

**Minnetonka Planning Commission
Minutes**

March 5, 2020

1. Call to Order

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

2. Roll Call

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

Staff members present: City Planner Loren Gordon and Assistant City Planner Susan Thomas.

3. Approval of Agenda: The agenda was approved as submitted.

4. Approval of Minutes: Feb. 13, 2020

Hanson, moved, second by Henry, to approve the Feb. 13, 2020 meeting minutes as submitted.

Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried.

5. Report from Staff

Gordon briefed the commission on:

- The Minnetonka Mills Church study has held two meetings so far with over 100 residents in attendance. Additional meetings will be held March 19th and 25th and April 14th. More information is posted on the city's website: minnetonkamn.gov. There are no development proposals submitted at this time.
- The March 19, 2020 planning commission meeting has been cancelled.
- The next planning commission meeting is scheduled to be held April 2, 2020.
- The city council approved the Shady Oak Crossings proposal contingent upon annexation of land in Hopkins.

6. Report from Planning Commission Members

Hanson noted that the city broke ground on the public safety facilities project.

7. Public Hearings: Consent Agenda

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

Waterman moved, second by Powers, to approve the items listed on the consent agenda as recommended in the respective staff reports as follows:

A. Front yard setback variance for an entry feature at 10101 Minnetonka Blvd.

Adopt the resolution approving the front yard setback variance for an entry feature at 10101 Minnetonka Blvd.

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

8. Public Hearings

A. Interim use permit for a garden market at 17555 Hwy 7.

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

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

Powers confirmed with Thomas that no comments were received from neighboring property owners.

Craig Gilb, operations manager for Untiedt's Vegetable Farm, representing the applicant, stated that the business has been operating at Westwinds Plaza for 13 years.

Chair Sewall asked if generators would be used. Mr. Gilb answered in the negative.

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

Powers was familiar with the business operating at Westwinds Plaza. It operated well. He supports staff's recommendation.

Waterman found the use to meet the interim use permit requirements and the variance seems reasonable given the natural barriers that exist on the trail.

Hanson looked forward to shopping there.

Chair Sewall thought the plants would make the parking lot look better. There would be a nice buffer between the business and the residential houses.

Powers moved, second by Waterman, to recommend that the city council adopt the resolution approving an interim use permit with a setback variance for a garden market at 17555 Hwy 7.

Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried.

B. Conditional use permit for licensed residential care facility at 3727 Shady Oak Road.

Chair Sewall 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.

Hanson asked how many parking spots would be available for visitors. Gordon explained that the resident and employees would not be there at the same time very often. There is a possibility that more than four vehicles could show up at the same time. A five-minute window for a delivery would not trigger enforcement of a no parking violation on the street.

Waterman asked if the utilities would be impacted. Gordon noted that the consumption of water, sewer, and electric services would be higher for the site than a typical residential house, but not a burden to the system.

Hanson asked if seven vehicles parked at the site would cause an impediment to emergency vehicles. Gordon answered that fire department staff reviewed the application and found no problem.

Dr. Ilitch Diaz Gutierrez, representing Spirit Care Homes, applicant, thanked Ingvalson for his work helping him complete the application process and Gordon for giving the staff report. He stated that:

- The proposal would increase the potential occupancy to 12 residents who would be elderly and disabled or who would require memory care.
- There is a huge need for this type of residence. Every day 10,000 people turn 65 years of age and 4,000 people turn 55 years of age in the United States. Most of the seniors would require assistance.
- In the state of Minnesota, there are 800 assisted living communities that provide 30,000 beds. In 2015, half a million people reported disabilities.
- In the Midwest, there are 24 beds for every 1,000 people 65 or older.
- In Minnetonka, most of the residential care homes are full and the wait lists are long.
- He is a physician. He has heard from his clients who have stayed in a nursing home for rehabilitation before that they do not want to go back to a nursing home for care.

Maria Fossie stated that she has been in healthcare for eight years and a registered nurse for five years. She worked overnight for two years where she cared for 19 residents at a large memory care facility. She has seen the need for high quality and personalized facilities. She wants to provide a safe, more personal option for elderly residents.

Dr. Gutierrez stated that:

- The house would look the same as any house in the neighborhood.
- He understood the concerns of the neighbors.
- Elderly disabled people are protected by the Federal Fair Housing Act against discrimination of housing.
- The city has conditions required by the conditional use permit including that the driveway may not be shared by another property, the house is located on a major collector road, the residents would not have vehicles and there would be no company vehicle.
- There would be two caregivers during the day and one at night. The food and service delivery would take an hour at the most.
- Visitors would be encouraged to schedule visits ahead of time to prepare the residents for the visit and stagger the parking.
- A similar care facility in Minnetonka with 10 residents had 4 emergency calls for service in 2019.
- The caregivers would park in the garage.
- He provided photos of residential care houses in Minnetonka. They look like any other house. Surrounding houses have maintained their value.
- By law, the site would have a secure perimeter, locked doors, and wander bands for each resident.
- The residents would be supervised at all times if outside. An indoor fire suppression system would be installed.

In response to Powers' question, Dr. Gutierrez explained that a wander band is a watch with an electronic tracker that would alert a caregiver if the resident would leave the house. There would probably be 10 or 11 residents.

In response to Hanson's question, Ms. Fossie explained that the two double rooms would accommodate a couple who prefer to share a room with each other.

Maxwell asked how long he expects residents to live at the site. Dr. Gutierrez answered that the national average is 3.5 years. Contrary to moving into a residential house, elderly residents provide their bed and a small piece of furniture.

Powers asked how often he expected garbage to be picked up. Dr. Gutierrez stated that recycling would be utilized and senior care facilities do not create a lot of garbage because senior residents do not consume as much as younger residents. Garbage would be picked up once a week with a couple additional garbage containers.

In response to Chair Sewall's question, Dr. Gutierrez stated that two parking stalls on the left side would be designated for delivery parking. The driveway could fit 10 to 12 vehicles parked on it, but, per city code, no more than four vehicles would be allowed to be parked outside of the garage at one time.

Ms. Fossie explained that she and Dr. Gutierrez went door to door and met with neighbors to explain the proposal. Most of the comments received were positive, but a couple neighbors were opposed to the proposal.

The public hearing was opened.

Jackson Tomlinson, 3730 Shady Oak Road, stated that:

- He was concerned with an increase in traffic.
- He was concerned with the safety of the residents. The driveway has a 12 percent grade. It would not be walkable for a resident. There is no sidewalk and Shady Oak Road is a busy road.
- He was concerned with the renovations. It looks like it would provide a comfortable setting for people to live in. A commercial elevator and fire suppression sprinkler system would be added to the house. It would not be suitable for a single-family house ever again.
- The staff report incorrectly referred to Baker Road instead of Shady Oak Road.
- The application states that there would be five staff members with two residents which would utilize all of the parking area. The parking would be inadequate for the proposal.
- There is a need for senior care, but he did not think this property would be a good fit for the proposal.

Patricia Haeg, 3744 Shady Oak Road, stated that:

- She is not opposed to senior care. Her mother in law is in senior care. She did not think the "general population" could pay \$10,000 a month for senior care.
- She was appalled that a family member would make an appointment to visit a resident. She thought that was a "red flag."
- She was concerned with traffic.
- The site would generate more garbage than one family.

Jerry Anderson, 3724 Hilltop Road, stated that:

- He was concerned with residents walking onto his back yard. He asked if there would be a fence.

Cynthia Kist, 3717 Arbor Lane South, stated that:

- She questioned if the applicant owns the property.
- She questioned why 12 residents are being proposed instead of six.
- She was concerned with parking and the steepness of the driveway.
- She was glad the potential owners would live on the property. That would provide a more secure commitment to the neighborhood and effective running of the facility.
- She questioned the relationship between the developer and the applicants.
- The proposal has been researched well. The applicant would do a great job, but she has concerns.

Patricia Haeg, 3744 Shady Oak Road, stated that:

- Her mother in law had many people visit her to provide assistance with physical therapy, showers, music therapy, and a clergy member as well as family members.

Mary Schweitzer, 3677 Shady Oak Road, stated that:

- She has had her front yard dug up six times in two years by CenterPoint for improvements.
- She was concerned with staff profiles, activity instructors, and traffic.
- She questioned the success and failure rates.
- She asked for the timeline.
- Parking is already an issue for residents who have a gathering.
- She thought there should be more caregivers than two during the day.
- She thought neighbors could volunteer at the facility.

Denise Nelson, 2408 Tonkawood Trail, stated that:

- She was a firefighter in Minnetonka for six years. The slope of the driveway is common and firefighters would have no problem going up the driveway.
- She has a sister who has lived in a group home for 16 years at multiple facilities. Most residents of senior care facilities do not have many visitors. The residents do not have vehicles at all and cannot walk.
- This is an opportunity for people to find a beautiful house to live in the community.
- The house on the outside would look relatively the same. She could not find a home for her sister in this community. There is a huge shortage. This is needed.
- There would be more trash, but her neighbor puts out four garbage containers every week and has five cars.
- This sounds like a wonderful opportunity. It is well planned. The lot is huge. The driveway could be expanded.

- A lot of houses in Minnetonka have fire suppression sprinkler systems. All of the newer houses have sprinkler systems and many have elevators.
- This is a wonderful plan. There would be eight rooms with the potential for a couple to live together in two of the rooms. That is very rare and lovely. She wished her sister could live in a home like this one.
- The other houses that provide senior care look great.
- This house is isolated from the neighbors.

Cynthia Kist, 3717 Arbor Lane South, asked if Spirit Home Care is a chain, private company, or subsidized care facility.

Bill Haeg, 3744 Shady Oak Road, stated that:

- He wanted to know if a dumpster would be used for garbage and require another type of garbage truck to pick it up.
- He did not think a person would want to wheel garbage cans to the road in the winter.

Jerry Anderson, 3724 Hilltop Road, stated that:

- The power to his house was questionable and he used to have several power outages each month for 45 years. It is better now.

No additional testimony was submitted and the hearing was closed.

Dr. Gutierrez stated that:

- A surveyor from the Minnesota Department of Health (MDH) would visit the site and determine if a fence would be necessary.
- There would be no garbage dumpster.
- He has experience with having a family member in assisted living and he sees the need for this type of care and housing.

Ms. Fossie said that often times a resident needs this type of care due to a decline in health and mobility and a need for help with everyday tasks. A house is what most people are comfortable with and residents love them. She wants to provide a home for people who need it.

Dr. Gutierrez stated that:

- The MDH requires that a nurse be present to supervise the caregivers.
- Spirit Care Homes is the business entity consisting of Dr. Gutierrez and Ms. Fossie and is an acronym for their values: safety, people, independence, respect, inclusivity, and trust worthiness. They would own the property.

- The state of Minnesota does not limit the number of residents. More residents would allow them to provide better care and lower the cost to the resident.
- Activities are scheduled ahead of time to limit traffic and parking.
- Renovations would take about 5 months. He expects two residents to move in each month and the home be full in one year.

Ms. Fossie stated that visitors would not be turned away, but encouraged to let staff know ahead of time if possible.

Dr. Gutierrez stated that:

- Driveway accessibility requirements are exempt if the building has a full automatic fire suppression sprinkler system.
- Residents typically use a wheelchair or walker and would have supervision if outside. Residents would not be allowed to walk down the driveway or walk along the street.

Chair Sewall confirmed with staff that “Baker Road” was mistakenly typed in the staff report instead of “Shady Oak Road.”

Gordon explained that the code provides 10 percent of a grade for a driveway as a rule, but allows flexibility by stating that a driveway must provide safe vehicular movement by providing places to stop and provide visibility. The top and the bottom of the slope of the driveway are flat. Staff is comfortable with the condition of the driveway.

Chair Sewall asked if any similar facility in the city has failed. Gordon was not aware of any that failed. Thomas was not aware of any that failed. She stated that staff would not know of a senior care residence that cares for six or fewer residents.

Gordon noted that utility companies continuously upgrade the electric and gas power lines to provide reliable, safe service. If there would be a need for additional gas or electric power, then the property owner would contact the utility company. The property owner could contact the city to request an increase in water pressure which is a common request by residences housing one family. An apartment building with 50 units would need a higher level of water and sewer services, but not the proposed use.

Dr. Gutierrez stated that volunteers would be welcomed, but there would be a background check.

Powers asked if the commission could restrict the number of residents. Gordon stated that the application is requesting approval for 12 residents. The city council has made modifications to the number of residents allowed in care residences for other applications. If a change is recommended, then reasons for the change must be provided.

Powers stated that the proposal is very well done. The neighbors are incredibly articulate. He knows the proposal would have an adverse impact, but questioned if it would be an “undue” adverse impact. His electricity used to go out several times a month. He thought the applicant may be somewhat underestimating the challenge and the neighbors somewhat overestimating the challenge. He is in favor of the proposal. He suggested housing eight or nine residents and, if that goes well, then increase the number of residents. It would be a mistake to deny the application.

Hanson supports staff’s recommendation. He hoped that the care residence would be fortunate enough to have so many visitors that it would create a parking problem and that it would be a vibrant home to live in and serve as an example of how those in need of care should be treated. He has relatives who lived in a facility and in a residence just like this. He and his family were the only visitors at the care residence every time. For years, he had no idea that the house was a care residence. He has no problem with 12 residents. He happily supports the proposal.

Henry appreciated everyone’s comments. One of the largest needed areas of housing right now is senior care housing. He appreciated the thoughtfulness put into the proposal. He would be proud to have a loved one live in a care residence like this. It is a definite responsibility for the city to make sure that seniors who require assistance have a place to live. He liked the idea of neighbors volunteering at the residence. He has slipped and fallen putting his garbage cans out. He suggested adding railings or stairs if possible. He is in favor of the proposal. He supports staff’s recommendation. He liked that the number of residents would be increased gradually. He felt that the applicants have the knowledge to act in the best interests of the residents.

Waterman thanked everyone for their comments. There is a concern for seniors and neighbors of the site. He supports the proposal since it meets all of the conditional use permit standards. It is a necessary housing component needed in the city.

Maxwell lived in a neighborhood with a group home for residents with dementia for many years. The residents were never without a caregiver. She liked having it there. In this case, the house is large enough to have more than six residents without changing the footprint of the building or the character of the neighborhood. The trees would still surround the house. She supports staff’s recommendation.

Chair Sewall commended the neighbor who suggested neighbors volunteer at the care residence. Parking may become an issue, but if there would be more than four vehicles outside at a time, that would become a law enforcement issue that the city could take action on. The burden is on the applicant to manage parking. He heard the concerns. He liked the idea of increasing the number of residents gradually. He supports staff’s recommendation.

Powers moved, second by Hanson, to recommend that the city council approve a conditional use permit for a licensed residential care facility at 3727 Shady Oak Road.

Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried.

Chair Sewall stated that the city council will review this item at its meeting on March 23, 2020.

C. Preliminary plat with lot width at setback variance for Fretham 29th Addition at 16856 Sherwood Road.

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. The application would meet the provisions of the tree protection ordinance and floodplain and wetland regulations.

Chair Sewall confirmed with Thomas that all criteria must be met for a variance to be approved.

Curt Fretham, applicant, thanked staff for working hard on the proposal and commissioners for listening to the request. He appreciated the neighbors' concerns. He stated that:

- The acre lot would be divided into two lots.
- The application is for a preliminary plat and he would like the focus on the application.
- He did not agree with staff's report and felt that the side lot line does not have merit. He believes that the preliminary plat meets code requirements.
- He felt the lot-width measurement line should be allowed to be located where it is shown on the proposed preliminary plat application.
- He questioned if staff's placement of the lot-width-measurement line trumps the applicant's placement of the lot-width-measurement line.
- The application does not practice historical practices, but he could not find that the application violated historical practices. He questioned the weight of historical practices.
- He questioned why staff's midpoint could be off "one hour" of measurement, but the application's measurement could not.
- He provided examples of lots with inconsistent dimensions.
- He questioned where it is in code that specifically defines how the lot-width-measurement line should be laid down. It says that it needs to touch the circle on both sides. His application does that.

The public hearing was opened.

Erin Breczinski, 16847 Patricia Lane, stated that:

- She requested the variance be denied.
- The proposal would have a negative impact on the neighborhood.
- The plan would remove 31 percent of the trees.
- There would be very little usable backyard.
- The house would not fit in with the houses which were built in the 1950s.
- The proposal would be harmful to wildlife.
- The current house needs extensive renovations.
- There is a discrepancy on how to measure the lot width.

Kevin Hughes, 16835 Patricia Lane, stated that:

- The wetland is vibrant and active with animals.
- He would have a view of the proposed house.
- He opposed cramming a big house near the wetland.

John Miller, 16811 Patricia Lane, stated that:

- The proposal would impact his view of the marsh land and impact the wildlife.
- The proposal would negatively impact the charm, ambiance, and property values.
- There is a severe drop off in elevation. He questioned how much fill would be added.
- He questioned the increase of runoff and the impact on the wetland.
- He questioned if subdivision of his 1.5-acre lot would be approved.
- The neighborhood would be negatively impacted.

No additional testimony was submitted and the hearing was closed.

Chair Sewall explained that the planning commission will make a recommendation to the city council. The city council will review the application on March 23, 2020 and take action which is the final decision.

Mr. Fretham explained that he plans to remodel the existing house if the application would be approved.

Chair Sewall confirmed with Thomas that subdivision of a property triggers enforcement of the tree protection ordinance.

Thomas stated that:

- The proposal would add two feet to six feet of fill outside of the floodplain and wetland areas.
- The applicant was notified prior to the submittal of the preliminary plat application that a variance for lot width would be necessary.

- Staff looked at ten years of subdivisions and found that the method used to measure the lot width on cul-de-sac properties was consistent. The midpoint of the arced setback is found and the measurement is placed tangent to the midpoint of the arc. Side property line configurations influence where the lot width is measured. Staff may have been generous when calculating width. If it were actually measured along the arced 35-foot setback neither of the lots would meet the required lot width at setback.
- The city attorney is comfortable with staff's recommendation.
- Past practice and the literal reading of the ordinance would suggest that the method of measurement used by staff is appropriate.

Chair Sewall reopened the public hearing.

Ms. Breczinski asked if the applicant would build a house on the new lot or sell the new lot. Thomas answered that the application for a preliminary plat would, if approved, subdivide the property. The planning commission does not review construction on a newly created lot. A building permit would require conformance with city ordinances and state building code. The McMansion policy could be applied if the property would be subdivided. If not subdivided, then the McMansion policy would not apply to the property.

Henry agrees with staff's recommendation. The measuring method has been applied consistently.

Powers concurs with the city attorney. He noted that residential property owners do not own or control a view.

Hanson found this a difficult decision. The difference of 14 feet is not real big. He noted that the alternative to this proposal may be worse. The city council may clarify the language used to determine how to measure lot width. He supports staff's recommendation.

Chair Sewall did not think building one new house would change the character of the neighborhood. The way the city is measuring the lot width is the most reasonable method. He supports staff's recommendation.

Waterman moved, second by Maxwell, to recommend that the city council adopt the resolution denying the preliminary plat with a lot width at setback variance for Fretham 29th Addition at 16856 Sherwood Road.

Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried.

D. Ordinance amending the zoning ordinance and subdivision ordinances relating to appeals.

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

Thomas reported. She recommended approval of the ordinance.

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

Powers moved, second by Henry, to recommend that the city council adopt the ordinance amending the zoning ordinance and subdivision ordinances relating to appeals.

Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried.

9. Elections

Powers moved, second by Hanson, to elect Sewall to serve as chair of the Minnetonka Planning Commission for one year beginning March 5, 2020.

Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried.

Powers moved, second by Waterman, to elect Hanson to serve as vice chair of the Minnetonka Planning Commission for one year beginning March 5, 2020.

Maxwell, Powers, Waterman, Hanson, Henry, and Sewall voted yes. Luke was absent. Motion carried.

10. Planning Commission Bylaws and Policies

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

Gordon reported. He recommended approval of the bylaws and policies listed in the staff report.

Hanson recalled that creating a policy regarding front porches had been previously discussed. Chair Sewall agreed.

Gordon stated that adding a porch is popular now. The style of the house would play a part.

Chair Sewall noted that multiple variances to allow a porch on the front of a residence were approved which may indicate that a change may be needed.

Gordon stated that staff could look at the issue and provide a proposal at a future meeting. More information on the popularity of three-car garages could also be provided.

In response to Henry's request, Thomas explained that the commission will review the merit of rescinding sign plans for commercial areas in the future.

11. Adjournment

Waterman moved, second by Henry, to adjourn the meeting at 10:15 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary