

**DRAFT MINUTES**

**CALL TO ORDER**

Chair Maddy called the meeting to order at 7:01 P.M.

**ROLL CALL**

Present: Chair Maddy; Commissioners Gault, Huskins, and Riedel; Planning Director Darling; Planning Technician Notermann; and, Council Liaison Johnson

Absent: Commissioner Eggenberger

**1. APPROVAL OF AGENDA**

**Riedel moved, Huskins seconded, approving the agenda for September 7, 2021, as presented. Motion passed 4/0.**

**2. APPROVAL OF MINUTES**

- **August 3, 2021**

**Gault moved, Huskins seconded, approving the Planning Commission Meeting Minutes of August 3, 2021, as presented. Motion passed 3/0/1 (Riedel).**

**3. MATTERS FROM THE FLOOR - NONE**

Chair Maddy explained the Planning Commission is comprised of residents of the City of Shorewood who are serving as volunteers on the Commission. The Commissioners are appointed by the City Council. The Commission's role is to help the City Council in determining zoning and planning issues. One of the Commission's responsibilities is to hold public hearings and to help develop the factual record for an application and to make a non-binding recommendation to the City Council. The recommendation is advisory only.

**4. PUBLIC HEARINGS**

**A. Urban Farm Animal Ordinance Amendments**

Planning Technician Notermann explained that in June, a resident asked the City Council to amend the City's regulations regarding required consent from a portion of the neighbors in order to have chickens or to add a variance process. She referenced a recent Minnesota Supreme Court decision that appears to require cities to follow the same process for ordinance amendments on codes related or dependent on zoning regulations as actual zoning amendments. As a result, the City Council forwarded the proposed ordinance amendments to the Planning Commission for public hearing and recommendation.

Planning Technician Notermann provided an overview of the proposed amendments based on Planning Commission direction from their August 3, 2021 meeting, as well as housekeeping corrections as recommended by staff.

**CITY OF SHOREWOOD PLANNING COMMISSION MEETING**

**SEPTEMBER 7, 2021**

**Page 2 of 8**

Commissioner Riedel asked if residents were allowed to have two dogs, but to go beyond two dogs the consent of neighbors was required.

Planning Technician Notermann stated she would have to investigate this matter further.

Commissioner Riedel suggested if this was the case that the language regarding neighbor consent for dogs be removed from this portion of City Code given the fact residents would be able to have chickens without needing to receive neighbor consent.

Commissioner Huskins questioned if a resident wishes to do something different (twice as many chickens, etc.) than is in the code, what will that trigger.

Planning Technician Notermann reported this resident would have to make a request to the City Council and staff would have to be directed to look into the request. She noted there was no variance process in place for the urban farm animals code language. Depending on the request, the City may have to consider another ordinance amendment. She explained the urban farm animal section of the code was not within the zoning code so no variance or conditional use permit would apply to these requests.

Chair Maddy opened the Public Hearing at 7:13 P.M. noting the procedures used in a Public Hearing. There being no public comment, Chair Maddy closed the Public Hearing at 7:13 P.M.

Commissioner Riedel commended the Commission for their work on this matter at the last meeting. He stated he supported removal of the neighbor consent language as he anticipated this would be an area of contention. He noted he liked the language that required the coop to be closer to the applicants house than the neighbor's house.

Commissioner Huskins recommended the fees be listed within the Ordinance. Planning Technician Notermann reported this information was within the fee schedule that was adopted by the City Council on an annual basis.

**Huskins moved, Riedel seconded, to recommend approval of ordinance approving an amendment to Shorewood City Code Chapter 705 (Farm and Other Animals) as presented by staff. Motion passed 4/0.**

**B. CUP for a fence**

**Applicant: Alec Walsh**

**Location: 5660 Minnetonka Drive**

Planning Technician Notermann gave an overview of the request by Alec Walsh for a CUP to construct a six-foot fence at 5660 Minnetonka Drive. She explained a six-foot fence in a front yard abutting an arterial road, County Road 19/Smithtown Road, is allowed with the approval of a CUP. She reviewed the R-2A Single and Two-Family Residential zoning of the subject property, applicable Code sections, staff's analysis, and findings. Staff recommended approval of the CUP subject to the applicant obtaining all necessary permits prior to constructing the fence.

Commissioner Huskins asked if the fence would be on the property line along Minnetonka Drive.

Planning Technician Notermann reported the fence along Minnetonka Drive would be four feet in height and this was allowed per City Code. She noted the portion along County Road 19 would be six feet in height, which would require a CUP.

**CITY OF SHOREWOOD PLANNING COMMISSION MEETING**

**SEPTEMBER 7, 2021**

**Page 3 of 8**

Commissioner Riedel questioned if neighbor permission was required in order to locate the fence directly on the property line.

Planning Technician Notermann explained this would be completed when the applicant applied for a zoning permit.

Alec Walsh, 5660 Minnetonka Drive, reported the fence along the west property line would be four feet from the property line. He noted there was a sewer easement along this property line and he did not want to be required to remove the fence if the City had to access the sewer line.

Commissioner Huskins questioned if the fence would be treated, painted or stained.

Mr. Walsh reported the fence would be weathered and then stained a natural tone.

Chair Maddy opened the Public Testimony portion of the Public Hearing at 7:24 P.M.

John Leebens, 23825 Smithtown Rd. stated he lived directly across the street and has done so for the past 25 years. He discussed how much traffic went by his property on a daily basis noting he fully supported the requested fence.

Chair Maddy closed the Public Testimony portion of the Public Hearing at 7:26 P.M.

**Huskins moved, Gault seconded, to recommend approval of the CUP for a six-foot fence in the front yard abutting an arterial road at 5660 Minnetonka Drive, subject to the applicant obtaining all necessary permits prior to constructing the fence. Motion passed 4/0.**

Planning Technician Notermann stated this item should appear before the Council on September 27, 2021.

**5. NEW BUSINESS**

**A. Variance to side and rear yard setback**

**Applicant: Wayne Hartmann**

**Location: 27460 Maple Ridge Lane**

Planning Technician Notermann gave an overview of the request by Wayne Hartmann for a variance to side and rear yard setbacks to construct a shed and carport on a 24-foot by 24-foot concrete pad at 27460 Maple Ridge Lane. She noted the accessory structure is already constructed and located approximately 4 feet from the side property line where ten feet is required and 16 feet from the rear property line where 50 feet is required. This variance application was submitted after City staff was made aware that the shed was under construction without permits.

Planning Technician Notermann referenced public comments received that are included in the meeting packet. She then provided an overview of the background of this request, applicable Code sections, staff analysis, variance criteria, and findings. Staff is recommending approval subject to applicant obtaining all necessary permits prior to any additional construction of the shed. Should the Planning Commission consider recommending approval of this variance, staff recommends the applicant be required to acquire all necessary permits and enter into an encroachment agreement.

Commissioner Riedel questioned when the original shed was built without a permit.

**CITY OF SHOREWOOD PLANNING COMMISSION MEETING**

**SEPTEMBER 7, 2021**

**Page 4 of 8**

Planning Technician Notermann commented it was built prior to the applicant being on the property.

Commissioner Riedel inquired if the driveway was installed without a permit.

Planning Technician Notermann stated this was the case and noted the City would require this to be rolled into zoning permit with the new structure.

Commissioner Riedel asked if a building straddles a property line, it cannot be legally non-conforming. He questioned what the process was for these buildings.

Planning Technician Notermann commented that in this instance an encroachment agreement could be pursued with the neighbor to allow the shed to remain in place, across the property line.

Commissioner Gault explained he was the neighbor and noted this shed has been in place since before 2003. He noted he moved to the property in 2005. He anticipated the encroachment occurred because there were offsetting easements on his property and on the Hartmann property. He indicated the encroachment was very minor, one foot or so.

Wayne Hartmann, 27460 Maple Ridge Lane, applicant, thanked staff for the detailed presentation. He reported his original intent was to use the original carport and lift it up. He explained it had become unusable because it was not built well and did not have a foundation. He stated his efforts failed and the building came crashing down. At that point, the building was twisted and broken, so he found it would be easier to rebuild. He reported his existing driveway runs down the property line and services the garage with an extension to the carport. He indicated this was currently non-conforming and has been non-conforming the entire time he owned the property. He explained he was looking to keep a driveway in place to the carport.

Commissioner Riedel asked if the applicant had considered applying for a permit for the process. He stated it appeared the applicant had built a shed and driveway without speaking to the City. He requested further information regarding this process.

Mr. Hartmann explained the driveway was not rebuilt, but rather remained as is. He noted with the shed he was working to make repairs and then went into an automatic replacement mode after the shed fell. He had the understanding a shed under 200 square feet did not require a building permit.

Commissioner Riedel clarified an accessory structure under 200 square feet did not require a building permit, but did require a zoning permit.

Commissioner Huskins requested further information regarding the decision for the structure to have a drain and then not to have a drain.

Mr. Hartmann commented he spoke to a landscaper regarding the use of pavers because this would assist in absorbing the water runoff from the driveway. However, after speaking with staff, he learned the City of Shorewood does not recognize this as impervious surface coverage. At that point, he decided to move in another direction given the expense to install pavers. He reiterated that he was just trying to get his property back to normal.

Commissioner Huskins questioned if there was a history of water concerns on the property.

**CITY OF SHOREWOOD PLANNING COMMISSION MEETING**

**SEPTEMBER 7, 2021**

**Page 5 of 8**

Mr. Hartmann stated there was a slope on the property from the flat driveway down to the shed and water flows downhill. He commented when the old building was in place there was asphalt down the hill. He indicated the new shed would push the water to either side. He explained he was not aware that he had a drainage easement on his property, but rather was only a utility easement.

Chair Maddy explained the applicant received a variance for a bedroom expansion in the past and as part of this a ten foot drainage and utility easement may have been required. He asked if staff could check the records for that.

Planning Technician Notermann indicated staff could check the records, but noted staff does refer to these types of easements at drainage and utility easements. She explained Mr. Hartmann's easement was only referred to as a utility easement.

Mr. Hartmann stated the addition to his home was on the opposite end of the house. He noted there was supposed to be a 50 foot setback for his house, but this went right through the middle of his home. He discussed how difficult it was for a homeowner that purchases a home and has a home not within the setbacks. He commented further on how odd his lot was and explained the proposed shed location was the right place for the shed.

Gayle King, 6110 Lake Virginia Drive, stated she has lived at her property since 2003. She noted there has been a common courtesy trail that runs between down from Michelle and Wayne's driveway onto her property in order for the kids to get to the school bus. She indicated this was a loose trail and over the years the trail has washed out more and more. This was brought to her attention in May after a large rain event. She provided the Commission with a photograph of this trail. She commented further on how the base of the shed had eroded due to the rain running down the property. She explained she then began to question if there was another area the shed could be located given the topography of the property and brought these concerns to the City.

Stan King, 6110 Lake Virginia Drive, explained he was concerned with how his property will be impacted by water runoff from Mr. Hartmann's property. He indicated asphalt and cement cause a great deal of water runoff and he wanted to be assured drainage and mitigation measures were in place. He noted erosion was occurring this year, which was a drought year.

Ms. King stated the building looked nice, but she was concerned about the erosion and runoff.

Commissioner Riedel asked what could be done to solve the problem in terms of drainage.

Mr. King indicated he was not an engineer. He noted the City had engineers that had expertise to address this concern.

Ms. King explained she had pictures of the erosion area and stated she would email these to the City.

Mr. Hartmann clarified he did not intend it was no big deal the water was running downhill, rather this was a statement of fact. He reported his work on the property had not changed the fact that the water still ran downhill. He explained the new shed was not changing the fact that there would be water running off his property down the hill. He indicated the boards were put in place to protect the floating slab. He commented he did not suggest to Peggy that a drain be installed, rather the neighbors were installing a drain on their driveway. He noted he has lost six maple trees on his property due to water runoff from Peggy's property and he was not complaining, rather he knew that water ran downhill and he would have to accommodate this water.

**CITY OF SHOREWOOD PLANNING COMMISSION MEETING**

**SEPTEMBER 7, 2021**

**Page 6 of 8**

Chair Maddy encouraged the residents in attendance to just agree to disagree on this matter and to respect both sides of the issue.

Chair Maddy commented the applicant had constructed a shed that was just shy of 600 square feet when only a 200 square foot structure was allowed without a building permit.

Planning Technician Notermann explained the applicant would be required to secure a building permit.

Commissioner Huskins questioned if staff has directed the City Engineer to look at the drainage issues south of the property given the topography on this lot. He stated he did not recall if there was a storm sewer drain on this street.

Planning Technician Notermann commented she was not sure if there was a storm sewer drain on this street but noted the City Engineer's would review the building permit application which would also address drainage and runoff concerns.

Commissioner Gault did not believe there was anywhere for the water to go, other than down the Hartmann's driveway.

Commissioner Riedel stated if the shed had not been straddling the property line, it would have been legally non-conforming. In that case the owner would have been able to rebuild the shed with the same footprint without any variance requests needed. With respect to the owner rebuilding the shed without a permit, he can be faulted for doing that but it would be reasonable to consider the request given the fact an existing structure can be rebuilt and the variance was needed because the structure straddled the line. However, the drainage concerns change the matter and a permit was needed to redo the driveway. He discussed how the matter was complicated because the work was done and there were drainage concerns. His instinct would be to have a study done on the drainage prior to approving a building permit. He stated if improvements could be made to the drainage, this should be done prior to granting a building permit.

Chair Maddy commented on the building permit process and noted the applicant could not increase the amount of impervious surface or the runoff rate.

Commissioner Riedel asked how this will work with a retroactive permit, given the fact a variance was being requested for a shed that was already in place.

Planning Technician Notermann stated it was her understanding since the shed was already built, the engineer's would be able to suggest sufficient mitigation to address the drainage concerns on the property prior to issuing a building permit.

Chair Maddy indicated he has seen this before on new construction and noted a rain garden may have to be installed.

Commissioner Riedel reported the building permit would not be issued until the drainage requirements were satisfied.

Planning Technician Notermann stated this was her impression and noted this could be made a condition for approval.

**CITY OF SHOREWOOD PLANNING COMMISSION MEETING**

**SEPTEMBER 7, 2021**

**Page 7 of 8**

Commissioner Gault commented Mr. Hartmann's intent was to move the shed away from his property. He understood the intent was good, but there were some problems with the execution. He anticipated the new concrete was forcing the water around the structure where before it had gone through the structure. He believed it was appropriate to approve the variance and appreciated the fact the building permit process would look at the plans in further detail.

Chair Maddy asked if it would make sense to add a condition for approval that looked at the rate or flow of water on the property.

Planning Technician Notermann recommended this be made a condition for approval.

Commissioner Huskins discussed how it was the City's responsibility to address the water that was flowing down Mr. Hartmann's driveway.

Commissioner Riedel indicated this was the purpose of a drainage and utility easement, which was located underneath this property.

Commissioner Huskins explained the survey notes this area is a utility easement only. He commented that this roadway does not have any storm sewer drains, curb or gutter.

Commissioner Gault questioned how much more water is being diverted to the property from a fairness standpoint. He believed it should be returned to status quo. He indicated he did not support approving the variance at this time in the absence of having some way to return to status quo. He did not hear the neighbors suggest the applicant was willing to mitigate the issue. He asked what would happen when a building permit and water mitigation measures were put in place.

Planning Technician Notermann commented in a normal case when a building permit is requested without needing a variance, staff would ensure that the water running off the property wasn't increasing. She indicated there was not really a status quo, but rather the impact would not be increased on the neighboring properties.

Chair Maddy stated this would occur with this property, even though the shed was already built.

Commissioner Riedel explained he was concerned with the fact the building permit review process would not have the same force as the conditions placed on the variance, or perhaps the building permit review process could be just as strict. He recommended the variance not be granted or that a condition be placed on the variance to require a drainage study to be done.

Commissioner Gault questioned if action on this item should be tabled for a month to allow staff to further study the property.

Commissioner Riedel stated this would be another option.

Commissioner Huskins asked if the study could be completed prior to the next Planning Commission meeting.

Planning Technician Notermann commented she was uncertain if this could be completed in the next month, but anticipated this work could be done.

**CITY OF SHOREWOOD PLANNING COMMISSION MEETING**

**SEPTEMBER 7, 2021**

**Page 8 of 8**

Chair Maddy reported the Commission could approve the variance and the study could be completed through the building permit process and prior to this matter being considered by the City Council.

**Riedel moved, Huskins seconded, to recommend approval of the side and rear yard setback variance request for the a 16x 12-foot shed with an additional 16 x 10-foot carport on a 24-foot by 24-foot concrete pad constructed approximately four feet from the side property line and 16 feet from the rear property line at 27460 Maple Ridge Lane, subject to the applicant obtaining all necessary permits and entering into an encroachment agreement, directing staff to perform a drainage study prior to this item going before the City Council to ensure there is no increase in water runoff. Motion passed 3/0/1 (Gault).**

**6. OTHER BUSINESS – NONE**

**7. REPORTS**

**A. COUNCIL MEETING REPORT**

Planning Technician Notermann reported on matters considered and actions taken during Council's August 23, 2021, meeting (as detailed in the minutes for that meeting).

**B. Draft Next Meeting Agenda**

Planning Technician Notermann stated that for the next Planning Commission meeting there will be a Comprehensive Plan Amendment to consider, along with a Preliminary Plat. In addition, the City is requesting a variance at the Christmas Lake boat landing for and expansion of the ramp. The Commission will also be considering a variance on Birch Bluff for an attached garage.

**8. ADJOURNMENT**

**Huskins moved, Riedel seconded, adjourning the Planning Commission Meeting of September 7, 2021, at 8:34 P.M. Motion passed 4/0.**