

**WAYZATA PLANNING COMMISSION
MEETING MINUTES
JUNE 1, 2015**

AGENDA ITEM 1. Call to Order, Roll Call and Approval of Minutes.

Vice Chair Iverson called the meeting to order at 7:00 p.m.

Present at roll call were Commissioners: Gonzalez, Ramy, Iverson, Gruber, Young, and Gnos. Absent and excused was: Chair Vanderheyden. Director of Planning and Building Gadow and City Attorney David Schelzel were also present.

Vice Chair Iverson asked for approval of the minutes from the May 4, 2015 meeting.

Commissioner Gruber requested the following changes: on page 3, line 44, change "suqare" to "square". On line 17, page 6, change "architecture" to "architect" and on page 9, line 1, is missing the name of the Commissioner who made the motion.

Commissioner Gonzalez stated she had emailed changes to Mr. Gadow.

City Attorney Schelzel stated he had sent grammatical changes to Mr. Gadow.

Commissioner Gruber made a motion, Seconded by Commissioner Gonzalez, to approve the May 4, 2015 meeting minutes as amended. The motion carried unanimously.

AGENDA ITEM 2. Regular Agenda Public Hearing Items:

a. 250 Bushaway Road – Zev and Kristi Oman

- i. Concurrent Preliminary and Final Plat for Three (3) Lot Subdivision**
- ii. Frontage Variance from Subdivision Ordinance**
- iii. Lot Area Variance from Subdivision Ordinance**

Mr. Gadow stated the property owners have submitted a Development Application requesting concurrent preliminary and final plat subdivision approval, a variance from the Subdivision Ordinance for public street frontage for proposed Lot 3, and a variance from the Subdivision Ordinance for lot area under 2-acres. He reviewed the Staff Report, certificate of survey and preliminary plat, the final plat, the grading and utility plan, and the significant tree inventory plan. He explained the Applicant does not have building elevations or plans available for the proposed three (3) lots at this time. He said that as a condition of any approval of this Application, the Planning Commission should consider requiring that the Applicant and/or future homeowner submit plans for review and approval by the Planning Commission and the City Council depicting appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of the buildings proposed to demonstrate similarity to the characteristics and quality of the existing homes in the neighborhood. The Fire Marshall had also reviewed the

1 application and Lots 1 and 3 would be more than 150-feet from a public road and would require
2 the fire access road be widened to 20-feet to within 150-feet of the Lot 3 building and a fire
3 hydrant be added.

4
5 Commissioner Gonzalez asked who owned the easement and had rights to this easement.

6
7 Mr. Gadow explained there were many property owners along this stretch that have various
8 rights and the City is not a party to this easement.

9
10 Mr. Peter Benincasa, Executive Real Estate, representing the Applicant, provided background on
11 the property and explained the Applicant would like to develop their property similar to the rest
12 of the neighborhood. He said the Applicant already has easement rights and the proposed lot
13 sizes meet the R1 District requirement, but the City made changes to the size requirements after
14 Mr. and Mrs. Oman purchased the property. The adverse feedback this Application has received
15 would be due to previous developments that had issues. The new development would be on the
16 first lot in the neighborhood so this would not impact traffic or provide heavy construction
17 equipment traffic throughout the neighborhood.

18
19 Commissioner Ramy asked if there would be a substantial amount of excavation to orient the
20 homes or provide back yards.

21
22 Mr. Benincasa stated there are several home designs that would fit into the property that would
23 not require substantial excavating.

24
25 Mr. Gadow stated the City would need more information when final plans are proposed in order
26 to understand the grading impacts.

27
28 Vice Chair Iverson asked Mr. Gadow if Lecy Brothers had requested variances for their
29 development.

30
31 Mr. Gadow explained Lecy Brothers had asked for variances for issues pertaining to the
32 roadway. The original PUD proposed by Lecy Brothers had been approved under the R1A
33 District standards, with an 80,000 square foot lot requirement. They had asked for variances
34 regarding the length of the cul-de-sac and the street width of less than 20-feet without curb and
35 gutter. Mr. Gadow said that the R1A Zoning District is more compatible with the Comp Plan's
36 Bushaway Conservation District.

37
38 Commissioner Ramy asked if any Wetland Conservation Districts had jurisdiction over the
39 wetland on Lot 3.

40
41 Mr. Gadow explained there would be no proposed impacts to wetlands with this Application as
42 submitted.

43
44 Commissioner Young asked for clarification on whether the requirements east of Bushaway
45 Road are different than the requirements on the west side of Bushaway Road.

46

1 Mr. Gadow stated the east side of Bushaway is part of the Bushaway Conservation District and
2 the lot size requirement for this district is 2-acres in order to recognize the larger lot estates. The
3 west side of Bushaway Road does have smaller lot sizes because that was the historical
4 development pattern at that time.

5
6 Vice Chair Iverson opened the public hearing at 7:24 p.m.
7

8 Mr. Roy Lecy, Lecy Brothers Homes and Remodeling, 15012 Highway 7, Minnetonka, stated he
9 owns one of the lots in the Enchanted Wood Development and was also the Developer for the six
10 (6) lot Enchanted Wood PUD Development. He stated at the time of the Enchanted Woods
11 Development they had tried to get approval for 1-acre lots but had been told only 2-acre lots
12 would be allowed in this area. They had also been required to increase the width of the existing
13 private roadway from 14-feet to 16-feet in some areas and 20-feet in other areas. He explained
14 the Applicant and two (2) other property owners had sued Lecy Brothers for over burdening the
15 easement. He would like to be sure that this Development is held to the same standards that the
16 Enchanted Woods Development had been held to. He asked where the construction vehicles
17 would turn around. As part of the Lecy Brothers development, the road had been newly
18 constructed from Hwy 101 to their development. He asked who would be responsible for
19 repairing the road damage during construction.
20

21 Commissioner Ramy asked how costs of maintenance of the road was divided among benefited
22 properties.
23

24 Mr. Lecy stated the maintenance was divided equally among the six (6) homes in the Enchanted
25 Wood Development, and they ask the Omans and one other homeowner to contribute to the snow
26 plowing. If there are homes added, then he would like to see a legal requirement or document
27 for these homeowners to pay for the maintenance and snow removal on this road.
28

29 Commissioner Gonzalez stated Lecy Brothers had been granted a variance to have a private
30 street in their development as long as it was widened to meet the requirements of the Fire
31 Marshal. She further noted that private streets are not usually allowed under the Subdivision
32 Ordinance.
33

34 Mr. Gadow stated the existing easement is a 20-foot easement and this does not allow for a full
35 build out of a 20-foot wide street. So, Mr. Lecy had been required to put in a secondary 20-foot
36 access road for the Fire Department. The Fire Marshal is recommending the Applicant work to
37 widen the easement to accommodate a 20-foot wide road.
38

39 Commissioner Gonzalez asked if the City had ever required homes to have sprinkler systems if it
40 is difficult for the Fire Department to access them.
41

42 Mr. Gadow stated the City might not be able to require this unless the home is large enough to
43 require a sprinkler system under the State Fire Code. If the roadway could not be widened, then
44 there are alternatives the Applicant could consider but these would need to be worked out with
45 the City Fire Marshal and potentially the State Fire Marshal.
46

1 Mr. Lecy stated the private street had been required. They had requested a public street that
2 came off of Holdrige and went into the Enchanted Wood Development. The City denied this
3 request due to the opposition from the Holdrige neighborhood. He explained the private road
4 had been widened to 16-feet at the recommendation of the Traffic Engineer.

5
6 Mr. Benincasa stated the Fire Marshal does not have a problem with the road width and the
7 Applicant could put in a fire hydrant. The proposed lots would be the first ones as you entered
8 the neighborhood. He explained Mr. Lecy's development should not be affected by the proposed
9 development.

10
11 There being no further comments, Vice Chair Iverson closed the public hearing at 7:40 p.m.

12
13 Commissioner Young stated the Applicant has commented that the Development would be
14 keeping with the character of the neighborhood. He asked if this would be referring to the lots
15 on the west side of Bushaway Road, which are smaller.

16
17 Mr. Benincasa stated this would be referencing the first home as you come into the
18 neighborhood, on the south or right.

19
20 Commissioner Ramy asked why the Applicant was departing from the previously approved two
21 (2) lot subdivision.

22
23 Mr. Benincasa explained the two (2) lot plan had been in 2009, prior to any development being
24 done. This would have conformed to what had been happening at that time.

25
26 Commissioner Gruber asked if any of the lots in the Enchanted Wood Development were non-
27 conforming.

28
29 Mr. Gadow stated the minimum lot size requirement for the R1A District is 80,000-square feet
30 and the Bushaway Conservation District minimum size requirement is 2-acres or about 86,000-
31 square feet. The 80,000-square foot requirement is more consistent with the Comprehensive
32 Plan guidance for this area. The Comprehensive Plan guides this property for 2-acres but the
33 corresponding Zoning is R1A.

34
35 Vice Chair Iverson asked if the Applicant would be held to the proposed lots and building pads if
36 approved.

37
38 Mr. Gadow explained the Applicant would be held to the lot configuration as shown in the final
39 plat if it were approved. This would be submitted to Hennepin County. The building pads could
40 be shifted within the plats but since there are no architectural renderings of the homes available
41 at this time, Staff would recommend a condition on any approval that any future
42 homeowner/buyer would have to have their building plans and pad layout approved by the
43 Planning Commission and City Council.

44
45 Vice Chair Iverson expressed concerns regarding the number of large trees that would be
46 removed with the proposed building pads and the potential for more if other plans are approved

1 in the future. She stated she would also like to know where the construction traffic would go and
2 how this traffic would not impact the trees. She stated she would like to see a tree preservation
3 plan for those trees that are located close to the proposed building pads. This plan would also
4 have to apply to the future owner of the property.

5
6 Commissioner Gruber asked if this would be considered a premature subdivision. She stated the
7 Commission should know what the criteria are and consider these as part of the Application.

8
9 Mr. Gadow stated there are a number of criteria under Section 805.17 of the Subdivision
10 Ordinance that should be reviewed in order to consider a subdivision premature. The burden is
11 on the Applicant to prove the subdivision is not premature.

12
13 Commissioner Gonzalez clarified the private road was on a private easement and this would not
14 involve the City unless there is a nuisance created for the City.

15
16 City Attorney Schelzel stated the City is not a party to the easement and if there are any issues
17 related to overburdening the easement, then the property owners need to work this out. He stated
18 he would have to look at the section of code on nuisances in order to know whether it would
19 apply in any way. He noted that the background information on the private access is important ,
20 however, because access is one of the criteria to be considered by the City under the Subdivision
21 Ordinance.

22
23 Vice Chair Iverson said would like to see a report that clearly lays out the grading impacts prior
24 to approving the subdivision.

25
26 City Attorney Schelzel stated that staff has suggested including a condition on any approval that
27 future homeowners provide building plans for review and approval to the Planning Commission
28 and City Council. The Planning Commission could add an additional condition to this that
29 when the plans are submitted they must include information on grading and building pads that
30 address Section 3.1.B of the Staff Report.

31
32 Commissioner Ramy stated the Applicant has not provided information showing hardship or
33 unique conditions of the property that would allow for a variance on the lot size.

34
35 Commissioner Young agreed with Commissioner Ramy in that the request for grading
36 information was premature because there are other things to consider prior to this. He stated that
37 when he evaluates this Application, this does not keep with the rhythm of the neighborhood, the
38 lots proposed are significantly smaller than what the Comprehensive Plan guides this property
39 for, the amount of tree loss is not clear and at a minimum is significant, and there is nothing
40 provided by the Applicant to show this is not a premature subdivision. He would like to see
41 these items resolved prior to looking at any grading concerns.

42
43 Commissioner Gonzalez stated page 9 of the Staff Report lays out the Variance Standards of the
44 Subdivision Ordinance. The Applicant would have to demonstrate an undue hardship and that
45 there are circumstances unique to the property that would deprive the Applicant of reasonable
46 use of the land. She said that this is not present in the Application. Granting a variance does not

1 correct inequities resulting from an extreme physical hardship such as topography. Any variance
2 that is granted requires the Applicant comply with the Comprehensive Plan and this Application
3 does not. The variance request for frontage is created by the Applicant and should not be
4 approved. She would not justify granting a variance because the owner is looking to maximize
5 their profit and economic considerations alone do not constitute a hardship.

6
7 Commissioner Gnos stated the Applicant's letter refers to a neighbor putting in a pool and
8 removing the serene, quiet atmosphere. He noted that the proposed subdivision would do the
9 same thing.

10
11 Commissioner Gruber asked if the Applicant had to prove to the Planning Commission that this
12 was not a premature subdivision, and whether this should be resolved prior to looking at the
13 variance requests.

14
15 Mr. Gadow stated that this would be one of the criteria to be considered by the Planning
16 Commission.

17
18 Commissioner Gruber made a motion, seconded by Commissioner Gonzalez, to direct Staff to
19 prepare a draft Report and Recommendation, for consideration at the next Planning Commission
20 meeting, recommending denial based on discussions of the Planning Commission, including the
21 variance standards criteria for the Subdivision Ordinance, the preliminary and final plat criteria,
22 and the premature subdivision standards. The motion carried unanimously.

23
24
25 **AGENDA ITEM 3. Other Items:**

26
27 **a. Review and adoption of Planning Commission Report and Recommendation on 532**
28 **Ferndale Rd W for Shoreland Conditional Use Permit and Variances**

29
30 Mr. Gadow reviewed the Report and recommendation of Approval of Shoreland Conditional Use
31 Permit, Front Yard Setback Variance, Impervious Surface Variance, and Tennis Court Variances
32 at 532 Ferndale Road West. He noted that this Application had been reviewed at the previous
33 Planning Commission and staff had been directed to prepare a draft Report and Recommendation
34 recommending approval on a 3-2 vote. The Planning Commission had indicated a condition of
35 approval should be that a landscape plan be provided to the City Council. He reviewed the
36 landscaping plan and the updated Stormwater Management Plan provided by the Applicant.

37
38 Mr. John Daly, Revision LLC, 153 E. Lake Street, Wayzata, representing the Applicant pointed
39 out updates that had been made to the proposed plans: the corners of the proposed tennis court
40 had been "clipped" to address some of the concerns about surface coverage, and the court had
41 been moved 5-feet further from the lake than originally proposed.

42
43 Commissioner Gruber asked if a grass court had been considered.

44

1 Mr. Phil Soran, 5625 Interlocking Circle, Edina, co-Applicant, stated they had considered grass
2 and clay surfaces. The grass would be difficult to maintain and the proposed surface would
3 improve the water retention.

4
5 Commissioner Gruber stated she is not comfortable with the tennis court being so close to the
6 lake, and she would not support this portion of the recommendation.

7
8 City Attorney Schelzel noted that staff had been directed by the Planning Commission at its last
9 meeting to prepare a draft Report and Recommendation recommending approval of the
10 Application for adoption at the present Planning Commission meeting. He suggested the
11 Planning Commission take a vote on adopting the draft Report and Recommendation that had
12 been prepared, and if the Report was not adopted in its entirety, then take separate votes on the
13 various components of the Report.

14
15 Mr. Gadow explained the Lakeshore section of the Code does not designate between principle
16 uses or accessory uses. A water-orientated structure can be as close as 10-feet to the shore.

17
18 Commissioner Young made a motion, seconded by Commissioner Ramy, to adopt the draft
19 Report and Recommendation prepared by staff, recommending approval of Shoreland
20 Conditional Use Permit, Front Yard Setback Variance, Impervious Surface Variance, and tennis
21 Court Variances at 532 Ferndale Road West. The motion failed: 3-ayes and 3-nays (Gruber,
22 Gonzalez, Iverson)

23
24 Commissioner Gnos asked if the Applicant would consider a grass court if Commissioner Gruber
25 would be in favor of the tennis court.

26
27 Commissioner Gruber stated she would be in favor of the tennis court if it were grass.

28
29 Commissioner Gonzalez made a motion, seconded by Commissioner Ramy, to recommend
30 approval of the Front Yard Setback Variance based on the findings of fact in the draft Report and
31 Recommendation, previous discussions, and public comments. The motion carried unanimously.

32
33 City Attorney Schelzel asked if a Shoreland Conditional Use Permit would be required if there
34 were no tennis court.

35
36 Mr. Gadow stated there would not be a need for a Shoreland CUP if the tennis court was not
37 included in the Application.

38
39 Commissioner Young made a motion, seconded by Commissioner Ramy, to recommend
40 approval of the Shoreland Conditional Use Permit based on the findings of fact in the draft
41 Report and Recommendation. The motion failed: 3-ayes and 3-nays (Gruber, Gonzalez,
42 Iverson).

43
44 City Attorney Schelzel explained the outcome of the votes for each request would be forwarded
45 to the City Council.

46

1 Commissioner Ramy made a motion, seconded by Commissioner Young, to recommend
2 approval of the Impervious Surface Variance based on the findings of fact in the draft Report and
3 Recommendation and public comments. The motion failed: 3-ayes and 3-nays (Gruber,
4 Gonzalez, Iverson).

5
6 Commissioner Gnos made a motion, seconded by Commissioner Young, to recommend approval
7 of Variances from the front yard, side yard, and Lakeshore setbacks for accessory uses for
8 installation of a tennis court based on the findings of fact in the draft Report and
9 Recommendation. The motion failed: 3-ayes and 3-nays (Gruber, Gonzalez, Iverson).

10
11
12 **b. Review of Development Activities**

13
14 Mr. Gadow reviewed the items that would be on the next Planning Commission meeting agenda
15 including the draft report for 250 Bushaway Road, the Lake Effect Project, and other workshop
16 items. There will be a joint workshop with the City Council in June to discuss neighborhood
17 zoning.

18
19 **c. Other Items**

20
21 Commissioner Gonzalez provided an update on City Council activity including the approval of
22 the Harmony Circle and Central Avenue Applications and the Centennial Home presentation by
23 the Heritage Preservation Board.

24
25 Mr. Gadow stated there would be an update on the relocation of the historic home in the 313
26 Central Avenue Project.

27
28
29 **AGENDA ITEM 4. Adjournment.**

30
31 There being no further business, Commissioner Young made a motion, seconded by
32 Commissioner Ramy, to adjourn the meeting. The motion passed unanimously.

33
34 The meeting was adjourned at 8:46 p.m.

35
36 Respectfully submitted,

37
38 Tina Borg
39 *TimeSaver Off Site Secretarial, Inc.*