



BOARD OF APPEAL AND ADJUSTMENT MEETING MINUTES
December 14, 2015
7:00 p.m.

1) Call to Order

Heck opened the meeting at 6:30 p.m.

In attendance: Chair Mark Heck, Planning Commissioners: Peter Vickery, Michael Molitor, Lora Sandholm, and Sylvia Allen, Council Liaison Pam Mortenson; Staff: Community Development Director David Abel, Associate Planner Nick Olson and City Attorney Ron Batty.

Chair Heck expressed his deepest sympathy to the Pollman family for the loss of commissioner Pollman.

2) HEARING

- a) **ZONING APPEAL: Application from Judith & Kenneth Schmeling and Gerald & Julie Aman challenging the application of City Code Section 505.07 Subd. 8(b) Riparian view shed protection regarding the lakeside setback for a new home permit at 5107 Minneapolis Avenue, R- 1 Zoning, PID # 12-117-24-13-0009.**

Community Development Director Abel presented the staff report found in the packet dated December 14, 2015. Highlights included in the presentation were:

- An administrative appeal has been submitted challenging the Staff's decision to issue a building permit for a new home at 5107 Minneapolis Avenue.
- The applicants (Judith & Kenneth Schmeling and Gerald & Julie Aman) are challenging staff's interpretation of the lakeside setback regarding riparian view shed protection.
- Staff's interpretation of city code dictates that the riparian view shed protection setback does not apply in this situation.
- The applicants are challenging this interpretation of code. They contend that the riparian view shed protection setback should apply to the new home.
- The riparian view shed protection can establish a secondary lakeshore setback greater than that established within the underlying zoning district requirement of 75 foot setback. If the riparian view shed protection is applied it would require a minimum lakeshore setback of 169 feet. The new home has a proposed setback of 87.9 feet from the lake.
- The Site Data was reviewed.
- A building permit for the construction of a new home was submitted to

the city on September 24, 2015. Following the building permit review process, the permit was first reviewed by the planning department. The planner verified the footprint shown on the survey is the footprint shown on the submitted plans. The permit went through the review process and was issued to the builder on November 4, 2015.

- The proposed new home meets all other zoning requirements.
- The subject property has two property lines in which the front yard setback is being applied. The north and east property lines both have public right-of-way along them. The property line in question regarding the riparian view shed protection is the east property line. According to the plat of Fair View Park Lake Minnetonka dated from 1896, there is platted right-of-way along the east side of 5107 Minneapolis Avenue. The right-of-way area in question is currently being used for stormwater runoff.
- Staff's interpretation of the riparian view shed protection is that it preserves the view sheds of adjacent riparian property owners. The interpretation is centered on the key word of that section being "adjacent". There is a public right-of-way in between 5107 & 5103 Minneapolis Avenue therefore, the principal riparian structure of 5103 is not adjacent to 5107.
- Staff's decision was also concluded on previous applications of the setbacks for 5107 Minneapolis Avenue. While reviewing the new home permit, staff researched the property file of the subject property. According to the file there have been two additions on the home. In both cases, the riparian view shed protection clause was not applied. In 1991, a garage addition was added to the street side of the home. A permit to add a porch on the lakeside of the property was done in 1993. In both cases, the same setback requirements were being applied as current staff is today (75 feet from the lake, 35 feet from two sides facing public right-of-way, and 15 from side).

Attorney Batty explained the process for which the meeting was to follow.

Matthew Seltzer of Stinson, Leonard, Street – 150 South 5th, Minneapolis; Attorney representing the Schmelings. He stated that his client is requesting the reversal of staff decision. He gave an overview of his interpretation of City Ordinance pertaining to the setback.

Gerald & Julie Aman – 5103 Minneapolis Avenue, lived there since 1998. They are opposed to the building of the new home at 5107 Minneapolis Avenue. Mr. Aman showed the sight line on a presentation board that he brought with him. He stated that this would hinder his line of sight of the lake substantially.

Judy & Paul Schmeling – 5115 Minneapolis Avenue, purchased their home in 2014. They strongly support the building of a new home but oppose the line of sight of the new home will present. They feel that the building of this new home will inhibit their view of the lake. They pointed out how close the new proposed home would be to their house and with the second story will block their view. They feel that it would be a negative impact on the value of their home.

Chair Heck questioned the 20 day rule. Abel explained the interpretation of the rule that

staff followed. Batty clarified and explained how the decision was made.

Patrick Steinhoff of Malkerson Gunn Martin – 220 South 6th St, Minneapolis; Attorney representing the Kauppis. He overviewed the letter that he submitted to the City. He stated that the Kauppis followed all the requirements for building their new home.

Steve Sexton of Minnetonka Custom Homes – 3575 Tuxedo Rd, Minnetrista; Builder for the Kauppis. He explained that he had spoke with Ben Gonzola, a previous planner regarding the right of way and line of sight issue. He spoke on the process of their submittal of plans and the steps they took in picking up their permits and the demolition of the home that was on the property.

Mark Kauppi, property owner of 5107 Minneapolis Avenue; He stated that people in the neighborhood use the right of way to access the lake. He stated that he purchased the property and home in 2008 and had made sure that at some point that they would be able to build a new home on the property. He stated that they have always followed the law in regards to the process of building their new home. He respectfully asked the board to uphold staff position and let him build his home.

Patrick Steinhoff stated that they are questioning the date of when the 20 day rule started. He requested that the board dismiss or deny the appeal. He feels that the ordinance is ambiguous. He stated that in situations where there are ambiguity, the ordinance should be construed in favor of the property owner (the Kauppis) whose rights are being restricted and should follow historical interpretation of the ambiguous ordinance.

There was some discussion on the building permits that were applied to the previous home.

Cathy Stepanek, 5121 Minneapolis Avenue; She has lived there since 1977. She had questions about the building permit process. She had issues with the date of approval and the term “adjacent”. She would like to have the line of sight upheld and suggested that the Kauppis move their house back to accommodate that.

Jim Shear, 5125 Minneapolis Avenue; He pointed out that the timing of clock should be the date that it is picked up. He commented that the Kauppis acted in good faith in working with the City. He feels that the City is opening themselves up for a lawsuit since the Kauppis have already torn their house down.

Matthew Seltzer stated that the Kauppis should have known that there was the appeal time frame and they went ahead and demolished the home anyway. He commented on the additions that happened in the 1990’s.

Gerald Aman commented on the right of way and drainage ditch.

Judy Schmeling stated that they do not have an issue with the Kauppis building a new home, it is just the location of where the new home location.

Patrick Steinhoff commented that maybe it is time for the City to change the Ordinance to notify neighbors when a new house is being built. He stated that it would be hard to change the floor plan of the new home to make it work for the Kauppis.

Councilmember Mortenson questioned if the builder knew of the appeal process deadline prior to demolition of the home. Abel stated that no one knew for sure if there was going to be an appeal.

Mortenson questioned when the demolition started. Mr. Sexton stated that it started on October 28, 2015.

Heck stated that staff acted in good faith and followed the procedure that they always follow.

There was discussion of the possibility of a variance to setbacks for this property.

Heck polled the commission on whether Staff acted in a reasonable manor. Hearing no objections, Heck asked for unanimous consent if the process was done in a reasonable manor.

Motion passed 5-0.

Motion by Heck, due to lack of a second, Heck questioned if he should make another motion. Molitor questioned if he could still second the motion, Heck stated that he could. Seconded by Molitor to overturn the Staff interpretation of the Riparian View Shed Protection Ordinance as it relates to the property at 5107 Minneapolis Avenue, R-1 Zoning, PID# 12-117-24-13-0009.

Motion passed 3-2. Opposed: Vickery and Sandholm

3) Adjournment

Motion by Heck, second by Vickery to adjourn the meeting at 8:58 p.m.

Motion passed 5-0.

Respectfully Submitted,

Kris Linqvist
Kris Linqvist, CMC
City Clerk