

MINUTES

CALL TO ORDER

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

ROLL CALL

Present: Chair Maddy; Commissioners Eggenberger, Riedel, Huskins and Holker; Planning Director Darling; Planning Technician Carlson; and, Council Liaison Gorham

Absent: None

1. APPROVAL OF AGENDA

Riedel moved, Huskins seconded, approving the agenda for September 20, 2022, as presented. Motion passed 5/0.

2. APPROVAL OF MINUTES

- **August 2, 2022**

Commissioner Holker noted a change needed on page 10 in a statement by Mr. Chamberlain that needed to be changed from 'were' to 'weren't'. She asked if they had followed up and given more detail on the retaining wall.

Planning Director Darling stated that they had not gotten back to her on those items but noted that they had talked a bit about providing some more trees on the lower end if there was logical room for planting.

Holker moved, Riedel seconded, approving the Planning Commission Meeting Minutes of August 2, 2022, as amended. Motion passed 4-0-1 (Maddy abstained).

3. MATTERS FROM THE FLOOR

4. PUBLIC HEARINGS

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.

A. PUBLIC HEARING – CONDITIONAL USE PERMIT FOR A SPECIAL PURPOSE FENCE

**Applicant: Richard Jeidy and Virginia Ball
Location: 25140 Glen Road**

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Planning Director Darling gave an overview of the request for a Conditional Use Permit for a Special Purpose Fence to provide a barrier to reduce confrontations between the applicant and their adjacent neighbor. She explained that the City's fence regulations allow for this type of application to be reviewed as a CUP rather than a variance. She stated that the fence is proposed to be a full privacy fence at six feet in height for the majority of the length of the property line with seven feet sections at the common confrontational areas. She reviewed the City's fence regulations that typically require front yard fences to be a minimum of 25% open and a maximum of four feet high, however, the applicant has stated that a shorter fence that is 25% open would not stop the ongoing confrontations. She stated that staff recommends approval of the request. She explained that staff received seven letters regarding this application, five of the letters were from the Eng household at 25170 Glen Road which expressed concern about the application, and two letters of support, one from Kimberly and Robert Kelly, 24975 Glen Road and the other from Jen and Matthew Lafontaine, 25165 Glen Road.

Commissioner Riedel asked Planning Director Darling to explain the difference between a variance and CUP, specifically the criteria related to fences.

Planning Director Darling explained that a variance is an application proposing something that is not in keeping with the zoning regulations or would be something that is contrary to the requirements. She stated that a CUP is an allowed use in the zoning district and explained that the difference between the two was essentially a variance is an exception to the rules and a CUP is an allowed use where they would look at more conditions than with just a permitted use.

Commissioner Huskins asked if there were any pre-existing easements between these two properties that the fence may or may not impact.

Planning Director Darling stated that she has not seen any easements shown on the applicants' survey. She noted that there are drainage and utility easements on the adjacent property.

Commissioner Huskins asked if an interim CUP permit would apply to fencing under any conditions.

Planning Director Darling answered that it did not and was not an option in this scenario as the ordinance would need to name the use as an interim conditional use permit.

Commissioner Eggenberger asked what would happen if a subsequent owner took the fence down.

Planning Director Darling stated that it would be a permanent approval, so if it was removed, they could reinstall it.

Commissioner Eggenberger asked if there were any requirements for maintenance after the fence is put up.

Planning Director Darling stated that it would be the same for any structure and would need to be maintained.

Commissioner Riedel stated that the City's code is very complex when it comes to fencing and the Commission had discussions in the past about cleaning up the code. He stated that Planning Director Darling outlined in the staff report how this fence differs from the requirements that would not require a CUP. He stated that his understanding is that people are allowed to construct a

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fence, with a permit, if it is at least three feet from the property line and if it would be right on the property line, there is a requirement that they get permission from the adjacent owner. He asked if his understanding was correct that this CUP superseded that requirement.

Planning Director Darling stated that the requirement of three feet from the property line is not quite correct and explained that it is three feet, if there is an adjacent fence because that space would allow for maintenance or mowing between the fences. She stated that if the desire is to put the fence right on the property line, the City requires sign-off from the adjacent neighbor.

Chair Maddy asked if the City regulated vegetation, for example arborvitae, to a certain height or setback.

Planning Director Darling stated that the City did not regulate vegetation.

Richard Jeidy, 25140 Glen Road, explained the background and reason behind his request for this fencing was that they were attempting to minimize confrontation that they have been putting up for 17 years from their neighbor. He explained that the final straw was the vulgar insults to his wife and chasing his dog with a shovel. He stated that they are asking for the ability to have peace of mind and walk in their own yard while feeling both comfortable and safe.

Commissioner Huskins asked if Mr. Jeidy had given any consideration to maintenance if the fence was so close to the neighbors property line and asked if there was a reason it needed to be that close to the line.

Mr. Jeidy explained that the reason they have chosen vinyl as the fence material was because it is low maintenance. He stated that the ability to have it on the lot line will allow him to keep trees and bushes that would not be disturbed and stated that he really would like to have full usage of his lawn.

Commissioner Riedel stated that there is a lot of existing vegetation and asked for details on which lot they were on.

Mr. Jeidy stated that the maple and pine in the front are on his lot and explained that they had gone through mediation through the City on the arborvitae that comes right up against the lot line. He stated that originally this individual owned both homes and things kind of melded together which is the reason for the closeness of the edging to the arborvitae. He stated that he has trimmed it back over the years because he was supposed to maintain his side of the vegetation, which he has done. He stated that in the hopes of getting approval of the fencing, he has trimmed back the arborvitae at the end of the property. He stated that his request is to place the fence about 2-3 inches off the property line.

Commissioner Eggenberger asked if the arborvitae would essentially grow into the fence.

Mr. Jeidy stated that it could, but arborvitae does not really rub or wear on vinyl fencing and noted that they are planning to use a very high-end, durable vinyl. He reiterated that he would like to get as much use of his yard as possible and did not think the arborvitae or other vegetation will be an issue for the fencing.

Chair Maddy opened the Public Hearing at 7:24 P.M. noting the procedures used in a Public Hearing.

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Richard Eng, 25170 Glen Road, stated that he was the adjacent property owner. He stated that the City needs to go back and check their records regarding the easement because there is an easement for utility and drainage which was done when the lot was split in 1987. He stated that he holds the records of that and explained that it is located right at the lot line. He stated that he would question licensing for the applicants dog and asked why it would be running around and not contained. He clarified that he did not hit the dog and was defending himself from an aggressive dog. He stated that the request is for vinyl fencing and he wanted to point out that vinyl cracks so it will not be maintenance free. He expressed concern about the ability of the installation crew digging holes and doing the work to be able to put up this fence without having to trespass on his property. He stated that he is not opposed to a fence, but he has numerous plantings in the area and would prefer chain link or split rail. He stated that he had his property surveyed in 2011 and all the markers were removed within 3 weeks. He explained that he had contacted the police department and was told that it was a civil matter. He stated that he again had his property surveyed this past July and told the surveyor not to put any markers on the property line. He noted that based on his survey results, the location that they want to put their fencing is just about 3 inches away from the edge of his arborvitae. He stated that on advice of counsel, he has hired an expert with a PhD in biology and another PhD in forestry who assessed the area in August who told him that his arborvitae would be dead within a few years if the proposed fencing is put up where they are proposing. He stated that he went out and got an estimate for the replacement costs for his arborvitae which would be \$26,309.22. He stated that he cannot stop them from putting up a fence, but when that fence affects his landscaping then it will become an issue for him. He stated that he feels the fencing, as proposed, will not stop confrontation because there will be future problems with his vegetation or his trees pushing on their fence.

Commissioner Eggenberger noted that it takes 2-3 days to erect a fence and asked if Mr. Eng was implying that he would not allow the construction crew to be on his property.

Mr. Eng reiterated that if they are allowed to put up a 7 foot tall fence he questions what would happen to his landscaping, so he would not allow the crew to be on his property.

Commissioner Huskins stated that there was safety issue brought up in the document Mr. Eng had presented that he would not be able to see traffic arriving into the cul-de-sac area.

Mr. Eng stated that this is where he feels the City has it wrong and has not done enough research. He stated that since they have built the cul-de-sac, cars come and whip around the cul-de-sac without stopping, and noted that there is also a deer corridor nearby and he feels a tall fence to the street will make it difficult for him to see and have appropriate reaction time.

Commissioner Riedel asked him to point on the diagram what line of sight would be impaired by the fencing and noted that he believed the only thing that would be obscured by the fencing would be his home and not the road.

Mr. Eng stated that he will not be able to sit in his living room and see the mailman or any emergency vehicles.

Commissioner Riedel stated that the line of sight from inside his home has no bearing on safety for traffic.

Chair Maddy stated that he believes he was referring to animals or something moving from behind the fence into traffic.

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Mr. Eng stated that he was also concerned with the effect of this seven foot fencing on his home value for resale.

Joe Lugowski, 24710 Glen Road, referenced the size of the dog being discussed and explained that it is a little poodle. He stated that he had never met the dog before but when he stopped over there today, that dog literally jumped into his car, wagged its tail and licked him. He stated that the road is brand-new and in years past it was only 10-11 feet wide and full of trees, but the current visibility on the road is extremely good. He stated that cars have increased their speed and noted that he had even stopped some cars that he felt were going too fast because he is at the beginning of the street. He explained that he did not share the concerns that were given by Mr. Eng regarding visibility.

Chair Maddy closed the Public Testimony portion of the Public Hearing at 7:46 P.M.

Chair Maddy noted that included in the report are accusations and rebuttals which the Commission has read.

Commissioner Riedel stated that he thinks the distinction between a variance and a CUP is relevant. He stated that he may not be inclined to grant a variance when it has to do with a dispute between neighbors but the Code has the CUP provision for fences and there are situations where it makes sense to deviate from the four foot, 25% open rule. He stated that he feels that this request seems reasonable in every respect and would provide a solution to what appears to be a very serious concern.

Commissioner Holker stated that she agreed and noted that peace in a neighborhood is very important to her and if this action will help that, she would be in support of the request. She stated that she grew up in this neighborhood and her parents still live there. She noted that the new road is a vast improvement over what was there and does not see any concerns with regard to sight lines.

Commissioner Eggenberger stated that he has served on the Planning Commission for five years and he has never met a proposal to put up a privacy fence that he liked. He stated that he abhors privacy fences unless they screen machinery or eyesores and thinks they are bad for the City. He stated that there is an old Welsh proverb that says, "A little among neighbors is way more than riches in a wilderness.", but he plans to vote for recommending approval for this CUP.

Commissioner Huskins stated that he will also support this request, but noted that he is concerned about the potential loss of landscaping of the adjacent property, but he recognizes that is a 'what if' scenario in the future.

Chair Maddy stated that to throw out an opposing view point from Robert Frost, "Good fences make good neighbors.", and explained that the point of the poem is that many times fences aren't really needed. He stated that with this being a behavioral issue, he hates to see the City get too involved in what one neighbor says about another and vice versa because it makes everyone uncomfortable and noted that he was hopeful that it will get resolved.

Commissioner Riedel stated that he does not know the legal intricacies in this situation, but if something is permitted by the zoning code or approved of the Council, it is not clear to him that a neighbor can then sue for damages, for instance, to their landscaping. He stated that he did not intend to opine on that issue, but he would hope that there is no legal action surrounding this and hopes that the neighbors can resolve their differences.

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Chair Maddy asked that it be included in the report for the Council that if the arborvitae die and it can be attributed to the CUP that was given, whether that would constitute a taking by the City or what other legal liabilities there may be in that situation.

Planning Director Darling stated that she will have the City Attorney look into this issue prior to the Council meeting.

Riedel moved, Huskins seconded, recommending approval of the CUP for a Special Purpose Fence at 25140 Glen Road, subject to acquisition of a building permit. Motion passed 4/1 (Maddy opposed).

Planning Director Darling stated that this item will come before the City Council on October 10, 2022.

Mr. Eng asked Planning Director Darling if he came into the City tomorrow and asked for a fence permit that did not require any variances whether it would be approved.

Planning Director Darling stated that the City has a standard permit, so if no variances were needed, it would be approved.

Mr. Eng asked if that meant that if he did that and got the fence put up, then the applicant would have to have his fencing offset three feet.

Planning Director Darling explained that Mr. Jeidy's applicant was the first application, so if Mr. Eng applied for permit to install a fence, he would need to keep his 3 feet away from Mr. Jeidy's fence and not the other way around.

B. PUBLIC HEARING – PRELIMINARY PLAT FOR HIGH POINTE ESTATES 2ND ADDITION

Applicant: Roy Lecy

Location: High Pointe Estates 2nd Addition - Southeasterly extent of Charleston Circle

Planning Director Darling explained that this application is a request from the property owner for a Preliminary Plat to alter the legal description so that it can be considered a buildable lot. She noted that the property is located on the east side of the cul-de-sac at Charleston Circle and was created as a remnant property or outlot with the High Pointe Estates subdivision that could be combined with adjacent properties in the future for a larger subdivision. She stated that after twenty years, the property owner has requested this action to move forward with the sale of the property as a buildable lot which requires changing the legal description of the property. She stated that the property more than meets the requirements for lot area and width as outlined in the staff report and explained the requests for easements around the perimeter of the property along with wetland, conservation, and access easements. She gave a brief overview of the stormwater management plan and tree preservation inventory that the applicant has submitted. Staff recommends approval subject to the conditions listed in the staff report and engineers memo. She noted that there was a small typographical error in the report and clarified that there are no variances needed for this application.

Commissioner Riedel stated that there was mention of changes in the wetland delineation and asked if that was the boundary of the wetland.

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Planning Director Darling reviewed the property boundary and noted that the wetland has been delineated and explained that there is a small amount of wetland that has grown beyond the property line into this property, so they will be looking for easements. She explained that the wetland delineation has been submitted to the watershed so those boundaries are subject to change until after they have gotten their full approvals through the watershed district.

Commissioner Holker stated that she would like to understand what the original intent was for this outlot. She stated that in reading through the information, it sounds like there was not a commitment to leave it empty.

Planning Director Darling stated that was correct and explained that this particular lot was created in order to combine it with adjacent properties for future larger subdivisions, but the subdivision never occurred because they were never able to acquire additional property, so they would like to move forward on their own and create a buildable lot.

Ruth Lecy, 5630 Glen Avenue, Minnetonka, stated that Mark and Roy Lecy have owned this property for 20 years and developed High Pointe Estates from it. She explained that they simply want to change Outlot D into a single family lot in order to build one home on it. She stated that she believed that they had submitted all the necessary paperwork to the City and noted that she also has signed forms from the HOA at High Pointe Estates approving this proposed change.

Commissioner Riedel asked if this property would be subject to the HOA of High Pointe Estates.

Ms. Lecy stated that was correct.

Chair Maddy asked if the property owners had any issues with the conditions of approval that have been recommended by staff.

Ms. Lecy stated that they do not and explained that they have done a great deal of development in the area and are well aware of the parameters that have to be met.

Linda Esenther, 5960 Glencoe Road, stated that they live right next to this property and have lived there for 37 years. She explained that they do not object to this proposal because they have enough land and noted that she had initially been confused because she thought they were requesting variances. She asked how she could get access to the wetland delineation report. She stated that she would also encourage the construction company to have a meeting with the neighbors in the area so that the neighborhood understands that they are keeping the wetland and wildlife and will not be encroached upon. She stated that she would like the neighborhood to have more access to information so they can be sure where all the boundaries are located.

Planning Director Darling noted that she had not included the most recent wetland delineation in the staff report, but it is available to the public and invited Ms. Esenther to stop by City Hall and she will make her a copy of the information.

Ms. Esenther asked if residents had access to the larger file because the information in the packet was just a summary of the information.

Planning Director Darling stated that the application is all public information and she is welcome to stop by tomorrow and look through the information.

Bentley Graves, 5980 Charleston Circle, stated that he was not opposed to this request and supports building a home here, but would echo the points made by Ms. Esenther. He explained

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that there has been a lot of questions up and down his street so if Mr. Lecy would be willing to come out and speak with the neighbors, it would allow them to get their questions answered.

Neil Randen, 5960 Charleston Circle, stated that when he first received the information he assumed the access point would be High Pointe Road and is a bit confused about the access. He stated that it is currently very peaceful here and will incorporate another driveway. He stated that they have only lived here for 1.5 years and keeping the area the way it is right now is important. He stated that he does not want to see a bunch of the trees wiped out and noted that the area is overgrown and it will take a lot of work to get in cleared out and questioned, in relation to the environment, where that would all go.

Commissioner Riedel asked if the driveway would come from Charleston Circle.

Planning Director Darling stated that was correct and would also be the home's street address. She explained that this lot has no access to High Pointe Road.

Chair Maddy clarified that while this is part of the High Pointe Association, the access for the property would be off of Charleston Circle with one driveway.

Ms. Esenther shared some history on the property and explained that the reason why they were not able to develop it further is because they never wanted to sell their property.

Bonita Wylie, 5970 Charleston Circle, asked with the construction, where they would be dragging the trees and everything out. She stated that Charleston Circle has a huge crack in it right now and doesn't think the patch will be able to handle big trucks coming in and hauling all this material away. She asked if the City would immediately come in and fix the roadway or if the residents would have to drive through potholes and cracked pavement. She noted that there is a manhole right in the middle of the road so this could effect the sewer too. She stated that she was not saying that this property should not be built on, but there are some hidden areas that she would like to know what the City will do to prevent the rest of the people on the cul-de-sac from having to go through major conditions because of this project. She stated that she has lived here for 36 years and would hate to see the sewer go out. She stated that she also does not want to see all the big trees gone and described the deer and other wildlife that live there. She expressed concern for the children that play in the cul-de-sac when all the large construction equipment comes to the area.

Commissioner Riedel stated that Ms. Wylie's concerns are valid and explained that those concerning impacts from construction will be addressed in the construction permitting and the burden will be on the developer to mitigate the impacts. He noted that he lives on a one-lane road and when someone does construction, the impact on the neighborhood is significant, so he understood her concern.

Chair Maddy asked Planning Director Darling to ensure that Public Works is aware of the issues on the roadway that were raised by Ms. Wiley.

Chair Maddy closed the Public Testimony portion of the Public Hearing at 8:17 P.M.

Commissioner stated that he did not see any reason to vote for denial of this request.

Commissioner Huskins noted that the Commission is also not here to comment on the structure that will be built on the property.

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Planning Director Darling noted that the wetland report has been submitted to her for City review, but it is reviewed in its entirety by the Minnehaha Creek Watershed District who will be the ones holding a technical evaluating panel on the site. She explained that the majority of the wetland was dedicated to the City during the original subdivision. She confirmed that the home would take its access off Charleston Circle and that there would be tree removal. She stated that she assumes that the tree removal will look 'heavy' because they will have to take out all the trees around the where they are showing the building pad. She stated that the applicant will identify exactly which trees will be impacted during construction, which will be removed, and where they will be replanting. She stated that she will follow up with Public Works related to the crack in the street and confirmed that all the construction access will be on Charleston Circle because it is the only access to this lot. She encouraged residents to call the police if the construction is occurring outside of the normal construction hours. She stated that Mr. Lecy knows the City's standard construction hours and would not anticipate there being any problems in this area. She noted that construction hours are 7 a.m. to 7 p.m. on weekdays and 8:00 a.m. to 6:00 p.m. on Saturdays with no work allowed on Sundays.

Huskins moved, Holker seconded, recommending approval of the Preliminary Plat for Outlot D High Pointe Estates (PID 3411723340032), subject to the conditions included in the staff report. Motion passed 5/0.

Planning Director Darling stated that this item will go before the City Council on October 10, 2022.

5. NEW BUSINESS

6. REPORTS

- **Council Meeting Report**

Council Liaison Gorham reported on matters considered and actions taken during the Council's recent meetings.

- **Draft Next Meeting Agenda**

Planning Director Darling stated slated for the next meeting there will be a CUP for an antennae co-location and a variance request for grading for a property along Lake Minnetonka. She stated that there are a few other variance requests that have come in, but the applications are not yet complete so they may be scheduled for future meetings.

7. ADJOURNMENT

Riedel moved, Huskins seconded, adjourning the Planning Commission Meeting of September 20, 2022, at 8:30 P.M. Motion passed 5/0.