

APPROVED
Minnetonka Beach Planning Commission Meeting Minutes
March 18, 2024 – 7 pm

1. Call to Order

Chair Breazeale called the meeting to order at 7:00 pm.

2. Roll Call

Present: Commissioners Blodgett, Breazeale, Steinfeld, Swanson, Whitely, Wortman and Council Liaison Halverson. Absent: Commissioner Finnegan

Staff in attendance: City Administrator Heidi Honey, Zoning Administrator Phil Carlson

3. Approve Agenda

(Whitely motion, Swanson second to approve the agenda; all ayes.) Motion passed.

4. Approve Minutes - Regular Meeting of February 26, 2024

Commissioners noted minor edits to the minutes and Honey will make the corrections.

(Steinfeld motion, Whitely second to approve the Regular Meeting Minutes of February 26, 2024, as amended; Abstain: Wortman (due to absence). Aye: Blodgett, Breazeale, Steinfeld, Swanson, Whitely)
Motion passed.

5. Public Hearings

5.1. Land Use Requests

5.1.1. Conditional Use Permit Amendment Request – Lafayette Club, 2800 Northview Road – 18 ft x 18 ft Netting at 1882 Patio

Carlson stated the request is for an amendment to the Lafayette Club’s Conditional Use Permit to install netting at the 1882 patio near the NE corner of the Club building. Carlson referred to his report and stated the netting seems necessary for safety because people on the patio have been hit by golf balls. The proposal is for a mesh material located far from the corner of the building, which would not be very noticeable to neighbors. It is about 400 ft from the lake and may be seen from the lake. His recommendation is to approve the amendment as presented.

Chair Breazeale opened the public Hearing at 7:12 pm.

Gregg Malsbary – General Manager and Chief Operating Officer (COO) of Lafayette Club. Malsbary stated his job has been centered around member safety over the past three years. The Club has put in preventative maintenance to help keep members safe. They have been trying to prevent errant golf balls from striking people and have had incidents of members being hit on the patio and other locations. The frequency of this happening is increasing, and he speculated it may be from enhanced technology and newer, younger members who are driving balls further and not as in control as previous golfers. Malsbary stated he is very concerned about safety. At the patio, balls can clear a tree and hit, and also hit there from a one bounce. The netting does not have to be exactly where proposed. It is about 6-8 ft from a fire hydrant and could be moved if required for access to the hydrant. It may be elevated 6 – 18 inches off the ground for the grounds crews to maintain the lawn.

Breazeale asked the cost of the project. Malsbary replied it is approximately \$16,500. The netting is similar to netting by the outdoor pool, the 9th tee, and hard courts.

Jake Saufley – Larkin Hoffman, attorney representing the Lafayette Club – Saufley noted the Club’s narrative is missing from packet. Honey stated she included everything that she received. Saufley stated he agrees with Carlson’s analysis of the site. He stated that the most important thing about the fence is that it improves safety on the Club grounds. He added that it is a reasonable use for the property because it allows the Club to continue to be used to its highest and best potential as a member organization by allowing membership to enjoy the recreational opportunities throughout the Club. Saufley went on to say some newer members are hitting further than past members, and the fence allows members to stand outside and enjoy the patio. He discussed the review criteria stating there is no impact to roads, parking or loading, there is scant visibility if any from the roadway, the property will continue to be used as a golf club so it will not impede development, the net will help further the Club’s purpose in its use as a golf club, and there is no harmful impact on neighboring properties via sightlines or in any change in use. Saufley stated that the net as proposed is as big as it needs to be but no larger. It has some customization to be moved downward or here or there based on safety concerns around the fire hydrant. There may be plantings around the bottom of it to allow ground balls to be stopped. Saufley stated it is consistent and compatible with other netting around the grounds of the club.

Chair Breazeale closed the public Hearing at 7:22 pm.

Steinfeld thought the request was reasonable. Swanson stated she thought the netting is necessary as the patio is very busy. She stated that the Club has taken other measures for safety, and the request is necessary and reasonable.

(Whitely motion, Swanson second to recommend that the City Council approve the Conditional Use Permit Amendment Application for the 18 ft x 18 ft mesh screen fence with the Findings of Facts 1-4, and 6-7 subject to the Conditions of Approval in the zoning administrator’s report:

Findings of Fact for Approval of Conditional Use Permit Amendment

- 1) **The Lafayette Club (“Club”) operates a golf course and country club at 2800 Northview Road in Minnetonka Beach and is a “permitted recreational facility” as defined in the Minnetonka Beach zoning code.**
- 2) **The Club operates under a Conditional Use Permit (CUP) originally approved in 1989 and amended at various times since.**
- 3) **The Club proposes to erect an 18-foot by 18-foot mesh screen fence at the northwest corner of the 1882 patio on the north side of the clubhouse building.**
- 4) **The purpose of CUP standards is in Section 3.4.4.A, to “establish reasonable conditions necessary to ensure compatibility between the proposed use and surrounding properties”. Criteria for reviewing conditional uses are in Section 3.4.4.D of the Zoning Code.**
- 5) **The proposed screen mesh fence will be barely visible from surrounding properties, the nearest street, and the lake, and will be compatible with its surroundings.**
- 6) **The request satisfies the criteria for approving a Conditional Use Permit in Section 3.4.4.D.**

Conditions for Approval of Conditional Use Permit Amendment

- 1) **The 1882 patio fence is to be maintained in an attractive manner.**
- 2) **If the fence is changed in any significant way, except removal of the fence in whole or in part (which is allowed), the changes need to be reviewed and approved as an amendment to the Conditional Use Permit; All ayes.) Motion passed.**

5.1.2. Conditional Use Permit Amendment Request -Lafayette Club, 2800 Northview Rd – Fence Extension at Driving Range

Carlson stated the request is for an extension of the driving range fence along the lake. The fence is approximately 10 ft tall and 500 ft long and has been there since before the Conditional Use Permit

was in place. The addition is 75 ft in length. The addition was already installed because the Club did not know a CUP amendment was needed. The fence also requires a variance to be within 75 feet of the lake. The existing fence is between 15 and 35 ft of the lakeshore and the addition is a similar distance of the lakeshore. The fence is chain link with no fabric. Carlson stated the request satisfies the conditions of approval, is a necessary part of the golf course, and is a reasonable request. Steinfeld asked the purpose of the fence. Carlson stated it is to prevent balls from going into the lake. Whitely asked if DNR had comments. A DNR email in the packet showed the DNR did not have any comments.

Chair Breazeale opened the public Hearing at 7:29 pm

Gregg Malsbary – GM and COO of Lafayette Club. Malsbary stated there was a need to replace the existing fence that had been there a number of years because it was quite dilapidated, so they replaced the fence. The purpose of the fence was to mitigate the balls from going into the lake and they felt balls were being hit well past where the fence ended. Malsbary did not know they needed to amend the CUP for the fence addition. The fence extension is an additional 75 ft with the same material. Malsbary went on to say the Club loses an average of 15,000 golf balls per year in the lake and, with the new fence and extension, it has dropped the number lost by half. Driving range golf balls are approx. \$.65 each, so the extension is saving them money. The Club doesn't have the same member safety concerns as the patio net, so this request is esthetics and trying to control costs for the Club.

Blodgett asked if they considered netting instead of the cyclone fence. Malsbary stated they were replacing what was there and they wanted to carry through the same fence material along the entire length. The cyclone fence is a less expensive route as the mesh is custom and more costly. The 75 ft extension cost approximately \$13,000.

Steinfeld asked if most of the balls clear the fence or hit the fence. Malsbary stated some clear it regardless, and no matter what you do they would not be contained. The existing fence was 10 ft high, so they replaced and extended it at the same height. He added that many balls catch on the chain link and bounce off and go back into the range but there are balls that get through the fence. Steinfeld asked if there was a significant number of balls that would have been lost if the extension was not put in place. Malsbary stated the extension is capturing approximately 40 – 50 % of the balls.

Jake Saufley – Larkin Hoffman, attorney representing Lafayette Club – Saufley stated the variance and CUP amendment request is for the 75 ft fence extension, as the rest of the fence was a non-conforming replacement of an existing fence. He discussed that cost is not the only factor and there are environmental factors of trying to keep balls out of the lake and promote safety in and around the course. The appearance is consistent with the fence that was replaced and creates one continuous line which helps to soften the appearance from the lake. The fence is on the furthest portion of the property and not easily visible to nearby residents. The fence helps the Club continue to utilize the property the way it intends to utilize it. The practical difficulty is that there is a lake with a 75 ft setback which presents tremendous difficulty in applying the zoning code to the Club and the difficulty was not created by the Club. Saufley added that the fence is reasonable and customary to others around it, it helps promote tranquility in the neighborhood on the lake side and it does not impact the residential side of the Club. The fence is limited to a length that is the most effective and it is not longer than needed. The fence enables the Club to continue to use the property as it is accustomed to.

Chair Breazeale closed the public hearing at 7:45 pm

Whitely stated the new fence is a big improvement over the old fence. Breazeale stated the fence extension is a reasonable request with golfers driving further than the old fence. The purpose of the

old fence was no longer being served because people can now drive further than the length of the old fence. Swanson stated this seems like a reasonable request.

(Whitely motion, Steinfeld second to recommend that the City Council approve the Conditional Use Permit Amendment Application for a Driving Range Fence extension and a variance based on Findings 1-6, and 8-9 in the Planner’s report and subject to the two Conditions of Approval as follows:

Conditions for Approval of Conditional Use Permit Amendment & Variance

- 1) The fence will be maintained in an attractive manner.
- 2) If the fence is changed in any significant way, except removal of the fence in whole or in part (which is allowed), the changes need to be reviewed and approved as an amendment to the Conditional Use Permit.

Findings of Fact for Approval of Conditional Use Permit Amendment

- 1) The Lafayette Club (“Club”) operates a golf course and country club at 2800 Northview Road in Minnetonka Beach and is a “permitted recreational facility” as defined in the Minnetonka Beach zoning code.
- 2) The Club operates under a Conditional Use Permit (CUP) originally approved in 1989 and amended at various times since.
- 3) There is an existing fence along the driving range that is over 500 feet in length, setback from the lakeshore approximately 15 to 35 feet. A new segment of fence 75 feet in length was added in the summer of 2023, setback from the lakeshore approximately 17 to 33 feet.
- 4) The purpose of CUP standards is in Section 3.4.4.A, to “establish reasonable conditions necessary to ensure compatibility between the proposed use and surrounding properties”. Criteria for reviewing conditional uses are in Section 3.4.4.D of the Zoning Code.
- 5) Fences are required to maintain a minimum 75-foot setback from the ordinary high water level of the lake per Table 4.3.4 in the Zoning Code.
- 6) Standards for variances are in the Zoning Code in Section 3.4.3.D (1) and (2).
- 7) The fence addition will be minimally visible from surrounding properties, the nearest street, and the lake, and will be compatible with its surroundings.
- 8) The request satisfies the criteria for approving a Conditional Use Permit in Section 3.4.4.D. and the standards for approving a variance in Section 3.4.3.D (1) and (2).
; All ayes.) Motion passed.

Carlson stated this request will go before City Council at their April 8 meeting.

6. Zoning Code Amendments

6.1.1. Zoning Code Amendments – DNR Conditional Approval of Proposed Code Language from 2/26/24 Public Hearing

Breazeale stated the DNR had a few comments that will go to city council after tonight. The comments are in the packet and relate to striking the definition of Shoreland Management Controls and references to them. There are also references to “(Strike the following...)” that were missed in the last presentation to council and will be fixed. He added that there is a phantom reference in the table on p.75, so they decided to put “none” in the Additional Requirements column to correct it. Breazeale asked that they put this on the list to look at in the future. A few incorrect references to other chapters were corrected. The DNR compliance project will be done when council approves this in April.

(Whitely motion, Steinfeld second to recommend approval of the edits requested by the DNR and the edits discussed in Planning Commission meeting in order to bring the zoning code into DNR compliance; All ayes.) Motion passed.

6.1.2. Floodplain Proposed Language Amendments

Whitely stated the work group compared the city's floodplain language with the MN floodplain language for material or meaningful differences. He then reviewed the proposed language changes and comments on each change as presented in the packet.

- Figure 1 was added to show a FEMA map. Carlson suggested adding language that the map is subject to change or persons using the code should refer to FEMA. Change heading of figure to Figure 10.2.1.
- 10.2.2.- removed reference to Zone X, already moved to common code.
- Floodway District and Flood Fringe District – add the same language as Figure 1 above.
- Figure 10.2.3 – added diagram of subdistricts - Floodway (OHWL), Flood Fringe, and Regulatory Flood Protection Elevation.
- Internal references were corrected.
- 10.2.7. – added model ordinance language which is a disclaimer
- 10.4.2. – already moved into common code.
- 10.5 was struck out so check following sections for correct reference to sections.
- 10.6. – Strike 10.6.2(D), unnecessary.
- 10.6.3. – recommend adding language from model ordinance items E – I
- 10.9.2(3) – add pool, deck and remove farm fences.
- 10.9.2(G) – added model language.

(Steinfeld motion, Swanson second to recommend city council give preliminary approval of the proposed amendments for a public hearing and DNR review; All ayes.) Motion passed.

7. New Business

7.1. 2025 – 2034 Capital Improvement Program

Honey stated they need to choose a CIP representative and approve the schedule. Wortman offered to be the representative.

(Swanson motion, Steinfeld second that Bridget Wortman be the CIP representative and to approve the proposed CIP schedule as presented in the packet; All ayes.) Motion passed.

7.2. Use of Underdeveloped Right of Way

Honey stated at the last council meeting there was discussion about how the city wants to treat underdeveloped right of way and looking at the city as a whole for understanding how to treat them in the event an application comes forward related to use of this property. She added that Carlson and Blodgett have discussed this in the past.

Honey stated with code amendments wrapping up, Council would like Planning to evaluate the tree ordinance and determine if they would recommend any changes. Breazeale stated he thinks Council wants Planning to find out if the ordinance is working as intended and meeting the purpose. Honey stated she has already met with staff and Halverson to discuss City staff experience with administering the ordinance. They do not see many issues but are aware there are a few residents who have expressed concerns about it. The Mayor would like an evaluation and allow resident comment. Council will provide direction to Planning after Honey gives her report to them.

Honey went on to say the requested project would be to research underdeveloped ROWs and determine how the City wants them to be used. Honey included information in the packet from when this was looked at a few years ago. Breazeale stated there may be legal considerations depending on if the land has an easement, is city owned, or how it was platted. Carlson stated the City would initiate a study which could then allow a moratorium to be placed via an interim ordinance. No applications would be accepted

regarding use of these specified areas during the moratorium, and it would be in place for up to one year. Breazeale stated Council should assign a work group for the study. Carlson stated there are concerns about unused right of way and much of that area is adjacent to park land and around Ray Peters Park. Development of them could involve removal of trees and have an impact on what is currently viewed as park land. Northwood Avenue is adjacent to park land and people use it as if it were part of the park. Vacating the land may not prevent development and should be studied. The land is dedicated to the public but is not the same as if the city owned the land. The city owns Ray Peters Park, but it does not own land in all of the undeveloped right of way adjacent to it. If that land is vacated, it reverts to the adjacent property owners. There was discussion about dedicating the other half of the undeveloped road to the city as park land. There was discussion that the term “right of way” should cover all the land they would like to study. Blodgett cautioned against vacating fire lanes. The study could include that.

(Swanson motion, Whitely second to recommend to city council that the city initiate a study and authorize the Planning Commission to engage in a study of the undeveloped right of way, undeveloped roads, and fire lanes; and that a moratorium be placed on any application for use or development of those for a period of one year; All ayes.) Motion passed.

7. Reports

Breazeale asked that commissioners think about if they would like to volunteer for the tree ordinance review work group or the undeveloped right of way work group before the next meeting.

Swanson distributed a Roberts Rules handout at the beginning of the meeting and Breazeale asked that they read that on their own time for a better understanding of meeting proceedings.

Whitely asked to move the next meeting to Tuesday, April 23rd due to Passover. Commissioners agreed.

Halverson reported on the council meeting activity. Council approved the variance request for 3 Crescent Street. The review of the Lafayette Club CUP amendment for the fence at the 7th hole will be discussed at the April meeting to give the Club and owners an opportunity to discuss a solution. She thanked Breazeale and Whitely for reporting at all the meetings and the time they spend on the code updates. Water treatment plant federal funding for PFAS treatment is supposed to be awarded but the city will need to understand if all requirements can be met. Halverson then discussed that the MN Department of Health reported at the meeting about PFAS in the city water. They are cancer causing materials in the city water. The city has the highest levels of PFOA and PFOS in the area. The MDH guideline is .0078 and test results have been up to 3.2. Treatment of this makes the water treatment plant more expensive but there are potential health concerns. Council has many difficult but important decisions to make. The Northview wall west will be rebuilt this fall. They are looking to do another bond in the fall for \$5-6 million.

8. Adjournment

(Blodgett motion, Swanson second to adjourn; all ayes.) Motion passed.

Chair Breazeale adjourned the meeting at 8:47 p.m.

PUBLIC IN ATTENDANCE – Gregg Malsbary, Jake Saufley

Minutes respectfully submitted by City Administrator Heidi Honey

Heidi Honey, City Administrator