

APPROVED
Minnetonka Beach Planning Commission Meeting Minutes
September 23, 2019

A Special Planning Commissioner meeting was held at 6:30 p.m. at 2216 Lafayette Road to visit the site of a land use and variance request for a shared driveway. Commissioners, the applicants, representatives from Denali Custom Homes and neighbors (Arnold's, Bender's, Patty Rezabek) walked the site along with Eric Paulsen from Bartlett Tree Service. Paulsen showed commissioners tree impacts on private and public property. Applicants showed commissioners the lot lines and impact on undeveloped Northwood Avenue. Commissioners then returned to city hall for the regular Planning Commission meeting.

1. Call to Order

Chair Haag called the meeting to order at 7:10 pm.

2. Roll Call

Present: Chair Haag, Commissioners Anderson, Breazeale, Moriarty, and Council Liaison Enlow. Absent: Halverson, Howarth, Naylor.

Staff in attendance: Susanne Griffin, City Administrator and Phil Carlson, Zoning Administrator

3. Approve Agenda

(Anderson motion, Moriarty second to approve the agenda; all ayes). Motion passed.

4. Approve Minutes: August 26, 2019

Commissioner Moriarty noted a typographical error on page 3 of 6.

(Moriarty motion, Anderson second to approve the minutes of the regular Planning Commission meeting of August 26, 2019 as amended, all ayes). Motion passed.

5. PUBLIC HEARING – Land Use/Variance Request for Shared Driveway

- 5.1. Land Use Request to Remove Condition on Resolution 2019-12 Regarding lot Subdivision and Plat Approval at 2422 and 2424 Lafayette Road and Variance Request Side Setback and Hardcover Variance at 2416 and 2422 Lafayette Road

Zoning Administrator Phil Carlson stated that the request is from two adjoining property owners 2416 and 2422 Lafayette Road. These two lots currently have a shared driveway on Lafayette Road and want to build a new shared driveway off of undeveloped Northwood Avenue in the rear. 2412 Lafayette Road already has access in the form of a driveway from this undeveloped road. He explained the variance requests (side setback requirements) and the condition in the previously approved plat approval stating that access to the resulting lots (in this case, 2422 Lafayette Road) only be from Lafayette Road. The applicants are asking the City to rescind this condition in the plat approval, and the consider separately the variances that would be needed for both side setbacks to accommodate the shared driveway.

The key question is whether the City should remove the condition; is it appropriate city policy to allow access to the undeveloped road when they have access already available from Lafayette Road or should residents be able to access city right of way from the rear. There are competing interests particularly as it relates to environmental impacts which was part of the plat condition. He explained the undeveloped city street and its relation to park land. He reviewed comprehensive plan guidance.

He reviewed the language in the condition regarding adverse environmental impacts and what was identified during the site visit regarding trees impacted. Two trees might be impacted but not removed on City right of way, but more removed but on private property.

If the condition is not removed, then the variances will be moot. He then reviewed the criteria for the variances. He noted that there were engineering and legal concerns relating to existing easements and shared use agreements, and agreements would be needed on maintenance of the partial development of the road. He also mentioned the National Pollutant Discharge Elimination System (NPDES) permit which would be required and briefly described what that would entail.

He reviewed that there are three separate decisions to be made: 1) remove the condition of the plat, and 2) two separate variance requests. He also stated that there is a question whether Northwood Avenue is street right of way or easement which imply different rights to use of the property. That question is not able to be answered tonight and the Planning Commission needs to take that into consideration.

He recommended approval of all requests and explained the options that the Planning Commission had to either recommend approval, approval with conditions, denial with findings of fact, or continue the item to get more information.

Commissioner Moriarty asked for clarification on the city owned streets vs easement issue. Carlson explained that some streets are city owned and the public has some rights to use them to some extent, but if the street is on an easement, the public would have more access to use, but there could be restrictions on that use based on the easement documents. In this case, Northwood Avenue is not a built-out street, so it is unclear whether it is an easement or City owned right-of-way, however, if the easement is for roadway purposes, then city reserves the right to maintain it for roadway purposes. Commissioner Breazeale asked about the likelihood that this is an easement. Carlson said this is a legal question and the Commission may want to get more information about this issue.

Commissioner Anderson asked if it was a road or not and whether the city retains the right to reserve it and not allow use for other than roadway purposes. Carlson referred to it as a road right of way rather than an actual road since there is no pavement at this time, but it could be an easement and he also mentioned that some roads have been vacated and those circumstances could be different as well. Commissioners further discussed what rights the public has for using right of ways and/or easement purposes and what rights the city has to regulate right of ways. Carlson reiterated that the Planning Commission may want to consider getting a legal opinion on the legal status of this property to understand the property owner's rights and the city's rights. Commissioners discussed the driveway to the north which currently accesses Northwood Avenue. This was allowed a number of years ago and was part of the building permit process.

Chair Haag opened the public hearing at 7:48 p.m. He asked speakers to speak at the podium, state their name and address and limit their comments to five minutes.

Applicant Chris Zinn – 2416 Lafayette Road

Applicant Chris Zinn asked that the Commissioners consider their applications based on facts presented and the recommendation of zoning administrator so they can make their presentation to the city council. He stated that the condition placed on 2422 Lafayette during the plat approval process impacts and limits their property in that they can only access the property from the front. He feels the condition on the subdivision was arbitrary and they had no ability to respond when this condition was put into place during the plat approval process for 2422 and 2424 Lafayette Road and it impacts him unfairly.

There is a current driveway easement/agreement between the two properties from Lafayette Road that goes back much further than they originally thought, and they understand that if they were to proceed with a shared driveway from the rear, they would need a new shared driveway agreement. The Zinn's submitted a letter which was in the packet that addresses this in more detail and provides the history of the existing driveway agreement with the previous owners.

Now that the home to the south is being built more parallel to his home than the previous home, the need for more screening is important and having the existing driveway there makes that difficult.

He addressed the focus on environmental impact which was discussed during the plat approval process. They are being very mindful of the environmental impact and have had an arborist determine what the

tree impacts would be. The existing trail behind their property where they propose to put the driveway is mostly scrub brush and there is minimal tree impact on city property, and no impact to “substantial” trees.

He pointed out that there is another property that currently accesses Northwood Avenue and the precedent of that decision. He also stated that subdividing the lots and plat approval in itself had more of an environmental impact on the city than his rear driveway would.

In closing, Zinn stated that he feels that not only is the request reasonable and fits with the comprehensive plan, it is a much better situation for the city as well. To swap the existing driveways to the rear will make for a much better appearance along Lafayette Road. It will be additional green space. He asked for their support.

Manuel Pinto – 2422 Lafayette Road

Mr. Pinto stated that there is an issue with legality. If this is an easement, they have the right to access their property as requested. The city may decide whether to build the road, but they want to build a driveway and access their property from the rear which would significantly improve property that is currently not being taken care of.

Erik Bender – 2412 Lafayette Road

Mr. Bender stated they put the driveway in the rear six years ago and did it primarily due to the size of the lot, and they were able to greatly improve the aesthetics on the Lafayette side. In addressing this issue, he stated that allowing the driveway from the rear would reduce traffic on Lafayette Road improving safety.

Holly Wolff 2316 Lafayette Road

Ms. Wolff stated that while she thinks it is best to let people do what they want on their property, she is concerned about what this decision portends for the future. She stated that at some point people may want to vacate Lafayette Road and completely develop Northwood to Crescent Avenue with access only from there which she believes could be a problem for the “Big Woods” in the rear. The City has protected these treasured woods for many years and what would stop the City from eventually developing the existing platted lots in the woods. Vacating Lafayette Road would no longer allow for public access to the lake which has also been protected for generations.

She acknowledges that the Zinn’s have been put in unfortunate situation, but the building plans were developed and approved with an understanding of the current driveway situation, which is workable. She asked how the Pinto’s expect to benefit in relation to her concerns.

Mr. Pinto responded that he wants to be a good and respectful neighbor. He explained that rear access would allow for privacy and a more attractive appearance from Lafayette Road. He stated that according to the city planner, there are only two more properties that could possibly be affected with a rear access in the future.

Robin Zinn – 2416 Lafayette Road

Ms. Zinn stated that she believes they have a right to access the property and it’s not accurate to use the work “benefit”. The zoning administrator’s opinion is that they have the right to access the property from the back and it’s not up to neighbors to decide what the benefits are or to decide what happens on what she believes to be her property rights.

Ms. Wolff came back to the podium. She reiterated that she believes property owners have rights to their own property and also stated that it hasn’t been established what can be done with these properties, so she agrees that need to be determined first. In addition, she is asking the City look down the road and see what possible outcomes, unintended consequences and precedents could be set with this decision.

Nathan Arnold – 2320 Lafayette

Mr. Arnold stated that this decision will benefit some and negatively affect others. He feels that potentially having a road next to his property would negatively affect him. He is concerned about the hardcover and stormwater runoff impacts on his property of developing the road. Runoff would likely come right to his property which already has stormwater issues.

Patty Rezabek 2522 Lafayette Road

Ms. Rezabek agrees with concerns about stormwater runoff. She has a pond in her back yard, so she understands Arnold's concerns. As a park commissioner she thinks the water runoff impacts should be considered by the city. Some trees don't like water and what would the impact be on trees across from the right-of-way. She stated that removing trees will change entire canopy of area, not only the park but private property as well and to consider the outcomes and mitigation efforts.

Manuel Pinto – 2422 Lafayette Road

Mr. Pinto spoke again and stated that water runoff is a legitimate concern and they intend to work with the city to deal with runoff.

Chair Haag closed the public hearing at 8:20 pm.

Commissioner Anderson stated that her top concern was water runoff and drainage needs to be considered.

Commissioner Breazeale understands there is a sense of urgency and he understands the arguments for the proposal. There is a lot of emotion on this topic and the Planning Commission and the City Council already answered the question. The idea of paving the road which could eventually be further developed is a big deal and one that requires more public input. Saying it's just a driveway and not looking at the bigger picture is a concern.

Commissioners discussed the original condition and their previous discussion at the Planning Commission and City Council and that Zinn's supported the subdivision, but Robin Zinn stated they never got the chance to comment on the condition at the time. Haag stated that the condition didn't impact them at the time, and that they need more information from the city attorney to make a decision/recommendation.

Commissioner Breazeale summarized that it's a balance between the development of Northwood Avenue allowing for paving the driveway and what the City's right are in that regard. Moriarty stated that property owner's rights are at issue as well and everyone needs to understand these rights into the future.

Moriarty asked the applicant about timing and the builder stated that the driveway could be done in the spring. Carrie Jorgenson stated they always planned to have access from the front but were later approached by the Zinn's and the idea seemed reasonable.

Zoning Administrator Carlson stated that at what point does the city allow the development and on the flip side, is the city required to allow the development of the road for access. These are the questions that need to be answered. He stated that when he originally wrote the report, he made some assumptions but now recommends getting direction from the city attorney. He also talked about extending the variance applications due to time restrictions. They can continue the topic to the next meeting and decide later if they want to take public comments.

Moriarty clarified what they need from the city. Carlson stated the questions are: what is the status of Northwood Avenue? Is it City owned right-of-way or an easement? If it is an easement are there terms or conditions of the easement? If it is a City owned right-of-way is the City obligated to develop the road and if so, under what conditions. Also, what are the property owner's rights?

(Moriarty motion, Breazeale second to continue this issue to the October Planning Commission meeting pending legal opinion of status of Northwood Avenue; all ayes.) Motion passed.

6. New Business

6.1. Possible Zoning Code Amendment regarding Detached Garage setbacks

Phil Carlson explained that in the last zoning code update, it appears that the detached garage setbacks may have been left out, and zoning codes normally include setbacks for detached garages. As it currently stands, applicants would have to meet the setbacks of the principle structure. He is suggesting an amendment as stated in his memo, adding to Table 3-3 a line item for detached garages. The old

code did show that garage setbacks had to meet the setbacks of the principle structure, so this appears to have been an oversight when creating the new code. If that is the intent of the code, then an amendment can be made.

He didn't include it in his memo, but the definition of outbuilding does exclude detached garages. He would add a footnote to the table that a detached garage is not an outbuilding.

Carlson explained that the next step would be to hold a public hearing on the proposed zoning code amendment.

He also talked about an issue that has recently come up regarding legal non-conforming structures and he will expand on this at the next meeting as well.

(Moriarty motion, Breazeale second to authorize the Zoning Administrator to prepare language to the zoning code to add setbacks for detached garages for the October Planning Commission meeting; all ayes.) Motion passed.

7. Reports

- 7.1. Chairperson – Chair Haag had no report
- 7.2. Council Liaison Enlow reported on actions of the September 9th City Council meeting to include the Mathews/Hacker appeal which was denied by the Board of Adjustment and Appeals. She summarized other actions of the regular council meeting including approval of the Schussler variance, addition of the watermain on Beach Lane, amendment to the Capital Improvement Program, authorized a conditions assessment on the water plant, and the 2020 preliminary budget was approved.
- 7.3. Commissioner Reports- No further reports -
- 7.4. Building Permit Report – Received and filed.

8. ADJOURNMENT

(Anderson motion, Moriarty second to adjourn; all ayes). Motion passed.

Chair Haag adjourned the meeting at 8:55 p.m.

PUBLIC IN ATTENDANCE – The following individuals signed the sign-in sheet (or were in attendance): Jim & Carole Knudsen, Nell Mathews, Nick Dalsin, Holly Wolff, Jaci Lindstrom, Patty Rezabek, Andrew Myers, Chris & Robin Zinn, Erik Bender, Manuel & Carrie Pinto, David Bieker, Colby Skelton, Jill Bartel.

Minutes respectfully submitted by City Administrator Susanne Griffin.

Susanne Griffin, City Administrator