

MAPLE GROVE
PLANNING COMMISSION
February 28, 2022

CALL TO ORDER

A meeting of the Maple Grove Planning Commission was held at 7:00 p.m. on February 28, 2022 at the Maple Grove City Hall, Hennepin County, Minnesota. Chair Lamothe called the meeting to order at 7:00 p.m.

PLEDGE OF
ALLEGIANCE

ROLL CALL

Planning Commission members present were Chair Craig Lamothe, Chris Ayika (attending remotely), Susan Lindeman (attending remotely), Chuck Lenthe, Michael Ostaffe, and Joe Piket. Absent was Lorie Klein (excused). Present also were Karen Jaeger, City Council Liaison; Joe Hogeboom, Community and Economic Development Director; Peter Vickerman, Planning Manager; Jesse Corrow, Associate Planner; and Scott Landsman, City Attorney.

ITEMS TO BE
REMOVED FROM
THE AGENDA

Chair Lamothe requested an item be added to the Consent Agenda that would table action for the Westin Commons 2nd Addition request to the March 14, 2022 Planning Commission meeting.

Motion by Chair Lamothe, seconded by Commissioner Lenthe, to add Item B to the Consent Agenda that would TABLE action on the Westin Commons 2nd Addition to the March 14, 2022 Planning Commission meeting. Upon call of the motion by Chair Lamothe, there were six ayes and no nays. Motion carried.

CONSENT ITEMS

The following Consent Items were presented for the Commission's approval:

- A. Regular Meeting – February 14, 2022
- B. Westin Commons 2nd Addition request **TABLED** to March 14, 2022.

Commissioner Ostaffe requested a change to the February 14 minutes on Page 14 noting the blank line should be filled in with his name. He requested on Page 15, paragraph 5 changing size to side.

Motion by Chair Lamothe, seconded by Commissioner Ostaffe, to approve the Consent Items as amended. Upon call of the motion by Chair Lamothe, there were six ayes and no nays. Motion carried.

**CONSIDERATION
OF ITEMS PULLED
FROM CONSENT
AGENDA**

None.

**REVIEW OF THE
CITY COUNCIL
MINUTES FROM
THEIR REGULAR
MEETING OF
FEBRUARY 22,
2022**

Mr. Vickerman reviewed with the Commission what items the City Council approved that was given direction at the Planning Commission level.

OLD BUSINESS

No items to present.

NEW BUSINESS

**ARBOR LAKES
BUSINESS PARK
PHASE 2
BUILDING B**

**ENDEAVOR
DEVELOPMENT**

**ELM CREEK
BOULEVARD AND
FOUNTAINS
DRIVE**

**PUD
DEVELOPMENT
STAGE PLAN AND
FINAL PLAT TO
CONSTRUCT**

Mr. Vickerman stated Endeavor Development is seeking PUD development stage plan and final plat approval for building B of the second phase of Arbor Lakes Business Park. The subject property is located at the northeast intersection of Fountains Drive and Zachary Lane. This project was first brought forward for approvals by the city in 2017 and received renewed approvals for concept stage plan in 2021. The first building of phase two received development stage plan approval in 2021 and is currently under construction. This request for PUD development stage plan and final plat approval matches the development concept and comments that were previously approved. The applicant is proposing to construct one building, building B, that is a total of 221,549 square feet in size. The proposed development is consistent and mirrors what was developed in the first phase of Arbor Lakes Business Park, directly adjacent to the east of the property. Staff discussed the plans in further detail and made the following recommendation.

STAFF RECOMMENDATION:

BUILDING B

Motion to recommend that the City Council direct the City Attorney to draft a Resolution and a Planned Unit Development agreement approving the Arbor Lakes Business Park Phase 2 Building B Planned Unit Development stage plan and final plat subject to:

1. The applicant addressing to the satisfaction of the city any remaining applicable comments contained in the memorandums from:
 - a. The Community & Economic Development Department dated February 4, 2022
 - b. The Engineering Department dated January 21, 2022
 - c. The Fire Department dated January 19, 2022

The applicant shall acknowledge that Park Dedication requirements are based on staff review and recommendation to the Park and Recreation Board and their subsequent board action. Board meetings are held on the third Thursday of each month.

Discussion

Commissioner Ostaffe requested further information on the status of Phase 2 Building A. Mr. Vickerman reported he did not have this information but noted the applicant may be able to answer this question.

Commissioner Picket questioned if there was enough room between the buildings to allow two trucks to pass. Mr. Vickerman indicated this would be allowed.

The applicant was at the meeting to answer questions.

Joe Bergman, Endeavor Development representative, explained Phase 2 Building A would be completed in June. He noted he has had various prospects, but no leases were signed just yet. He reported the truck court would handle two trucks servicing both buildings at the same time.

Commissioner Ostaffe asked what percentage of office/warehouse would push the 246 parking spaces. Mr. Bergman indicated every tenant has different parking requirements. He noted some of the trailer spaces in the back could be restriped to provide more parking.

Chair Lamothe questioned if Endeavor had any prospects for the new building. Mr. Bergman commented it was speculative at this time. He stated in this market, it was hard to land a tenant without knowing when the building would be completed.

Chair Lamothe asked if there were any comments from the public. There were no comments.

Motion by Commissioner Lenthe, seconded by Commissioner Picket, to recommend that the City Council direct the City Attorney to draft a Resolution and a Planned Unit Development agreement approving the Arbor Lakes Business Park Phase 2 Building B Planned Unit Development stage plan and final plat subject to:

- 1. The applicant addressing to the satisfaction of the city any remaining applicable comments contained in the memorandums from:**
 - a. The Community & Economic Development Department dated February 4, 2022**
 - b. The Engineering Department dated January 21, 2022**
 - c. The Fire Department dated January 19, 2022**

The applicant shall acknowledge that Park Dedication requirements are based on staff review and recommendation to the Park and Recreation Board and their subsequent board action. Board meetings are held on the third Thursday of each month.

Upon call of the motion by Chair Lamothe, there were six ayes and no nays. Motion carried.

PUBLIC HEARING

7479 FERNBROOK

LANE NORTH

MICHAEL BALL

VARIANCE TO

PERMIT A 10

FOOT-8 INCH

Mr. Corrow stated the applicant is requesting a variance to permit a recently constructed shed that encroaches into the 5-foot side yard setback and is larger and taller than permitted within the shoreland setback area. The property located at 7479 Fernbrook Lane N. abuts Fish Lake and is in the shoreland overlay district. City Code allows for a water oriented accessory structure to be placed within the 75-foot shoreland setback when certain conditions are met. The code specifies the structure shall not be greater than 10 feet in height and 100 square feet in area. Additionally, the structure shall at no point be closer than 25 feet to the ordinary high-water mark

TALL AND 124
SQUARE FOOT
SHED THAT
ENCROACHES
INTO THE 5-FOOT
SIDE YARD
SETBACK

and shall conform with side yard setbacks for that zoning district. The lot meets the criteria to place a structure within the shoreland setback, however, the shed was constructed larger, taller and closer to the side yard setback than is permitted by code. Staff discussed the plans in further detail and made the following recommendation.

STAFF RECOMMENDATION:

Motion to recommend that the City Council direct the City Attorney to draft a Resolution approving the 7479 Fernbrook Lane North variance subject to:

1. The applicant addressing to the satisfaction of the city any remaining applicable comments contained in the memorandums from:
 - a. The Community & Economic Development Department dated February 22, 2022

The applicant shall acknowledge that Park Dedication requirements are based on staff review and recommendation to the Park and Recreation Board and their subsequent board action. Board meetings are held on the third Thursday of each month.

Discussion

Commissioner Picket asked if the applicant came to the City and requested a building permit. Mr. Vickerman explained the applicant reached out to the City in April of last year and inquired about a shed. The City's requirements were provided via email. He noted the shed was under construction in October of 2021 and a complaint was made due to the fact it was too close to the property line.

Commissioner Ostaffe questioned if a permit was issued. Mr. Corrow explained for a shed this size, a permit is not required. He stated sheds 200 square feet or larger require a permit.

Commissioner Picket inquired if the applicant built the shed himself or was it built by a third party. Mr. Corrow deferred this question to the applicant.

Commissioner Lenthe noted the shed encroaches into the 100 year floodplain and asked how staff felt about this matter. Mr. Corrow

stated this was not a concern for an accessory structure.

Commissioner Ostaffe questioned if there were other accessory structures or sheds in the neighborhood that were improperly placed. Mr. Corrow commented he was uncertain, but understood sheds were constructed without staff knowledge. He indicated he was not aware of any sheds in this neighborhood that were a concern, and he did not recall any other variances being approved for a shed in the shoreland setback.

Commissioner Ostaffe noted the five foot side yard setback has been in place for quite some time. Mr. Corrow reported this was the case.

Commissioner Piket asked how easy it would be to move the shed 2.2 feet if the variance were denied. Mr. Corrow indicated the shed was sitting on 4" x 4" timbers and he anticipated some remediation would have to be done.

Commissioner Lenthe stated if the variance was not approved, would the applicant have to remove the structure. Mr. Corrow commented the structure would not have to be removed, but rather the shed would have to meet the City's conditions and brought down to an appropriate area of 100 square feet and height of 10 feet. In addition, the shed would have to be moved outside of the side yard setback.

Commissioner Ayika questioned if the applicant was informed of the complaint that was made to the City. Mr. Corrow stated he was uncertain if complaining party reached out to the applicant. He explained that after the City received the complaint, staff visited the site and inspected the shed.

Commissioner Ayika inquired what the penalty was for violating the side yard setback. Mr. Corrow commented the City would give the opportunity to correct the situation. He indicated this led the applicant to apply for a variance to the side yard setback.

The applicant was at the meeting to answer questions.

Robert Kouba, representative for Michael Ball, explained his office helped prepare the variance application. He stated staff appears to have the old variance narrative that was filed on December 30, 2021. He indicated after discovering impervious surface, a subsequent narrative was filed on January 16, 2022 which had five

variance requests. He reviewed the five variance requests in further detail with the Commission. He reported his clients property was quite narrow, being only 40 feet wide. He discussed the boulder wall that was on the property and commented on the screening that would be provided, through boulders and perennials. He requested the shed be allowed to remain gray with white trim. He indicated it was his understanding there were blue and gray sheds around the lake. He commented on the height of the shed stating the machinery that would be stored within the shed was larger in size. He explained the shed was currently on 4" x 4" beams with packed gravel. He further discussed how water flowed from the shed down the hill. He stated his client had the understanding that because his lot was narrow (40 feet), this created a unique circumstance and therefore a variance should be considered. He discussed the purpose of setbacks and noted the current placement of the shed would allow for the City to access his lot for utility purposes.

Commissioner Lindeman stated it appears the applicant thought through many things when building this shed. He questioned why the applicant did not apply for a variance prior to constructing the shed if he knew there would be height and setback concerns. Mr. Kouba commented his client believed that because his lot was narrow the variance was almost automatic. Obviously, this was not the case.

Commissioner Ayika reported the applicant was provided with the City's requirements for the shed prior to designing and constructing the shed. In addition, the applicant was informed that while he was constructing the shed, the City's requirements were not being met. He asked why the applicant did not rectify the situation at that time. Mr. Kouba stated his client mistakenly believed that the narrowness of his lot and the unique situation of his parcel, that the variance request would be somewhat automatic.

Chair Lamothe opened the public hearing at 7:40 p.m.

The public was asked by Chair Lamothe if they had any comments to make regarding this application.

Dave Haas, property owner directly north of the subject property, stated he has lived in his home for the past 20 years. He questioned if the Commission would accept the purposeful disregard of City Code. He indicated he was pleased to see the line of questions the

Commission has had for the applicant's representative. He discussed how the City would be in chaos if the community did not adhere to City Code and building requirements. He reported five variances were being requested by the applicant even after the applicant requested City requirements and had a visit from City staff regarding the shed. He indicated the applicant was told the shed was too close to the property line. He noted the property was recently surveyed and the property lines were prominently marked. He stated the property owner did not apply for a permit for the shed nor did he request a variance until after the City threatened punitive action. He explained the homeowner violated the ordinances, knew he was violating the ordinances, but went ahead and constructed the shed. He stated now the applicant was requesting a variance because he was in a difficult situation. He indicated he was opposed to the requested variance.

Timothy Niles, 7469 Fernbrook Lane North, stated he owned the property adjacent to the applicant. He noted he provided the Commission with a letter. He indicated he challenged his neighbor regarding his plans back in March or April of 2021 and he was told he didn't care, he was going to build the shed anyways. He did not believe this kind of behavior should be rewarded or accepted. He commented the City sewer line runs in the area of the shed.

Motion by Chair Lamothe, seconded by Commissioner Lenthe, to close the public hearing at 7:49 p.m. Upon call of the motion by Chair Lamothe, there were six ayes and no nays. Motion carried.

Commissioner Lindeman asked if the applicant was required to get a permit for the shed. Mr. Corrow clarified a permit was not required for a shed of this size.

Chair Lamothe questioned if staff supported the screening as proposed by Mr. Kouba. Mr. Corrow reported staff was comfortable with the screening with the brown or green earthen paint color. He commented further on the impervious surface requirements.

Chair Lamothe indicated the applicant would like to keep the shed the color that it was and staff was recommending something different. He inquired how this would be handled. Mr. Vickerman stated he has had conversations with the applicant and he had the understanding the applicant supported the shed remaining the same

color with screening being added consisting of boulders and perennials.

Chair Lamothe clarified that the applicant was requesting four separate variances from the City for the shed.

Commissioner Lenthe asked if there would be shrubs or flowers to screen the shed. Mr. Vickerman stated the ordinance gives some flexibility when it comes to screening. He reported existing vegetation, new vegetation or the color of the shed should work together to help it blend in. He stated it was not the City's intent to make the sheds invisible but rather the screening should help them blend in.

Commissioner Ostaffe questioned if there were any ordinances in place that would preclude a resident from painting their house hot pink or mustard yellow. Mr. Vickerman stated not that he was aware of.

Commissioner Ostaffe discussed the sheds that were currently on the lake that were not an earthen color and asked if these sheds would have to get a permit to be painted. Mr. Vickerman explained if there was a complaint the City would have to enforce based on the complaint.

Commissioner Ostaffe inquired if a fence could be placed within on the property line. Mr. Vickerman reported this was the case.

Commissioner Lindeman reviewed a picture of the shed noting she appreciated the gray color noting it worked well with the boulder walls. Mr. Vickerman stated the guidance that is typically given is browns or greens. However, in this instance, because the shed has a boulder wall behind it, gray may be a better color for helping the shed blend in with its surrounding.

Motion by Commissioner Lindeman, seconded by Chair Lamothe, to recommend that the City Council direct the City Attorney to draft a Resolution approving the 7479 Fernbrook Lane North variance to the screening requirements to permit the shed color to remain gray.

Commissioner Lenthe explained he was struggling with this request because the applicant has not made a conscience effort to comply with City Code. He reported there were a number of areas where the applicant could have complied with the code and simply

did not. He was discouraged by the fact it would not have taken a great deal of effort to do so, and the applicant still failed to comply. He noted the building pitch could have been adjusted to fit City Code. He believed the applicant should have made an effort to comply with City Code versus just building what he wanted. In addition, he did not support this shed being located within the 100 year floodplain.

Commissioner Ayika stated in a lot of ways he agreed with Commissioner Lenthe. He commented in terms of the motion on the floor, this may be a variance that was low hanging fruit. However, he believed staff had been very lenient and noted he would not support a variance to the building color. He explained staff visited the property and the applicant had not listened to City staff or the City's requirements. He supported the building color being changed as was recommended by staff.

Commissioner Piket indicated he was struggling with this item as well. He expressed frustration with the fact the applicant constructed the shed, despite having information from the City on the proper requirements. He stated his inclination was to not support this variance or any of the other variances.

Commissioner Ostaffe commented the issue at hand was the intent of the applicant to flatly ignore the City's rules. He indicated he was having a hard time wrapping his head around this. He asked if the applicant could store the hockey boards and materials outside under a tarp instead of inside the shed. Mr. Vickerman explained this was the situation and staff reviewed the site after receiving a complaint and found the stored materials were not in compliance with City Code. The applicant was told to put the hockey materials inside.

Chair Lamothe stated he was struggling with this request as well and had to bite his tongue when considering the arrogance and attitude of the applicant when it came to process. He explained this would be a different situation had the applicant come before the Planning Commission prior to constructing the shed. He indicated he was working to put aside his disdain for the applicant and what he has done and was trying to consider the request as though it came in before the actions occurred. He reported he would be able to support all of the variances except the setback request because there was no justification.

Commissioner Lindeman commented after hearing from the neighbors she was uncertain that she would support the increased height and size of the shed. However, she believed the screening would not have been an issue had the applicant done what he was supposed to at the beginning.

Chair Lamothe reported he struggled with the shed size and height. He understood the applicant was trying to store hockey materials and equipment. However, this shed would remain with the property even if the applicant was no longer living in the home. He commented he could support the building height and size but could not support the side yard setback variance.

Commissioner Ayika indicated staff was not being punitive in terms of the shed color. He reiterated that he would not support the shed color remaining as is.

Chair Lamothe asked who the Commission was trying to solve for. He noted the gray shed blended in with the current surroundings and for this reason, he would be supporting the screening variance.

Commissioner Ostaffe clarified that staff believes adding boulders and perennials would break up the appearance of the shed and feels painting the shed green or brown would be appropriate. He reiterated that staff did not require the shed to be painted but rather, adding boulders and perennials would screen the shed. Mr. Vickerman commented staff had believed the applicant had already agreed to change the shed color, which was why the staff report was written the way it was. He noted staff supported the addition of boulders and perennials surrounding the shed.

Chair Lamothe indicated staff had recommended the shed be painted an earthen color of green or brown and the shed was currently gray in color, which required a variance to staff's recommendation.

Commissioner Picket reported there should be some consequences for the applicant for not following the rules ahead of the project.

Upon call of the motion by Chair Lamothe, there were four ayes and two nays (Commissioners Ayika and Lenthe opposed). Motion carried.

Motion by Commissioner Lenthe, seconded by Chair Lamothe,

to recommend that the City Council direct the City Attorney to draft a Resolution denying the 7479 Fernbrook Lane North side yard setback variance from 5 feet to 2.8 feet.

Commissioner Picket explained this variance would have been denied even if requested prior to the construction of the shed.

Commissioner Ayika agreed stating the applicant should be able to make a small sacrifice by moving the shed, in order to comply with City Code.

Upon call of the motion by Chair Lamothe, there were six ayes and no nays. Motion carried.

Commissioner Lenthe stated there were no practical difficulties on this lot and therefore the size of the shed should comply with City Code. He indicated he would not support an increased size in the shed.

Motion by Commissioner Lenthe, seconded by Commissioner Lindeman, to recommend that the City Council direct the City Attorney to draft a Resolution denying the 7479 Fernbrook Lane North variance to the increased area of the shed from 100 square feet to 124 square feet.

Commissioner Ostaffe anticipated that if this request had come before the Commission prior to construction of the shed, it may have been approved. He noted he would be supporting this request.

Commissioner Picket stated increased height and size were tied together. He assumed that these increases were due to the hockey lights and boards that were being stored inside the shed. He commented he would be supporting this request as well.

Chair Lamothe agreed that had this request come in prior to being constructed he would have supported the request and for this reason he would not be supporting the motion to deny.

Upon call of the motion by Chair Lamothe, there were three ayes and three nays (Commissioners Ostaffe, Picket and Chair Lamothe opposed). Motion failed.

Motion by Commissioner Ostaffe, seconded by Commissioner

Piket, to recommend that the City Council direct the City Attorney to draft a Resolution approving the 7479 Fernbrook Lane North variance to the shed height from 10 feet to 10 feet 8 inches.

Commissioner Lindeman stated she would not be supporting this motion.

Commissioner Ayika commented it was difficult to forget all that has transpired between the City, the neighbors and this applicant. He noted he was voting based on the concerns he had with the applicant and his blatant disregard of City Code.

Chair Lamothe stated the height and size variances were not substantial and for this reason, he would be supporting the dimensional changes to the shed.

Upon call of the motion by Chair Lamothe, there were three ayes and three nays (Commissioners Ayika, Lenthe and Lindeman opposed). Motion failed.

DISCUSSION
ITEMS

There were no discussion items.

ADJOURNMENT

Motion by Chair Lamothe, seconded by Commissioner Piket, to adjourn the Planning Commission meeting. Upon call of the motion by Chair Lamothe, there were six ayes and no nays. Motion carried.

Chair Lamothe adjourned the meeting at 8:38 p.m. to the next regularly scheduled meeting of the Planning Commission scheduled for March 14, 2022.