hijacked the name of their religion.
- The report details the times and number of people who will visit the center.

No additional testimony was submitted and the hearing was closed.

Chair Kirk reiterated the purview of the planning commission.

O'Connell asked what would happen if the number of visitors would be much higher than the anticipated number. Cauley explained that a condition of approval would require review of the conditional use permit if attendance increased to 600 drivers. The conditional use permit could be revised or revoked if conditions would be different than those approved.

Chair Kirk confirmed with Cauley that there would be no additional proof of parking. Cauley stated that there may be an opportunity for a parking arrangement with the Brenwood Business Park. At this time, that would not be necessary.

Powers asked for the proposed hours of operation. Cauley answered 4:30 a.m. to 10 p.m. Memorial services and weddings happen in the evening.

Odland asked what public transportation would be available near the site. Wischnack answered that there is transit service available just north of the site.

Knight knew that neighbors of ball fields complain about noise. He asked if the city receives noise complaints from neighbors of religious institutions. Gordon said that noise complaints are most commonly about commercial uses, followed by schools, and then everything else. Staff did not anticipate a problem with noise at the proposed location.

Calvert said that police assist with directing traffic on holidays at her religious gathering place. She noted that the traffic was congested in St. Paul during one religious holiday where worshipers were outside. She asked if traffic control could be required for special occasions. Cauley answered that could be included as a condition of approval. Gordon stated that there are a few religious institutions that have traffic congestion during special occasions and request help from the police department who usually provide reserve officers to assist.

Odland asked if a play area would cut into the available parking. Cauley said that an outdoor play area may be required by the state licensing agent.

Powers asked how a noise issue occurring at 4:30 a.m. would be addressed. Cauley noted that 30 people are expected to visit the site at 4:30 a.m. City hall has not received a noise complaint when there have been more than 30 staff members present when she has arrived at city hall at 4:30 a.m.

Wischnack explained that if the property would become tax exempt, it would not impact the property taxes of any other Minnetonka property owner because Minnetonka has such a large commercial and industrial tax base that Minnetonka gives money to the pool of fiscal disparities around the metropolitan area. The impact to taxation are not the same in Minnetonka as it would be for another city. Minnetonka is the third highest fiscal disparities payer in the metropolitan area.

Wischnack noted that the city has not seen property values diminish when located near a religious institution.

Chair Kirk said that the noise ordinance would address noise issues.

Odland encouraged the applicant to research the requirements of a daycare before remodeling the building.

Calvert liked the creative use of the building. She liked the variety of uses.

Powers moved, second by Odland, to recommend that the city council adopt the resolution on pages A15-A22 of the staff report. This resolution

approves a conditional use permit with parking variance for Eden Prairie Islamic Community Center at 5620 Smetana Drive.

Odland, Powers, Calvert, Hanson, Knight, O'Connell, and Kirk voted yes. Motion carried.

Chair Kirk stated that Minnetonka prides itself on being welcoming without prejudice. He apologized if anyone was offended, but felt that people should have the opportunity to speak. He was being respectful of the speakers, but emphasized that this is not the proper forum to debate race or religion as the planning commission is concerned about parking and traffic issues. He appreciated everyone being respectful.

The city council is tentatively scheduled to review this item August 8, 2016.

D. Preliminary plat of Highview Place, a nine-lot subdivision, generally located at the northwest corner of Interstate 494 and Highway 7.

Chair Kirk 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.

Colleran clarified that Ash trees are not classified as high priority trees. Cauley reviewed the tree preservation plan which is a worst-case scenario. Natural resources staff visit the site during development to ensure compliance. Storm water management would be part of the development.

Rob Eldridge, with Ridge Creek Custom Homes, applicant, stated that:

- He is excited about the project. He has worked hard to make the proposal fit in the neighborhood.
- He and Jo spent a lot of time looking at the trees. The tree removal would be watch very closely. He came up with a floor plan to save trees.
- The site is unique. He hopes to mitigate the busy location.
- He was available for questions.

Colleran explained that she already included trees that may survive grading of their critical root zones in the number of trees that would be removed.

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

Chair Kirk said that the proposal is what was expected.

Powers trusts that Ridge Creek Builders will do exactly what they say they will do. Chair Kirk agreed that the builder did a great job of working with the neighbors.

Knight moved, second by Odland, to recommend that the city council adopt the resolution on pages A18-A30 approving the preliminary plat of Highview Place.

Odland, Powers, Calvert, Hanson, Knight, O'Connell, and Kirk voted yes. Motion carried.

The city council is tentatively scheduled to review this item August 8, 2016.

E. Side yard setback variance from 10 feet to .75 feet for installation of a solar array at 3528 Moorhead Road.

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

Gordon reported. He recommended denial of the application based on the findings listed in the staff report.

Calvert asked staff to explain the difference between the existing cement slab and the solar array. Gordon answered that the cement slab is approximately 3 feet from the property line. It is further back than where the solar array would be located. The setbacks were created to protect the visual impact, fire code issues, and community standard. Hard surface conditions are not looked at in the same manner.

Karen Howe, 3528 Moorland Road, applicant, stated that she appreciated the commission considering the variance request. The setback would be one foot and three inches wide. She provided pictures included in the presentation that show that shrubs, solid fencing, garages, and sheds would block the view of the solar array. Her adjacent neighbors as well as 42 other neighbors support the solar panels being installed. She was unable to get approval from 8 houses since 2 were on vacation, 1 was vacant, and she got 1 more signature today. The value of the house would increase by \$15,000. That would benefit the city. A huge house would block sun. Her proposal would have less impact than what was there previously.

Tim Parnell, electrical engineer for the applicant, provided a technical consult on the amount of reasonable sunlight in these situations. Another location would reduce the energy production which would make it less financially viable. He referred commissioners to the website: solar.maps.mn.edu as a good resource to see how much available sunlight would be available, but it is not accurate enough to provide confirmation.

Knight liked that the applicant worked hard to create a plan of which the neighbors approve. He asked how a tree planted on the neighbor's property would impact the panels gathering sunlight. Mr. Parnell said that it would decrease the energy output. Knight noted that the proposed location might be the best location for today with the current neighbor, but it may not be the best location over time.

The public hearing was opened.

James Kinzer, 3600 Moorland Road, stated that the adjacent neighbor's property near the driveway would not support a mature tree in the area that would block light to the solar array. The proposal is the optimum location for the solar array. He supports the project. The applicant has done her homework and is respectful of others. Everyone who has a line of sight to the property supports the proposal. He does tree work for all of the neighbors and has seen all of the views.

No additional testimony was submitted and the hearing was closed.

In response to Chair Kirk's question, Gordon explained staff's concern with the proposed setback and noted other areas where the solar array could be located.

Ms. Howe stated that option one would obstruct access to the garage. Mr. Parnell stated that option two would diminish production of the solar array. Chair Kirk assumed that the north side would be built to a level to allow the solar array to face the south. Ms. Howe said that would eliminate her garden. Ms. Howe stated that the west side orientation would decrease energy production by 20 percent which is the difference between reasonable and optimal. Ms. Howe stated that President Obama stated that solar panels should be made accessible to households with low and moderate incomes. This is a moderate home and property which decreases the number of location options. She would like to keep her garden.

Calvert was aware that the city encourages solar gardens. She asked how the city encourages the use of solar panels. Gordon said that solar panels are encouraged. Each property is looked at on an individual basis. The preservation of trees is also a priority. The city has bought into a solar farm.

Odland confirmed with Gordon that the solar array is similar to an accessory structure in terms of setback requirements. Odland noted that the most optimum location is not required to be allowed when there are reasonable alternatives.

Chair Kirk noted that the carport is what is difficult to approve. He questioned if the proposal would need a setback variance for just a metal frame holding solar panels. Gordon answered that would also be considered an accessory structure.

O'Connell noted that the accessory structure would be larger than half of the garage. The accessory structure could be reduced in size to still have room for a carport and increased setback. He would support the setback variance if the carport would not be so big.

Chair Kirk reviewed that commissioners are concerned with the small setback for the carport solar array. Ms. Howe stated that she chose the option that the neighbors preferred and would impact the neighbors the least amount. A huge pole with solar panels on top would be less aesthetically pleasing. Chair Kirk suggested she work through the options with staff. He explained the option of tabling the item and the applicant's right to appeal a denial to the city council.

Odland moved, second by Knight, to table action on the application requesting a side yard setback variance from 10 feet to .75 feet for a solar array at 3528 Moorland Road.

Odland, Powers, Calvert, Hanson, Knight, O'Connell, and Kirk voted yes. Motion carried.

F. Preliminary and final plats, with lot area, buildable area, and lot width at setback variances at 16965 and 16957 Cottage Grove Avenue and an unaddressed adjacent parcel.

This item was removed from the agenda at the applicant's request.

O'Connell complemented Chair Kirk on his handling of a difficult meeting.

9. Adjournment

Knight moved, second by Odland, to adjourn the meeting at 10:10 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary