

**WAYZATA PLANNING COMMISSION
MEETING MINUTES
October 7, 2019**

AGENDA ITEM 1. Call to Order

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

AGENDA ITEM 2. Roll Call

Present at roll call were Commissioners: Parkhill, Plantan, Flannigan, Douglas, Iverson and Bashioum. Absent: Merriam. Community Development Director Emily Goellner, Assistant Planner Nick Kieser, Planning Consultant PeggySue Imihy, and City Attorney David Schelzel were also present.

AGENDA ITEM 3. Approval of Agenda

Chair Flannigan asked for a motion to approve the agenda for the meeting.

Commissioner Plantan made a motion, seconded by Commissioner Douglas to approve the September 16, 2019 agenda as presented. The motion carried unanimously.

AGENDA ITEM 4. Consent Agenda

- a.) Approval of September 16, 2019 Meeting Minutes
- b.) Report and Recommendation of Approval for Zoning Ordinance Text Amendment and Conditional Use Permit for an Animal Clinic at 1125 Wayzata Blvd E
- c.) Report and Recommendation of Approval for Variances for a New Single-Family Home at 639 Bushaway Rd "Skyfall"

Chair Flannigan read the items on the consent agenda and asked if any Commissioner wished to pull an item for further discussion.

Commissioner Douglas asked for clarification on Saturday's hours of business for the Animal Clinic.

Community Development Director Emily Goellner responded that the majority of business in the area were open until 8:00 p.m. on Saturdays.

Chair Flannigan asked if anyone wished to pull an item from the Consent Agenda. Hearing no such request, he asked for a motion to approve the Consent Agenda as presented.

Commissioner Douglas made a motion, seconded by Commissioner Plantan to approve the Consent Agenda as presented. The motion carried unanimously.

AGENDA ITEM 5. Public Hearing Items:

a.) Consider Development Application for Planned Unit Development Concept Plan for Office-Retail Building at 401 Lake Street East

Consultant Planner PeggySue Imihy stated that the applicant, Peterssen/Keller Architecture, and the property owner, Lothenbach Props VI LLC, have submitted a development application to redevelop the property at 401 Lake Street E. The applicant is proposing to demolish the existing building on the site and construct a three-story, 25,890 square foot office-retail building. The building would have 2,500 square feet of retail on the ground floor and 14,578 square feet of office space on the second and third floors. The building would also have 4,000 square feet of green roof area, 450 of which would be rooftop patio space, accessible from a single staircase to the roof. The current zoning is C-4 Central Business District and is located within the shoreland overlay district. The 2030 and 2040 comprehensive plan land use designation for the property is Central Business District. The applicant is requesting the review of a concept plan for a Planned Unit Development (PUD). She explained that the concept plan is the first step in the process, and entails the Commission determining if they like the use, the overall look, and if it makes sense. If the Concept Plan is approved, the applicant will return with an application for a General Plan of Development and a rezoning of the Parcel to Planned Unit Development. As part of the request, the applicant is asking for a deviation from the allowable floor area ratio (FAR) of 2.0, development of a lot less than 12,000 square feet, and the required first floor retail percentage of 50% which would be requirements if the property remained in the C-4 Central Business zoning district. The application also requests a variance from the maximum building height of 35 feet which is a requirement of the PUD zoning district.

The maximum building height in the C-4 District and the PUD district is 35 feet and three stories, whichever is lesser. The proposed building is shown at three stories and would be 35 feet at the top of the building roof and shows a safety guard rail around the greenspace on the roof deck which places the total building height at 38.5 feet. The applicant labeled the guard rail as a parapet, but the Design Standards describes a parapet wall as a structure that screens mechanical equipment and the "Sign Related" definition of a "Parapet" is a low wall which is located on a roof of a building. There is no mechanical equipment being screened by the guard rail and the applicant is not requesting to install a sign on the guard rail. The applicant has stated in their narrative that there would not be any furnishings or structural features on the roof other than the parapet/guardrail. The City Code does not provide clear direction on what is a parapet and therefore staff has directed the applicant to request a variance to allow the Planning Commission to provide a determination about allowing a guard rail to be defined as a parapet. She asked the Commission to consider if granting a variance would be in harmony with the general intent of the ordinance, if the applicant has demonstrated sufficient practical difficulty, and if conditions should be attached if the variance is granted.

1 The City Code 902.02 defines Floor Area Ratio (FAR) as the floor area of a building or buildings
2 on any lot divided by the area of such lot, or in the case of planned developments by the net site
3 area. The floor area ratio requirements as set forth under each zoning district shall determine the
4 maximum floor area allowable for a building or buildings (total floor area of both principal and
5 accessory building) in direct ratio to the gross area of the zoning lot. FAR is used to indicate the
6 desired density of parcel in comparison to the size of the parcel. In the C-4 District, the required
7 minimum lot area is 12,000 feet, and the desired FAR is 2.0. The subject property is slightly
8 smaller than the required minimum lot area at 10,595 square feet. The applicant has requested that
9 they be allowed to deviate from the maximum FAR of 2.0 to 2.44 as part of the Planned Unit
10 Development request.

11
12 Commissioner Parkhill stated that the Floor Area Ratio could be met if the proposed building was
13 designed to be smaller.

14
15 Planner Imihy agreed that the FAR could be met if the proposed building was smaller. She
16 reminded the Commission that the lot is non-conforming at 10,594 square feet. She explained that
17 if the lot was conforming (12,000 sq. ft) the FAR of the proposed building would be 2.15. She
18 added that the required FAR varies by district.

19
20 The City Code 902.02 requires a minimum total lot area of 12,000 square feet. The property is
21 10,545 square feet, which makes the lot a legal non-conforming use subject to the standard of City
22 Code 915.02 B.6 b) which stats that an existing conforming use on a developed lot of substandard
23 size may be expanded or enlarged if such expansion or enlargement meets all other provisions in
24 this ordinance.

25
26 The proposed plans indicate that only 17% of the ground floor would have retail space, for a total
27 of 2,500 square feet of retail usage. The footprint of the ground floor is 10,210 square feet. The
28 C-4 District has a requirement that 50% of the ground floor be retail, which would require 5, 105
29 square feet of retail usage. The proposed plans have asked for a deviation to allow for parking to
30 be provided in the northern part of the structure.

31
32 She described the next steps for the project which would include: General Plan for a PUD,
33 rezoning to PUD, Shoreland Impact Plan/Conditional Use Permit, Design Review, and Fee in Lieu
34 of Parking (FILOP) agreement. She explained that the current application has not proposed
35 enough on-site parking. The applicant has proposed 19 spaces and provided a parking study stating
36 that 35 parking spaces would be sufficient for the proposed uses. The ordinance requires 47
37 parking spaces for the proposed uses. The applicant would like to enter a FILOP agreement for the
38 16 parking spaces that their data has determined to be sufficient. Planner Imihy had a traffic
39 engineer from her firm review the traffic study submitted by the applicant and provided the
40 following conclusions: parking spaces needed could range from 33 to 47 and would depend on
41 the final uses of the office building, the 2-7 spaces of parking required for the retail component
42 could likely be accommodated with the current on-street parking, the spaces provided through
43 FILOP are 845 and 1478 feet away and wouldn't be considered walkable, the on-site ramp would
44 only allow one vehicle to enter/exit at a time, the on-site ramp provided for very tight parking with
45 multiple stalls having difficult access issues.

1 Planner Imihy stated that the applicant held a public meeting with residents on September 24,
2 2019. The residents identified several concerns regarding the project which included: parking,
3 land-locking of the Masonic Temple, materials used, lack of setback of the second floor, and roof
4 access and height variance.

5
6 Chair Flannigan asked if the Commission had any questions for Staff.

7
8 Commissioner Bashioum asked how many parking spots the City had to sell in total for FILOP
9

10 Planner Imihy stated that she does not have the exact number available, but she felt comfortable
11 stating that the City could likely cover the needed spots.

12
13 Commissioner Bashioum stated that the Commission would like to know the amount available.
14 She added that a parking problem could occur if no number granted exceeded the spots available.

15
16 City Attorney David Schelzel stated that approval for a FILOP would entail additional approvals
17 and applications that would take place at a future meeting.

18
19 Commissioner Parkhill asked for clarification regarding the PUD and the amount of details
20 provided.

21
22 Planner Imihy stated that the current Concept Plan is quite detailed, and the Commission should
23 provide comments regarding their overall opinions on the project. This step allows the applicant
24 to respond to concerns.

25
26 Commissioner Parkhill asked if there would still be a height issue if the applicant chose to construct
27 an actual parapet wall rather than the intended glass structure on the roof.

28
29 Community Development Director Emily Goellner stated that the glass has been chosen to
30 minimize the visual impact to the surrounding areas. She added that the choice is whether to allow
31 access to the roof top because allowing access would require a guard rail or parapet which would
32 be added to the height requirement.

33
34 Chair Flannigan asked if there were other buildings Lake street with roof top access.

35
36 Planner Imihy stated that there are other buildings that exceed the height requirement.

37
38 Commissioner Iverson asked where the mechanicals were going to be located.

39
40 Planner Imihy stated that the mechanicals would be located on the second floor inside the building.

41
42 Commissioner Parkhill asked if the FAR isn't approved would the mechanicals be moved to the
43 roof.

44
45 Planner Imihy responded that Lake Street District does not allow for mechanicals to be placed on
46 a roof.

1
2 Commissioner Bashioum asked for clarification regarding the old bank building on Lake Street.
3 She stated that the roof top access was denied due to height requirements.
4

5 Planner Imihy stated that the project was on Swans corner and their project would have reached
6 48 feet in height. They also proposed a different configuration which contained an additional
7 structure that would be present on the roof. The current applicant has indicated that will not have
8 a physical structure on the roof.
9

10 Commissioner Douglas asked how close the structure would be to structure at 407.
11

12 Planner Imihy responded that the structure would be built on the property line but would have a
13 cutout on the first floor to allow access to 407.
14

15 Commissioner Douglas asked for the purpose of the roof top access.
16

17 Planner Imihy stated that the applicants have expressed wanting to add the amenity for their tenants
18 due to the beautiful view of Lake Minnetonka. She added that the applicant has indicated that no
19 long-term furniture would be allowed on the roof.
20

21 Commissioner Iverson stated that the plans show three floors of mechanical equipment. She stated
22 that the type of equipment used could be very noisy and she expressed concerns regarding that.
23

24 Planner Imihy responded that the applicant could respond to the concern.
25

26 Commissioner Plantan asked for clarification regarding the retail square footage.
27

28 Planner Imihy stated that the applicants plan shows 2500 in retail square footage. She added that
29 the applicant could provide further information.
30

31 Planner Imihy provided a list of other buildings on Lake Street that have been approved for height
32 above 35 feet, but none of these buildings have had a roof top patio.
33

34 Chair Flannigan stated that frequently when buildings exceed the height requirement it is due to
35 an elevator. He asked if the structure will have an elevator.
36

37 Planner Imihy stated that the applicant has chosen not to have an elevator. They will have to look
38 into ADA requirements.
39

40 Commissioner Iverson stated a reminder for the Commission that many of the variances for
41 building height were due to parking and due to the water table.
42

43 Chair Flannigan asked about the plan for stormwater runoff.
44

45 Planner Imihy stated that future plans would include mitigation plans for stormwater runoff.
46

1 There being no further questions from the Commission for Staff, Chair Flannigan asked the
2 applicant to speak to the Planning Commission about the application.

3
4 Property owner, Lothenbach Props VI LLC, Greg Kype, CFO, provided the names of the builder
5 and architectural firm that they have hired to work on the property.

6
7 Applicant's architect, Gabriel Keller, 1526 W 25th Street, Minneapolis, stated that they are in the
8 design phase of the project and are interested in feedback which is why they met with the
9 neighbors. He added that they are working on responded to all of the concerns brought to their
10 attention. The goal of the project is to create a classic building with a sense of scale to its
11 surroundings and will stand the test of time. He added that the green roof will help with some of
12 the stormwater management, but they will have to provide additional management underground.
13 The building will have an elevator that doesn't require overrun on the rooftop. He added that an
14 elevator is an ADA requirement. They have chosen to apply for a PUD so that they can use more
15 creativity in their design process and use the site in the best way. The parking continues to be a
16 complicated issue to address with the water table having an expensive impact. They are dedicated
17 to providing appropriate parking for their tenants.

18
19 There being no further questions from the Commission for the applicant, Chair Flannigan opened
20 the public hearing on the application at 7:30 p.m.

21
22 Resident, Charles Nolen, owner of 315 Manitoba and property manager of 440 Lake Street stated
23 that he is very knowledgeable regarding development and the economic factors that drive it. He
24 stated that the views are precious and drive the quality of the space and the value of the buildings.
25 He was concerned with the rooftop glass railing and how many penetrations will be allowed. He
26 also raised concerns regarding parking and the extreme lack of it. He shared that the proposed
27 project will have two and a half times more square footage and provide one less parking stall than
28 his building does. He added that every single parking stall in his building is rented and occupied.
29 He shared that the third floor alone is designed for at least 25 employees. His calculations for
30 parking would equal far more than 47 necessary parking spots. He does not like the idea that the
31 public parking would need to absorb all of the remaining parking needs. He believes that the PUD
32 is being used to disregard the underlying zoning. He does not believe the project is a PUD and the
33 variances being requested are self-created hardships. He stated that the size of the site does not
34 impact the FAR. The application is to create a 26,000 square foot building that could easily comply
35 with the FAR. The second-floor setback requirement is being ignored because of the applicants
36 want to have more square footage. He ended by stating that he wasn't against the project and
37 believes the materials and the building is attractive, but their parking problem shouldn't be pushed
38 on the community. He would like to see the ordinances followed for the protection of the people
39 behind them.

40
41 Resident, Darin Schmidt, owner of 320 Manitoba, and representing Manitoba South Properties,
42 stated that he owns four lots located to the north of the project. He stated that less than a year ago
43 the City Council added a condition for the property at 305 Lake that prohibits having many of the
44 items being discussed for the roof top of the current property such as railings or furniture. Parking
45 continues to be an issue for everyone in the neighborhood. He added that due to increase business
46 it is often difficult to travel in the neighborhood. He questioned the date chosen for the parking

1 study that was completed and said it may have been one of the least busy days possible. He agreed
2 with others that raised concerns regarding the potential noise and the view of the roof.
3

4 Resident, Lowell Zitzloff, 319 Barry Ave, stated that he had sent a letter to the Commission
5 explaining his concerns regarding the project. He has developed buildings in the area and
6 recognized the difficulty to follow the ordinances while trying to be financially sound. Parking is
7 very precious in Wayzata due to the cost of land, but if they can build a highway under the English
8 Channel than Wayzata can find a solution to the parking concerns. He stated that each developer
9 has been made to comply with the ordinances and so should the current projects developers.
10

11 Resident, Andrew Brennen, 407 East Lake Street, President of the Masonic Temple, stated that
12 they are located next door to the project and he agreed with the other concerns raised. He
13 appreciates that communication that has occurred between the project developers and the projects
14 neighbors. He agreed with the others that expressed concerns regarding parking. He stated that
15 his building is utilized during the day and evening, and he isn't as concerned with the evening
16 parking availability. His building tenants like to utilize concrete slab located at the back of the
17 property for outdoor picnic and gathering space but was concerned with the view and sound from
18 the closely located mechanical equipment. He ended by raising concerns regarding the potential
19 structural impact of underground parking on his property due to it having been constructed in 1920.
20

21 There being no one else wishing to comment on the application, Chair Flannigan closed the public
22 hearing at 7:51 p.m.
23

24 Chair Flannigan asked the Commission to provide feedback and comments on the application.
25

26 Chair Flannigan asked Staff for the potential next steps.
27

28 Commissioner Plantan stated that the number of deviations concerned her. She appreciates the
29 design of the building and thinks it is beautiful. She ended by stating that there is already a lot of
30 traffic congestion in the area and lack of parking is her biggest concern.
31

32 Commissioner Iverson stated agreement with Commissioner Plantan's statements. She
33 appreciates the comments from the neighbors. She also does not like the idea that the use of a
34 PUD is a way of getting around the necessary variances.
35

36 Commissioner Douglas stated that she also likes the look of the building. She added her concerns
37 regarding parking and traffic congestion. She also stated concern with the FILOP system and how
38 it doesn't appear to alleviate any of the parking concerns.
39

40 Commissioner Parkhill stated appreciation for the look of the building. He doesn't agree with the
41 use of a PUD for the project. He would rather address each deviation separately. He likes the idea
42 of the landscaped roof but would need more information so as to remain consistent within the City.
43 He would also like to see each landowner solve their own parking problems because it may be too
44 much expectation on the City to solve it.
45

1 Commissioner Bashioum also agreed with her fellow Commissioners. She would like to see a
2 focus on if a terrace should be allowed if it has been denied to others. She added that it is important
3 to be consistent. She stated that covering 100% of the lot is also concerning, especially without
4 the second-floor setbacks.

5
6 Chair Flannigan stated the building is attractive but too big for the lot and what is required. The
7 idea for the rooftop greenery is interesting environmentally friendly and shouldn't be overlooked.
8 He agreed that parking is a large concern in Wayzata, and he would like to see the applicant look
9 at addressing the concern.

10
11 Chair Flannigan asked for a motion on the application.

12
13 Commissioner Bashioum stated that she is not against having the green roof but would want it to
14 fit within the allowed 35 feet.

15
16 Director Goellner stated that the Commission has a few options regarding the application. One
17 option would be to deny the application based on the number of comments that were made and
18 changes that would be needed. A new concept plan would be requested. Another option would
19 be to table the application to allow the applicant to provide further information that would clarify
20 items or questions that had been raised.

21
22 Commissioner Iverson made a motion, seconded by Commissioner Plantan, to direct staff to
23 prepare a draft Planning Commission Report and Recommendation, with appropriate findings,
24 reflecting a recommendation of denial of the Concept Plan for a Planned Unit Development, denial
25 of the deviation of FAR to 2.44, denial of the deviation to allow the ground floor retail at 17%,
26 and denial for the deviation for the minimum lot size, and denial for the variance of the building
27 height at 38.6 feet for the application for 401 Lake Street East, for review and adoption at the
28 next Planning Commission meeting. The motion carried unanimously.

29
30 **b.) Consider Development Application for Variances and Conditional Use Permit**
31 **for a Detached Parking Structure at 214/216 Minnetonka Ave S**
32

33 Assistant Planner, Nick Kieser, stated that the applicants and property owners, Peter Slocum, 214
34 Minnetonka Ave S., and Dr. Bruce Merry, 216 Minnetonka Ave S, have submitted a development
35 application for side and rear yard setback variances along with a Conditional Use Permit
36 (CUP)/Shoreland Impact Plan to construct a new garage. The proposed project will construct a
37 new four-car garage over four existing paved parking spaces in the rear of the property. The
38 proposed garage encroaches into the 10' side and rear yard setback requirements and requires a
39 CUP for the proposed 92.10% of hardcover, which is a decrease from the existing 92.56%
40 hardcover. The application requests approval of a Side yard setback of 7.2' from the north (side
41 yard) property line which is 2.8' less than the required 10' setback, a Rear yard setback of 5' from
42 the East (rear yard) property line which is 5' less than the required 10' setback, and a Conditional
43 Use Permit/Shoreland Impact Plan to allow for 92.10% impervious surface which is a decrease
44 from the current 92.56% hardcover. He explained that this application is for the location of the
45 proposed garage and the applicant would have to return for a design review as part of a future
46 application. The applicant is not planning on removing any of the current landscaping and is

1 proposing to add a gutter system that would move the rainwater into the existing vegetation. The
2 applicants have proposed the location of the garage with the intent of not blocking necessary turn
3 around space for their shared parking spots.

4
5 Chair Flannigan asked if the Commission had any questions for Staff.

6
7 Commissioner Bashioum asked for clarification for the proposed garage and an identified utility
8 pole.

9
10 Planner Kieser explained that the structure would be set back approximately four feet from the
11 pole.

12
13 Commissioner Plantan asked for clarification regarding the reason for positioning the proposed
14 garage next to the retaining wall on the North and if it is due to having ample space to back out
15 and therefore avoid having to back out onto Minnetonka Blvd.

16
17 Planner Kieser stated that the parking spots are angled to accommodate the turnaround.

18
19 Commissioner Douglas asked about the drainage pipes in the retaining wall and their purpose.

20
21 Planner Kieser stated that the applicant could address that.

22
23 There being no further questions from the Commission for Staff, Chair Flannigan asked the
24 applicant to speak to the Planning Commission about the application.

25
26 Applicants and property owners, Peter Slocum, 214 Minnetonka Ave S., and Dr. Bruce Merry, 216
27 Minnetonka Ave S, made themselves available for questions.

28
29 Dr. Merry stated that there is an existing easement with the neighbor to the south for back parking
30 lot access. He stated that the parking spots are at an angle because 90-degree turns would be
31 impossible. The retaining wall is rotted and needs to be replaced. Their hope is to replace the
32 retaining wall and add a garage as far back that will make access to the parking stalls convenient
33 for themselves as well as their neighbors.

34
35 Mr. Slocum stated that the retaining wall is dated back at least 20 years and seeps soils onto the
36 parking lot. The retaining wall is built with stacked ties and will need to be replaced soon.

37
38 There being no further questions from the Commission for the applicant, Chair Flannigan opened
39 the public hearing on the application at 8:21 p.m.

40
41 There being no one wishing to comment on the application, Chair Flannigan closed the public
42 hearing at 8:22 p.m.

43
44 Chair Flannigan asked the Commission to provide feedback and comments on the application.

45

1 Commissioner Douglas stated that she had looked at purchasing the townhouse in the past and
 2 decided not to purchase due to it not having a garage. She added that a garage would be a nice
 3 improvement to the property.

4
 5 Commissioner Iverson stated that she is concerned with the long-term impact of deviating from
 6 the setback ordinances. She added that the setbacks are present for a reason.

7
 8 Commissioner Bashioum asked for clarification regarding Commissioner Iverson stating that they
 9 would be having a setback against a structure.

10
 11 Commissioner Iverson responded that her statement was in regard to the unknown of the future
 12 development of the site. She reiterated that granting variances for setbacks between buildings can
 13 create an unwanted precedence and structures built closer together than what the ordinance intends.

14
 15 Commissioner Plantan asked for clarification regarding the reduction of the impervious surface
 16 coverage.

17
 18 Planner Kieser stated that the applicant is reducing the impervious surface by approximately half
 19 a percent.

20
 21 Chari Flannigan stated that he understands the difficulty with the project and the intentions of the
 22 applicants. He also stated understanding for Commissioner Iverson's concerns regarding the
 23 future of the property with the decreased setbacks.

24
 25 Chair Flannigan asked for a motion on the application.

26
 27 Commissioner Bashioum stated that the practical hardship and reason for the decreased setbacks
 28 is because of the parking situation and the need to have space to turn around.

29
 30 Commissioner Parkhill made a motion, seconded by Commissioner Douglas, to direct staff to
 31 prepare a draft Planning Commission Report and Recommendation, with appropriate findings,
 32 reflecting a recommendation of approval of the development application for 7.2' side yard setback,
 33 a 5' rear yard setback, and a Conditional Use Permit/Shoreland Impact Plan to have 92.10%
 34 impervious surface for the properties at 214 and 216 Minnetonka Ave S for review and adoption
 35 at the next Planning Commission meeting. The motion carried 5 ayes and 1 nay (Iverson).

36
 37 **c.) Consider Development Application for a Conditional Use Permit for Fence**
 38 **Height at 663 Bushaway Road**
 39

40 Assistant Planner, Nick Kieser stated that the applicant, Elevation Homes, and property owners,
 41 Jon and Kristine Sabes, have submitted a development application requesting approval of a
 42 Conditional Use Permit (CUP) to allow installation of a fence that ranges from 6' to 8' in height
 43 along Bushaway Road. The fence will be constructed of solid cedar material. The Wayzata Zoning
 44 Ordinance allows fences in the front yard of a property, provided that they are no more than 42"
 45 in height and no more than 50% solid material. The proposed fence is made of 100% solid material
 46 and is a maximum of 8' in height in some locations, which is allowed with CUP approval. The

1 fence is located partially on the property and partially in the right of way of Bushaway Road, which
2 also requires approval by Hennepin County. There is also a 6' tall motorized gate that is proposed
3 to be at the driveway entrance, which is setback further from the fence line. The proposed plans
4 show a fence that is an average of 6' in height to the south of the gate. Then the fence starts at 6'
5 in height to the north of the gate which gradually increases to an 8' in height at the most northern
6 end of the property along Bushaway Road. The applicant had a plan to replace a 6' tall fence that
7 was existing but found it necessary to improve the screening to their house from the headlights
8 and vehicle noise from Bushaway Road with a taller fence. The 6' tall fence that was existing was
9 taken down before this development application. The applicant placed new posts that can be seen
10 in the attached pictures of the property that show where the proposed fence will be located. The
11 applicant is still allowed to replace the fence up to 6' in that location without any development
12 application approvals. There are two properties that have received a CUP for additional fence
13 height along Bushaway road, with approval of 8' and 7' fence height. There are additional houses
14 along Bushaway Road that have fences that exceed 42" in height but were constructed before the
15 fence ordinance was put in place. The property is zoned R-1A Low Density Single-Family
16 Residential. The 2030 and 2040 Comprehensive Plan designation is Estate Single-Family
17 Residential. The applicant has stated that they have received preliminary approval to place the
18 fence in the Hennepin County right of way.

19
20 Chair Flannigan asked if the Commission had any questions for Staff.

21
22 Commissioner Douglas asked if the existing fence was a solid material and since they removed it
23 does the applicant need to get approval to replace it with a solid material.

24
25 Planner Kieser responded that the existing fence was a solid material and the applicant is allowed
26 to replace the fence with comparable material.

27
28 Commissioner Bashioum asked if there were any restriction on gates.

29
30 Planner Kieser responded that the code restrictions for gates are the same for the fence
31 requirements. The gate would have to be 50% opaque and it would need to meet the height
32 requirement.

33
34 Commissioner Plantan asked if the fence height total includes the retaining wall height.

35
36 Planner Kieser stated the retaining wall is not included in the total height. He added that the height
37 is an average.

38
39 There being no further questions from the Commission for Staff, Chair Flannigan asked the
40 applicant to speak to the Planning Commission about the application.

41
42 Applicant's Representative, Bill Costello, 18312 Wayzata Blvd. stated that the gate and adjacent
43 fencing is being proposed at 6' in height and will be made of the same material as the rest of the
44 fence.

45
46 Commissioner Parkhill asked if the Hennepin County approval addressed the height of the fence.

1
2 Mr. Costello responded that Hennepin County did not address height.

3
4 Chair Flannigan asked for the reasons behind the request.

5
6 Mr. Costello responded that the noise and lights from the road are affecting the homeowners and
7 are specifically bothersome in the bedroom. There have been many attempts to mitigate the effects
8 of the road noise and headlights which have included removal of windows and increased
9 landscaping. There continues to be places where the noise and lights are not able to be blocked.
10 He added that there has been quite a bit of landscaping on both side of the fence to soften the look.

11
12 Commissioner Bashioum asked if the home owners have considered planting tall evergreens.

13
14 Mr. Costello responded that they have planted evergreen trees, but it will take some time for the
15 trees to fill in and they are looking for a more immediate solution.

16
17 There being no further questions from the Commission for the applicant, Chair Flannigan opened
18 the public hearing on the application at 8:44 p.m.

19
20 There being no one wishing to comment on the application, Chair Flannigan closed the public
21 hearing at 8:44 p.m.

22
23 Chair Flannigan asked if there was a mechanism that the City can use to enforce the upkeep of the
24 fencing and its landscaping.

25
26 City Attorney Schelzel stated that the Commission could attach a maintenance condition to the
27 CUP. Enforcement is difficult. He stated that the City does not have fence maintenance ordinances
28 other than addressing safety hazards or nuisance conditions.

29
30 Chair Flannigan asked the Commission to provide feedback and comments on the application.

31
32 Commissioner Douglas stated that she does not like 8' solid fences.

33
34 Commissioner Iverson stated that the home is beautiful. She stated that any landscaping added to
35 the outside of the fence will not survive the salt and sand that will be used on the roadway. She
36 thinks that the fence height is too tall. She stated that there are some things that the homeowner
37 can do on the inside of the home to mitigate the lights from the road, but unfortunately the sound
38 is a byproduct of living so close to the road. She thought that maybe adding additional evergreens
39 closer to the house may help. She would find 6' acceptable.

40
41 Chair Flannigan stated that the homeowners purchased the property and designed a home with
42 knowledge that noise, and light may be an issue. He agreed with allowing a 6' fence height.

43
44 Commissioner Parkhill stated that he believes that the property needs the 8' fence and he would
45 be comfortable allowing it.

46

1 Commissioner Bashioum stated that the increased fence height had already been allowed on other
2 properties.

3
4 Commissioner Plantan asked if the other properties where the additional fence height was allowed
5 were on grade or with a retaining wall.

6
7 Planner Kieser stated that one of the properties was on grade and he was unsure about the other.

8
9 Commissioner Parkhill stated that because the house was on a hill it would make sense to him that
10 additional screening would be necessary.

11
12 Chair Flannigan stated that he would think the opposite would be true.

13
14 Commissioner Iverson stated that she frequently bikes on the sidewalk past the property and she
15 has noticed a clear view of the homeowner sitting in his living room due to the grade of the house.
16 She stated that with or without the fence the line of sight would exist.

17
18 Commissioner Bashioum stated that it doesn't seem fair to grant a variance for some and not for
19 all on the same street. She would like to direct staff to review the ordinance.

20
21 Planner Kieser stated that he identified two properties that have been granted the fence height. He
22 added that there are many other properties that constructed their fences prior to the ordinance being
23 established. Therefore, there are likely a large number of fences above the fence requirement.

24
25 City Attorney Schelzel clarified that the Commission is considering a request for a Conditional
26 Use Permit and not a variance. He referred the Commission to the standards for considering a
27 CUP. He advised the Commission to determine if the standards have or have not been met and
28 then vote accordingly.

29
30 Commissioner Iverson stated that a comment that has stayed with her for many years is the idea
31 that Wayzata should not want to be known as the City of fences. When considering the character
32 of the Wayzata community it is important to consider the amount of fencing present.

33
34 Commissioner Bashioum stated that she would like to see constancy in the decision making.

35
36 Commissioner Plantan reminded the Commission about a recent application for a solid fence with
37 a height increase that was ultimately denied. She stated that consistency is not a large concern for
38 her because the focus should continue to remain on the impact the fence would have on the
39 surrounding areas and those areas are very inconsistent.

40
41 Chair Flannigan asked for a motion on the application.

42
43
44 Commissioner Parkhill made a motion, seconded by Commissioner Bashioum, to direct staff to
45 prepare a draft Planning Commission Report and Recommendation, with appropriate findings,
46 reflecting a recommendation of approval of a Conditional Use Permit for a fence consisting of

greater than 50% solid matter, up to eight feet in height, and are setback a minimum of ten feet from the street or roadway are allowed in the front yard for this CUP, in accordance with the plan submitted with the clarification of the 6' height at the gate and its adjacent fencing for the property located at 663 Bushaway Road for review and adoption at the next Planning Commission meeting. The motion failed with 3 ayes and 3 nays (Douglas, Iverson, Plantan).

Commissioner Iverson stated that she would be willing to change her vote to allow the application to move to the City Council.

Chair Flannigan stated that he would encourage the applicant to minimize the amount of fencing that is at eight foot tall.

Chair Flannigan asked for another motion.

Commissioner Parkhill made a motion, seconded by Commissioner Bashioum, to direct staff to prepare a draft Planning Commission Report and Recommendation, with appropriate findings, reflecting a recommendation of approval of a Conditional Use Permit for a fence consisting of greater than 50% solid matter, up to eight feet in height, and are setback a minimum of ten feet from the street or roadway are allowed in the front yard for this CUP, in accordance with the plan submitted with the clarification of the 6' height at the gate and its adjacent fencing for the property located at 663 Bushaway Road for review and adoption at the next Planning Commission meeting. The motion carried with 4 ayes and 2 nays (Douglas, Plantan).

Commissioner Douglas stated that it isn't the height that concerns her as much as the solid material.

AGENDA ITEM 6. Other Items:

a.) Review of Development Activities

Assistant Planner, Nick Kieser stated that the Boatworks application public hearing is scheduled for the October 21 meeting.

b.) September 17 City Council Meeting Report

Assistant Planner Kieser stated that the 2019 Wayzata High School football team captains shared their activities in the community and at school. The police activity report and building activity report were reviewed and approved. The second reading of the ordinance that was vacating the right of way at 275 Lake Street, which is the Wayzata Blue property. There was a 3-2 vote of approval of the 153 Peavey Lane subdivision application.

c.) October 1 City Council Meeting Report

Commissioner Iverson stated that the City Council did not spend any time on Lake Effect and focused on reviewing the Wayzata Bar and Grill expansion. Due to the expense of the options

1 they determined to go back to the drawing board. Everything has been removed from the water
2 tower. Energy and Environment committee was approved.

3
4 **d.) Planning Commissioner Liaison for the October 15 City Council Meeting**

5
6 Commissioner Parkhill will attend this meeting and report back to the Planning Commission.

7
8
9 **AGENDA ITEM 8. Adjournment.**

10
11 There being no further business on the agenda, Chair Flannigan asked for a motion to adjourn.

12
13 Commissioner Bashioum made a motion, seconded by Commissioner Plantan to adjourn the
14 Planning Commission meeting. The motion carried unanimously.

15
16 The Planning Commission meeting was adjourned at 9:13 p.m.

17
18 Respectfully submitted,

19 Jenny Groess

20 *TimeSaver Off Site Secretarial, Inc.*