

**MINNETONKA PLANNING COMMISSION
MINUTES**

FEBRUARY 21, 2008

1. CALL TO ORDER

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

2. ROLL CALL

Commissioners Blatz, Lehman, Schmitz, Sjeklocha, Walker, Adams, and Cheleen were present.

Staff members present: City Planner Julie Wischnack, Natural Resource Manager Jo Colleran, Planning Technician Jeff Thomson, and Assistant City Engineer Steve Lillehaug.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with an additional comment and changes to a staff report provided in the change memo dated February 21, 2008.

- 4. APPROVAL OF MINUTES:** February 7, 2008

Adams moved, second by Blatz, to approve the February 7, 2008 meeting minutes as submitted.

Blatz, Lehman, Schmitz, Sjeklocha, Walker, Adams, and Cheleen voted yes. Motion carried.

5. REPORT FROM STAFF

Wischnack briefed the commission on a land use application considered by the city council at its meeting of February 11, 2008:

- Adopted an ordinance modifying a wetland overlay district boundary for John and Maressia Twele at 5117 and 5121 Baker Road (07017).

Wischnack reported that a comprehensive guide plan public hearing regarding the I-394 corridor and Highway 7 areas was held. Comments provided by the public will be posted on the city's website Monday, February 25, 2008.

- 6. REPORT FROM PLANNING COMMISSION MEMBERS:** None

7. PUBLIC HEARINGS: CONSENT AGENDA

The item was not removed from the consent agenda for discussion or separate action.

In response to Adams' question, Lillehaug explained the drainage pond's location and its outlet's connection to an existing culvert.

Lehman moved, second by Adams, to approve the item listed on the consent agenda as recommended in the respective staff report as follows:

A. Site and building plan to construct a clubhouse building at the existing Conservatory apartment complex at 10601–10681 Smetana Road. (08003.08a).

Approve the minor amendment to the existing "Fehl Addition" master development plan, as it pertains to The Conservatory at 10601 Smetana Road. Approval is based on finding that the amendment meets all required standards and ordinances. Approval is subject to the following conditions:

- 1) Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan date-stamped January 17, 2008.
 - Grading plan date-stamped January 17, 2008.
 - Landscaping plan date-stamped January 17, 2008.
 - Building elevations date-stamped January 17, 2008.
- 2) A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
 - a. The following must be submitted for the grading permit to be considered complete.
 - (1) Final grading, drainage and erosion control plans must be submitted for staff approval. The plans must:
 - (a) Include a drainage report calculating runoff rate for 1 and 10 year storm events.

- (b) Include one-inch of infiltration associated with new impervious surface must be accommodated. Infiltration details and design for this infiltration must be submitted.
 - (c) Include rip rap details for flared end sections and the proposed outlet control structure.
 - (d) Include pond cross-section detail.
 - (e) Use Mn/DOT standard plate for pedestrian curb ramps.
 - (f) Comply with the preliminary grading plan.
 - (g) Preserve trees designated for preservation at the time of approval.
 - (h) Show sewer and water services to minimize impact to any significant trees.
- (2) Final utility plans must be submitted for staff review and approval. The plans must:
- (a) Include details for sanitary sewer and water service connections. Water service size must be determined and shown on the plans.
 - (b) Label all new utilities as "PRIVATE."
 - (c) Note that "Trail Closed" signs and barricades will be used in conjunction with utility work.
- (3) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit, wetland restoration, landscaping requirements, and to restore the site. The developer may submit one itemized letter of credit, if approved by staff. The city will not release or reduce the letters of credit or cash escrow until work has been completed according to the plans approved by the city.

- (4) A drainage and utility easement over the 884.1 elevation. The easement must be prepared by an attorney knowledgeable in the area of real estate and is subject to the review and approval of the city attorney. The easement and associated drawing must be recorded with the county.
 - (5) A pond maintenance plan and agreement. The plan and agreement must identify owner, parties responsible for maintenance and a inspection/maintenance schedule and checklist for the private pond.
 - (6) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.
- b. Prior to issuance of a grading permit:
- (1) Install a temporary rock driveway, erosion control, tree and wetland protection fencing for staff inspection. These items must be maintained throughout the course of construction.
- c. Permits may be required from other outside agencies including, but not limited to the MPCA and Nine Mile Creek Watershed District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.
- 3) Prior to issuance of a building permit:
- a. Submit the following items for staff review and approval:
- (1) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.
 - (2) A landscaping and tree mitigation plan.
 - (a) The plan must have a minimum landscape value of 2% of the total project value, including building construction, site preparation, and site improvements.

- (b) Amur maples in the proposed landscape plan must be replaced with another species acceptable to natural resource staff.
 - (c) Additional native tree and shrub plantings on the northwest side of the site may be included and would count toward the monetary value of the landscape plan.
- (4) Submit cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:
- The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and
 - If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
- (5) A letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping.
- (6) An illumination plan for staff approval.
- b. All required hook-up fees.
- 4) The existing wetland buffer east of the existing driveway must be maintained.
 - 5) The property owner is responsible for replacing any required landscaping that dies.
 - 6) All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-

contained mechanical units that blend in with the building architecture are exempt from the screening requirement.

- 7) Approval does not include the signs shown on the drawings. Separate permits are required from staff.
- 8) Construction must begin by December 31, 2009, unless the planning commission grants a time extension.

Blatz, Lehman, Schmitz, Sjeklocha, Walker, Adams, and Cheleen voted yes. Motion carried and the item on the consent agenda was approved as submitted.

8. PUBLIC HEARINGS

A. Conditional use permit to convert the existing house at 11213 Minnetonka Boulevard into a licensed day care facility for 35 children for Jewish Family Foundation. (07062.07a)

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

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

Adams asked if Hennepin County approved the proposal. Thomson stated that a county representative reviewed the proposal and agreed to grant the access permit on the conditions that the median be extended and the access widened. Widening the access would require relocation of a utility pole.

Lehman asked what agreements were reached with residents of the area the last time the intersection was improved. Lillehaug stated that no official agreements were recorded with the properties in regard to the access. The applicant's driveway was relocated further to the west during the last intersection improvement project. Lehman was interested in discussions that took place with residents regarding concerns with the intersection. Lillehaug explained that the median would have, typically, been extended further west in a similar situation. To ensure full access to the properties, it was not extended. There were no promises made for the future.

Lehman commented on the parking stall on the west having access to the main entrance to the building. He questioned why the east sidewalk access would not work as well as the west sidewalk access. Thomson stated that the state's

building code requires that the stall provide accessibility to the front entrance and meet Americans with Disability Act requirements. There is a stairway between the east parking area and the front entrance.

Walker asked if the applicant was committed to keeping the population of the daycare at no more than 20. Thomson explained that the proposal initially requested a capacity of 35 students. The applicant agreed to decrease the number to 20. A daycare of 12 or fewer students is a permitted use in a single-family residence. Thomson directed the question to the applicant.

Schmitz asked if the residence across the street is a daycare. Thomson answered that the neighboring properties are used as single-family residences. The residence across the street does operate a daycare as an accessory use of the single-family residence.

Mordechai Grossbaum, 3301 Robinwood Lane, applicant, favored the elimination of the median. He will work through conflicts with the project. The median requirement may force him to give up the project.

Blatz was curious how many teachers would work at the facility. Mr. Grossbaum stated that state law mandates a ratio of 1 teacher to 7 younger students. For older students, the ratio is 1 teacher to 10 students. He has been stalling people. The process is taking longer than he expected.

Walker asked how the number of students would be limited. Mr. Grossbaum explained that the state requires 35 square feet for each child. He was given advice to include the largest number of students allowed when applying for the conditional use permit so he would not have to return for authorization to add students. Staff suggested 20. He would work with 20.

Walker asked for the current enrollment. Mr. Grossbaum responded zero. He had no one lined-up.

Mr. Grossbaum thanked Thomson for his hard work. It was a pleasure to work with him.

The public hearing was opened.

Mike Nedder, 11301 Minnetonka Boulevard, was not opposed to the daycare, but was opposed to changing the median. Two years of dealing with construction was enough.

Richard Schnitzus, 11306 Minnetonka Boulevard, stated that the median size was reduced twice during the planning stage last time. Nobody in the neighborhood thought another improvement would be done this soon.

Heidi Miller Nedder, 11301 Minnetonka Boulevard, stated that she takes care of an elderly person who has dementia. She was concerned the noise would agitate him. She was concerned with the number of students increasing to 25 or 30.

No additional testimony was submitted and the hearing was closed.

Sjeklocha asked what type of signage would be allowed. Thomson explained that the city's ordinance would allow the site to have a monument-style sign on the property. A wall sign would also be allowed on the structure. An illuminated sign could not face single-family residential housing.

Lehman reviewed that the extension of the median requirement was Hennepin County's decision. He asked if the city has any influence with the county's ultimate determination. Lillehaug stated that staff struggled with the situation. The county wants to protect its road system. The city considers local access. In this case, it is the city's opinion that the county's extension of the median requirement would be a better option. It implies other safety issues with the inherent u-turn with the right in and right out only.

Lehman stated that the applicant said that the location is not unique in terms of concerns with the close cross traffic turning to enter businesses. He provided several examples. It troubled him that the applicant and neighbors would be adversely impacted by the requirement to extend the median if the same standard is not being applied in similar situations.

Schmitz clarified that the conditional use permit would limit the number of students to 20. An increase in students would need approval by the city.

Chair Cheleen lives close to the Minnetonka Boulevard and County Road 101 intersection. Those medians are not as long, but the streets are wide and allow for traffic to pass turning vehicles. He wondered if the street should be widened if the median would be extended. Lillehaug agreed. Curbing, trail, and acquisition of property from the adjacent property owner would need to occur to widen the paved portion of the street.

Chair Cheleen questioned if it is an expectation of staff that the county will require the extension of the median in order to grant an access permit. Lillehaug

responded that the county has stated that it would be a requirement for approval of the access permit.

Adams supports the daycare. If the county insists on having the median, it would impose a hardship on the neighborhood. He did not support the proposal because of the median extension requirement.

Blatz suggested the applicant open the facility for 12 students and then see what the demand would be in the future.

Mr. Grossbaum discussed the traffic pattern options. He wanted to sit down with the city and county to work through the traffic issues. He needed to consider what it would take to make the facility viable. He did not want to impact the neighbors at all. They have been very kind. The median would be troublesome and is not needed. The project is doable. He questioned if all the medians in the city need to be extended or if this is the only one. If the access is safe elsewhere, it should be safe here as well.

Chair Cheleen asked Lillehaug how much revamping the intersection would cost and if the applicant would have to pay for it. Lillehaug confirmed that the applicant would be responsible for the cost. He guessed it would cost somewhere between \$20,000 and \$50,000.

Chair Cheleen reviewed that a facility of 12 students or fewer would not need a conditional use permit or any modifications. Wischnack stated that no land-use approval would be needed from the city. Building code and environmental health provisions would apply.

Chair Cheleen had a hard time supporting the proposal. He made a right-turn on green at the intersection and a van behind him honked. The easiest solution might be the 12 or less students.

Mr. Grossbaum wanted to make the facility work better and support more than 12 students. He wanted the law to work along with the project, get behind the project, and make it work. A driver may get honked at driving on any busy street. A traffic engineer told him that a 90-degree turn would be safer. He requested the city approve the application. Then he would deal with the county. A facility with 20 students would not support construction of the median.

Schmitz asked where the county's position fits in the review of the conditional use permit, site and building plan review, and setback variance. Wischnack

answered that the site and building plan approval hinges on the applicant receiving an access permit from Hennepin County.

Schmitz asked if there was a point where the county would not require a median. Lillehaug struggled with that himself. There was no clear answer. If the number of students was reduced to 12, then a permit would no longer be required because the driveway would no longer have to be modified.

Wischnack explained that state law allows single-family residences to house daycares for 12 children or less.

In response to Lehman's question, Wischnack agreed that staff does not act as an advocate. Staff facilitates a process in which applications are reviewed and a professional recommendation is provided.

Chair Cheleen supports the daycare, but was concerned with the impact to the neighborhood. He was skeptical that the county would allow more than 12 students without modifying the median. He did not support creating such upheaval again. A small daycare operates across the street. It would create a hardship for that resident. He did not support the proposal.

Walker opposed the project due to the traffic issues, volume of activity, and cost accrued for the curb and street changes.

Adams moved, second by Walker, to recommend that the city council adopt the resolution on pages A20-A23 of the staff report with changes provided in the change memo dated February 21, 2008, denying the applicant's requested conditional use permit, with variances, and site and building plans based on the following findings:

- 1) The proposal does not meet the required general conditional use standards, as the day care use may adversely impact public safety on adjacent roadways.
 - a. The access to the subject property is generally too close to the intersection of County State Aid Highway (CSAH) 73 and Minnetonka Boulevard.
 - (1) There is potential for east-bound vehicles waiting at the intersection to queue through and beyond driveway to the subject property. This would create a traffic conflict between

these stacked vehicles and vehicles attempting to turn into or out of the site.

- (2) Westbound vehicles attempting to turn left into the site would block through westbound traffic. This has the potential to create a queue that backs up into the signalized intersection on occasion.
- b. To mitigate left-turn conflicts into and out of the site, the existing concrete median must be extended beyond the subject property.
 - (1) The median would result in U-turns west of median, as well as at the signalized intersection.
 - 2) The proposal does not meet the required specific conditional use permit standards.
 - a. The proposal requires both building and parking setback variances.
- 3) The proposal does not meet site and building plan requirements.
 - a. The existing concrete median would be required to mitigate left-turn conflicts to the subject property. This median, based entirely on the applicant's proposal, would substantially affect neighboring properties directly north of Minnetonka Boulevard. The properties currently have full access. However, following construction of the median, the properties would have right-in/right-out access only.

Blatz, Lehman, Schmitz, Sjeklocha, Walker, Adams, and Cheleen voted yes. Motion carried.

Adams reminded the applicant that a daycare for 12 or fewer children could be done at the site without the county's access permit approval.

Chair Cheleen announced that the next planning commission meeting will be March 6, 2008.

9. ADJOURNMENT

Blatz moved, second by Adams, to adjourn the meeting at 7:30 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary