



## PLANNING COMMISSION MEETING MINUTES

June 27, 2016

7:00pm

### 1) Call to Order

Chair Sandholm opened the meeting at 7:00 p.m.

In attendance: Commissioners – Chair Sandholm, Vice Chair Michael Molitor, Peter Vickery, Gary Pettis, and John Tschumperlin; Council Liaison Bob Christians; Staff: Associate Planner Nick Olson, City Clerk Kris Linqvist, and City Attorney Ron Batty - Kennedy and Graven.

Absent: Sylvia Allen

#### a) Approval of Agenda

Motion by Pettis, seconded by Vickery to approve the agenda as presented.

Motion passed 5-0. Absent: Allen

#### b) Approval of Minutes of May 23, 2016

Motion by Vickery, seconded by Molitor to approve the minutes from May 23, 2016 as presented.

Motion passed 5-0. Absent: Allen

### 2) Public Hearings:

#### a) **VARIANCE: Application from David G. Opheim for a front yard setback variance to reduce the required setback from 35 feet to 12.7 feet and a side yard setback variance to reduce the required setback from 15 feet to 9.5 feet to replace an existing one story home with a new two story home at 5370 Eastview Avenue; R-1 Low Density Single Family Residence Zoning District; PID# 12-117-24-24-0004.**

Associate Planner Olson presented the staff report found in the Planning Commission packet dated June 27, 2016. Highlights included in the presentation were:

- The applicant is requesting a Variance for the property located at 5370 Eastview Avenue.
- The applicant purchased the property in December of 2013 with the intent that the current home would be demolished and replaced with a new home.
- The existing home is currently non-conforming with respect to the street side and side yard setbacks.
- The proposed new home would be built generally on the same footprint, but with the addition of a second story.
- Notices were sent out to all property owners within 500 feet of the

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subject property. Staff did not receive any correspondence in regards to the application.

- Staff has made the following findings of fact:
  1. The variance request is consistent with the purposes and intent of the city's zoning ordinance;
  2. The variance request does not further clutter the shoreline or impact views for neighboring properties, consistent with the city's comprehensive plan;
  3. The Property is non-conforming with respect to width which makes it difficult to fit a reasonable home on the Property without a variance;
  4. There is unimproved Eastview Avenue right-of-way along the north property line, which requires a front yard setback. This requirement further shrinks the buildable area of the Property;
  5. The Applicant is proposing the new home in generally the same footprint as the existing home, which maintains the current non-conforming setbacks; and
  6. The proposed home has similar setbacks to that of other homes in the neighborhood.

Based on the above findings of fact, staff recommends approval of the front yard and side yard setback variances with the following conditions:

1. The Applicant obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction;
2. The proposed grading should maintain existing drainage patterns or improve the existing drainage of the lot and adjacent lots;
3. The Applicant is responsible for all fees incurred by the City in review of this application;
4. The variance approvals are valid for one year from the date of approval and will become void and expire unless a building permit has been issued for the site; and
5. Any other conditions discussed by the Planning Commission.

David Opheim, applicant – expressed his excitement about being able to build a new home.

Pettis questioned the footprint of the home. Olson stated the existing home is in a non-conforming location and that the new home would be generally in the same footprint.

Chair Sandholm opened the Public Hearing for the Variance at 7:05 p.m. No one was present to speak on the variance request.

Chair Sandholm closed the Public Hearing at 7:05 p.m.

Motion by Sandholm, seconded by Pettis to recommend to the Council to approve a front yard setback variance to reduce the required setback from 35 feet to 12.7 feet and a side yard setback variance to reduce the required setback

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from 15 feet to 9.5 feet to replace an existing one story home with a new two story home at 5370 Eastview Avenue based on the finding of facts and contingent upon the conditions outlined in the staff report dated June 27, 2016. Motion passed 5-0. Absent: Allen

**b) VARIANCE: Application from David & Catherine Olson for a side yard setback variance to reduce the required setback from 15 feet to 11 feet for a screened porch and deck addition at 3415 Warner Lane; RDB Douglas Beach Single Family Residence Zoning District; PID# 25-117-24-24-0057.**

Associate Planner Olson presented the staff report found in the Planning Commission packet dated June 27, 2016.

Highlights included in the presentation were:

- The applicant is requesting a Variance for the property located at 5370 Eastview Avenue.
- The existing home was built in 2002 after the original home was demolished.
- At the time the current home was built, a variance was granted for a 5 foot variance to both side yard setback requirements.
- The RDB Residential-Douglas Beach Zoning District has special provisions.
- Notices were sent out to all property owners within 500 feet of the subject property. Staff did not receive any correspondence in regards to the application.
- Staff has made the following findings of fact:
  1. The variance request is consistent with the purposes and intent of the city's zoning ordinance;
  2. The variance request does not further clutter the shoreline or impact views for neighboring properties, consistent with the city's comprehensive plan;
  3. The variance request meets the most common side yard setback of 10 feet required in the Douglas Beach zoning district, which is a reasonable request;
  4. The addition of a deck and screened porch is reasonable given the home was designed and built to accommodate future improvements;
  5. The unique shape of the lot, which has a significantly larger at the street (120.28 feet) than at the lakeshore (59.02 fee), requires the largest setback of 15 feet from the side yard; and
  6. Many of the homes in the neighborhood have either a deck, screened porch, or both. Allowing for both will not impact the character of the neighborhood.

Based on the above findings of fact, staff recommends approval of the side yard setback variances with the following conditions:

1. The Applicant obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction;

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2. The proposed grading should maintain existing drainage patterns or improve the existing drainage of the lot and adjacent lots;
3. The Applicant is responsible for all fees incurred by the City in review of this application;
4. The variance approvals are valid for one year from the date of approval and will become void and expire unless a building permit has been issued for the site; and
5. Any other conditions discussed by the Planning Commission.

Dan Peterson, 7524 Fairfield Rd, Brooklyn Park, contractor for applicant – explained the proposed porch/deck

Chair Sandholm opened the public hearing for the variance at 7:09 p.m. No one was present to speak on the variance.

Chair Sandholm closed the public hearing at 7:10 p.m.

Motion by Molitor, seconded by Tschumperlin to recommend to the Council to approve a side yard setback variance to reduce the required setback from 15 feet to 11 feet for a screened porch and deck addition at 3415 Warner Lane based on the finding of facts and contingent upon the conditions outlined in the staff report dated June 27, 2016.

Motion passed 5-0. Absent: Allen

**c) CODE TEXT AMENDMENT: The City of Minnetrista will consider Ordinance 439, an amendment to city code section 505.01 definition of lakeshore setback, an amendment to city code section 505.05 subd. 3 appeals from administrative decisions, and an amendment to city code section 505.07 subd. 8(b) Riparian view shed protection. The current draft ordinance will redefine how the lakeshore setback is measured to include only lakeshore on the property for which a building permit is being applied.**

Community Development Director Abel presented the staff report found in the Planning Commission packet dated June 27, 2016.

Highlights included in the presentation were:

- Due to a building permit in 2015, the Riparian View shed ordinance is in need of review.
- Three section of the Ordinance needs amending:
  - Section 505.01 the definition of *Lake Shore setback* needs clarification
  - Section 505.05, Subd. 2 *Board of Appeals and Adjustments*. The time of when the 20 day clock to appeal would commence.
  - Section 505.07, Subd. 8(b) *Setbacks Riparian view shed protection*. Staff surveyed surrounding communities to determine how many have a riparian view shed ordinance.

Pettis questioned the publishing date. Abel explained that it would be the published date in the official newspaper.

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Vickery questioned the radius of mailed notification. Abel stated that it would be vary from application to application.

Vickery questioned how many permits were issued per year. Abel stated that approximately a half of dozen per year are lake shore homes.

Sandholm questioned what body of water the Riparian View Shed ordinance applies to. Abel stated that it applies to any public body of water not just Lake Minnetonka lakeshore.

City Attorney Batty gave further explanation of the intent of the proposed ordinance.

Sandholm questioned some verbiage in the proposed ordinance pertaining the building in lots (505.07, Subd. 8(b) (1)). Batty clarified the intent and a modification will be made in the draft.

Molitor questioned what the standard 75 foot setback is to any portion of the house such as deck or stairs. He would like to see in the proposed ordinance that it follows what is standard and not allow decks or stairs in that setback. He would like conformity amongst ordinances.

Christians commented about a lot of these old homes were built many years ago when the code was different and are now aging with new bigger homes built in their place.

Batty explained the existing ordinance regarding replacement after a fire. It is allowed within 180 days to the exact replacement but would require a variance if the plan was deviated from.

Molitor make a comment that it was his understanding that the ordinance be more restrictive not less restrictive. Abel expressed and explained the concerns and direction staff received from council with setbacks as a whole.

Vickery commented that it is hard to calculate in topography and it will vary from neighborhood to neighborhood.

Molitor questioned the 20 day clock. Batty explained the intent of the proposed language of the ordinance pertaining to this.

Molitor questioned why “adjacent” was not defined more clearly instead of going with a new approach of distance instead. Batty explained the new intent.

Chair Sandholm opened the public hearing for the code text amendment at 7:55 p.m.

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Kenneth Schmeling, 5115 Minneapolis Avenue – had questions on the new proposed section 505.05 Subd. 2 and wanted clarification. He commented on how the language was written and was not in laymen's terms. He also comments about the new proposed section 505.07 Subd. 8(b). He stated that he found seven cities on Lake Minnetonka that had Riparian View Shed Ordinances.

Jerry Aman, 5103 Minneapolis Avenue – stated he likes the idea of posting a notice. He had comments about the 300 feet proposed radius.

Chair Sandholm closed the public hearing at 8:21p.m.

Sandholm stated she liked this ordinance better and it gave more flexibility.

There was discussion of getting rid of the Riparian View Shed Ordinance all together.

Molitor made comments that with the current ordinance a variance process would have to be followed. He doesn't like the way the new proposed ordinance is written.

Tschumperlin questioned who of the cities that staff surveyed had Riparian View Shed ordinances. Abel stated Tonka Bay, Orono, and Wayzata.

Batty commented on the ambiguities in the ordinance and relying on variances to fix the problem is not the correct solution.

Pettis commented that he is in favor of the notification process and thinks that the ordinance should remain as is with the addition of the notification process.

Sandholm does like the notification process.

Tschumperlin commented that the proposed ordinance is much easier to understand and is in favor of it.

Motion by Molitor, seconded by Pettis to recommend to the City Council to deny the Proposed Ordinance 439.

Motion passed 3-2. In favor: Molitor, Vickery and Pettis. Opposed: Sandholm and Tschumperlin. Absent: Allen

### 3) Business Items

#### a) **CODE TEXT AMENDMENT: The City of Minnetrista will consider an amendment to the City Code regarding the regulation of sober homes.**

City Attorney Batty presented the staff report found in the Planning Commission packet dated June 27, 2016.

Highlights included in the presentation were:

- At its May 23, 2016, the planning commission reviewed a draft ordinance regarding sober houses, requested changes to the ordinance and continued the discussion to the June 27, 2016 meeting.

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- The proposed ordinance establishes a license-based approach which, with exceptions, is personal to the applicant and does not attach to the property.
- The proposed ordinance establishes a process for review of a request for accommodation which is arguably closer to statutory intent. There is no public hearing before the planning commission. The ordinance simply provides for the city council to “consider” and “evaluate” the request following receipt of staff’s recommendation.
- The proposed ordinance is purposely vague on limits which may be imposed on a sober house. The city only needs to grant an accommodation under federal law if the request is reasonable. The ordinance includes a list of factors the staff and ultimately the city council should consider when deciding whether a request is reasonable.

Molitor commented that the revised ordinance answered all the comments and concerns from the planning commission.

Motion by Tschumperlin, seconded by Molitor to recommend to the City Council to approve Ordinance 438 in regards to Sober Homes.

Motion passed 5-0. Absent: Allen

#### 4) Informational Items

##### a) Staff Reports – Associate Planner – Nick Olson

- Serenity Hills is potentially going to be on the July 18, 2016 Council agenda

##### b) Staff Reports – Community Development Director – David Abel

- The use of City issued emails

##### c) Council Reports – Bob Christians

- Spirit of the Lakes

Chair Sandholm commented on the Bus Tour

#### 5) Adjournment

Motion by Molitor, seconded by Vickery to adjourn the meeting at 9:04 p.m.

Motion passed 5-0. Absent: Allen

Respectfully Submitted,

*Kris Linqvist*

Kris Linqvist

City Clerk

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