

**MINUTES  
CITY OF EDINA, MINNESOTA  
PLANNING COMMISSION  
CITY COUNCIL CHAMBERS  
JULY 13, 2011  
7:00 P.M.**

**I. CALL TO ORDER**

Chair Grabiell called the meeting of the Planning Commission to order at 7:02 P.M.

**II. ROLL CALL**

Answering roll call were Commissioners Scherer, Staunton, Schroeder, Fischer, Forrest, Carpenter, Stefanik and Chair Grabiell.

Excused: Commissioners Potts and Platteter.

**III. APPROVAL OF MEETING AGENDA**

**Motion made by Commissioner Staunton and seconded by Commissioner Fischer approving the meeting agenda as amended continuing Item 2011.0005.09a to the August Planning Commission meeting. All voted aye; motion carried.**

**IV. APPROVAL OF MINUTES**

Commissioner Staunton noted a correction in his comment on Page 11, middle of the page, removing the word "not" from his statement.

Commissioner Forrest requested a change on Page 5, stating she was concerned about the properties to the south, specifically the 7500 York building. On Page 11, she requested her comment read she was concerned with whether or not the City Planner could add conditions for approval.

**Motion made by Commissioner Staunton and seconded by Commissioner Scherer approving the minutes of the regular meeting of the Planning Commission on June 29, 2011 as amended. All voted aye; motion carried.**

**V. COMMUNITY COMMENT**

No comment.

## **VI. PUBLIC HEARINGS**

**B-11-04**

**Variance**

**College City Design Build/Connie Carrino/Jeff Miller  
4509 Garrison Lane, Edina**

### **Front Yard Setback Variance**

Planner Aaker explained the subject property is located on the south side of Garrison Lane consisting of a lot with a home currently under construction. The owners have been planning to teardown/rebuild on their property since the mid 1990's. Years of planning and plan revisions have revealed a number of challenges unique to the property. The property backs up to the westerly lobe of Garrison Ponds with a 50 foot setback from the water imposed. The front lot line is at an angle creating an uneven building pad area. The low floor of the previous home was built slightly below the flood elevation causing the basement to be subjected to moisture and mold.

After years of planning the homeowners were going forward with a plan that would have required two variances; one for the first floor to be elevated higher than the required one foot in order to solve their seepage problem by elevating the basement and a variance from the front yard setback requirement to "square off" the garage so both garage doors can be flush with one another.

Unfortunately, as the owners were preparing to bring the plan forward, the Minnesota Supreme Court ruled in June, 2010, on existing variance language that severely limited a City's ability to grant variances from their ordinance requirements. In response to the ruling, the City of Edina put in place a Conditional Use Permit process to address proposed new first floor elevations that may be in conflict with the State Building Code, Flood Plain Regulations and/or drainage patterns. The CUP was adopted to allow projects such as the applicant's to continue to go forward during a time when variances were not being granted. The Conditional Use Permit process allowed the owners to raise the first floor of their new home, however, they were not able to address the front yard setback requirement given that variances had largely been put "on hold". The State Legislature has now adopted new language that permits the processing of variances so the homeowners may now go forward with their original plan. The owners had always hoped to address all issues at one time with the city, however, the process by which they could have accomplished their goal was interrupted just as they were finally ready to go forward.

Property owners Connie Carrino and Jeffery Miller are hoping to add three feet onto the front of their westerly garage stall to allow both garage stalls to be the same depth. The current plan would recess the door and front wall of the garage. The roof would remain the same with the garage door in-set from the front wall of the adjacent garage stall. Over years of planning it has become quite clear to them that the angled front yard

setback and the required 50 foot setback from the pond restrict a reasonable use of their property.

Planner Aaker concluded that staff recommends variance approval based on the following findings:

- 1) With the exception of the variances requested, the proposal would meet the required standards and ordinances for the R-1, Single Dwelling Unit District.
- 2) The proposal would meet the required standards for a variance, because:
  - a. The proposed use of the property is reasonable; as it is will allow a slight increase in the westerly garage stall depth to match the easterly garage stall.
  - b. The encroachment is a small triangular over-lap of the setback that consists of approximately 10 square feet.
  - c. The intent of the ordinance is to maintain adequate spacing from the street. The small over-lap will not compromise the streetscape.
- 3) The unique circumstances are the angle of the front lot line given the orientation of the homes on the block to the street and the setback required from the water body behind the home. At the time when the original home was built on the lot, a 25 foot setback from the water body was required.

Approval of the variance is subject to the following conditions:

- 1) Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
  - Survey date stamped: June 17, 2011.
  - Building elevations date stamped: June 23, 2011.

### **Appearing for the Applicant**

Jeffrey Miller explained the shorter garage stall was an obstacle for the homeowner. He indicated the existing roofline and walls would not change. The only change would be that the garage door itself would be moved three feet forward.

Bjorn Freudenthal, Design Build, requested the Commission approve this variance and allow the homeowner to build a garage larger than 18 feet in depth.

Chair Grabiell opened the public hearing.

## **Public Comment(s)**

No comments.

**Commissioner Carpenter moved to close the public hearing. Commissioner Fischer seconded the motion. All voted aye; motion to close public comments carried.**

## **Discussion**

Commissioner Fischer commented the request was reasonable and was in favor of the variance as presented.

## **Motion**

**Commissioner Carpenter moved approval of the front yard setback variance for Connie Carrino and Jeffrey Miller at 4509 Garrison Lane with the recommendations of Staff. Commissioner Forrest seconded the motion.**

**All voted aye; motion carried. 7-0.**

**2010.0001.11a      Amendment to approved plan and Preliminary and Final Plat  
The Waters Senior Living of Edina  
6200 Colonial Way, Edina**

Planner Aaker informed the Commission the Waters Senior Living in Edina, on behalf of the Colonial Church of Edina is requesting an amendment to their approved site plan and a Preliminary and Final Plat for a 139-unit, 3-story senior convalescent home at 6200 Colonial Way.

In an effort to create seven (7) affordable housing units within the approved development project, the applicant is requesting a reduction in the building size by 28 feet. Specifically 28 feet would be taken out of the middle of the building. The site plan remains generally the same, with the exception of one parking stall being eliminated.

To accommodate the reduction in building size, 36 underground parking stalls would be eliminated. On the first floor, there would be a reduction in width of the two story entry, reductions in space for offices, a reduction in the café, living room and one of the wellness rooms. On the second floor there would be a reduction in private dining area, a reduction in the parlor, a reduction in air space for the two story entry and a shift in the dining area. On the third floor a gathering room would be eliminated. There would be no changes to the number or size of the dwelling units.

The applicant is also requesting a subdivision of the property to create a new lot on which the building will be located. The Preliminary Plat was approved when the project was approved in 2010; however, Final Plat was not obtained, and the preliminary

approval has expired. The proposed Preliminary Plat is exactly the same as the previously approved Preliminary Plat.

Recommend that the City Council approve the site plan amendment to reduce the size of the approved 139-unit convalescent home by 28 feet to provide seven units of affordable housing.

Planner Aaker concluded that staff recommends site plan amendment approval based on the following findings:

1. The proposed plans are consistent with the approved Site Plan for the development.
2. The building would be smaller in size.
3. The number of parking stalls provided would still exceed City Code requirements.
4. The applicant would provide seven units of affordable housing which will go towards meeting the City's established goal with the Met Council to provide additional affordable housing units.

Approval is subject to the following conditions:

1. Unless modified by the conditions below, the project must still meet the conditions required in the original Site Plan and Rezoning approval for the site.
2. The site must be developed in conformance with the following plans:
  - Site plan date stamped May 12, 2011
  - Building elevations date stamped May 12, 2011
3. The project shall include seven units of affordable housing as determined by the Metropolitan Council.

### ***Preliminary & Final Plat***

Recommend that the City Council approve the Preliminary and Final Plat to create a new lot for the approved 139-unit convalescent home.

Approval is subject to the following findings:

1. The proposed plat meets all Zoning and Subdivision Ordinance requirements.

Approval is subject to the following conditions:

1. The Final Plat must be filed within one year of City Council approval.
2. The Park Dedication fee of \$695,000 shall be paid prior to release of the mylars approving the Final Plat.

Commissioner Carpenter questioned if the outdoor parking could be controlled to assure that recreational vehicles were not occupying these stalls. Planner Aaker felt this would not be a concern and would be managed closely by the property owners.

### **Appearing for the Applicant**

Dave Jensen, The Waters Senior Living, thanked the Commission for their time this evening. He reviewed the requests before the Commission stating the affordable housing initiative was altered due to the fact TIF was not approved. The building size was reduced while still offering seven affordable housing units. Mr. Jensen explained his organization would not allow outdoor boat or recreational vehicle storage.

Mr. Jensen stated his organization would need to receive two licenses from the State of Minnesota for the operation of the proposed assisted living units. He indicated his organization has three assisted living facilities currently in operation with proper licensing in place. He reviewed several letters of support with the Commission and supported Staff's recommendation for approval.

### **Discussion**

Commissioner Carpenter questioned the timing of the licenses. Mr. Jensen indicated the licenses would be applied for in the construction process. The State would inspect the site to assure that the proper health and safety measures were in place.

Commissioner Staunton requested further information on the anticipated population in the assisted living facility. Mr. Jensen described the anticipated residents further with the Commission along with their needs.

Commissioner Staunton asked if any of the residents would have physical or mental disabilities. Mr. Jensen explained that 14 units were dedicated to memory care and would have 24 hour supervision.

Commissioner Scherer commented on the parking concerns. She questioned if 126 stalls would meet the needs of the residents and employees. Mr. Jensen stated residents in care suites and memory units would not have vehicles. The remaining 96 units would have access to a parking stall. However, experience has shown that only 20% of these units would require a parking stall. He anticipated that 30 parking stalls would be needed for employees and 20-30 would be needed for residents.

Commissioner Fischer asked the average age of residents in the facility. Mr. Jensen stated the average age was estimated to be 87.

Commissioner Forrest inquired how the facility would still offer affordable housing units when the building size was decreased. Mr. Jensen explained the common areas were decreased in size to accommodate for the proposed seven affordable housing units.

Commissioner Stefanik asked if the room sizes would be reduced through the new plan. Mr. Jensen noted the room sizes would remain the same.

Chair Grabiell opened the public hearing.

### **Public Comment(s)**

Chair Grabiell read for the record a letter from a resident who strongly opposed the Waters Senior Living of Edina. Grabiell rejected the comments made in the letter as the comments were not truthful.

Susan Clark, 5812 West 61<sup>st</sup> Street, opposed the proposed assisted living facility. Ms. Clark represented the adjacent neighborhood and reviewed the history of the project with dates. Ms. Clark felt the project was materially misclassified in the zoning process as other assisted living facilities were classified PSR4. She did not understand why Edina has classified the site PRD5. The State guidelines for assisted living facilities were reviewed. Ms. Clark then completed a calculation as to the number of residents that could occupy the facility. While Dave Jensen has stated no more than 169 residents will occupy the building, 209 residents would fit into the space. The adjacent neighborhood was not in favor of the increased density. Continuing, Ms. Clark noted 20% of the occupants of The Water Senior Living of Edina could be under the age of 55. She explained that this 20% would increase the parking needs of the facility. Concluding, Ms. Clark respectfully requested the Commission deny the amendment to the approved plan along with the preliminary and final plat for The Waters Senior Living of Edina.

Robert Scroggins, 6256 Sandpiper Court, supported the proposal. He felt the proposed development was better and single family housing. Mr. Scroggins added that the plan was previously approved by the Council and the amendments only improved the facility, reduced the intensity and density while still offering affordable housing units. He indicated the request was reasonable and should be approved.

Gordon Johnson, 5837 Jeff Place, reviewed the legal issues before the City. He understood the plan was previously approved and felt this was acted on erroneously by the Council. Johnson indicated the facility was not a convalescent home, rest home or nursing home and was not being properly licensed with the State. Continuing, Johnson commented that in his opinion the PRD5 zoning classification was incorrect under State statute, and the PSR4 zoning classification did not meet the proposed project either. He requested the City of Edina allow the applicant to withdraw their request or that the item be tabled to allow the City to adopt an assisted living Ordinance to permit the proposed use. Johnson felt once the proper Ordinance was in place the development could be properly reviewed.

Kent Gravelle, 5609 Tracy Avenue, reviewed City Ordinance 810.11, explaining how the Commission was to review plats. Mr. Gravelle reviewed the history of plat approvals in the City. He indicated the neighborhood had no similar structures or facilities in close

proximity and did not fit with the character of the neighborhood. Mr. Gravelle expressed concern with increased traffic levels along Tracy Avenue. He explained the proposed development had a grade over 18% and significant slope changes would be made through the development. For these reasons, Mr. Gravelle requested the Commission deny the request.

Jan Johnson, 5837 Jeff Place, noted she was a consulting dietician with assisted living facilities and has been for the past 40 years. She expressed concern about the reduced parking spaces and the zoning classification for this proposal. Ms. Johnson felt that more than 30 spaces were needed for employees. In addition, volunteer, visitor and guest parking spaces would be needed at the facility. She explained that overflow parking from this development would spill out into her neighborhood, which was not welcomed. Ms. Johnson requested the parking requirements be reviewed to assure that overflow parking was not brought into the neighborhood.

Jeannie St. Pierre, 6005 Arbor Lane, indicated the City currently had a parking problem with scheduled park events at Colonial Way. St. Pierre then reviewed several photographs with the Commission of illegal parking and parking concerns on adjacent roadways to The Waters Senior Living as the result of park events, church events, weddings and funerals.

Trevor Isaaman, 5704 Olinger Boulevard, stated he has lived in the community for 22 years. He explained the parking and traffic in his neighborhood has become a concern. Mr. Isaaman felt the reduction in parking was a mistake that the adjacent neighborhood would pay for.

Chair Grabiell encouraged the residents in this neighborhood to bring their parking concerns to the Police Department and request additional enforcement.

Dorothy Kerzner, 5828 Jeff Place, expressed concern regarding the proposed affordable housing. She reviewed a letter explaining the requirements for elderly waivers noting residents would have to qualify for medical assistance. Ms. Kerzner indicated elderly waivers were not a realistic solution to meet the affordable housing needs.

David Henry, 5712 Creek Valley Road, objected to the density of the proposed project, along with the traffic study. He felt the trips in and out of the facility were misrepresented. Mr. Henry requested the Commission not approve the subdivision.

Harvey Havir, 6108 Tracy Avenue, felt the project was being presented falsely as the assisted living facility did not meet the zoning needs of a PRD5.

Chair Grabiell read through the City's zoning guidelines for PRD5 with the residents present.

Mr. Havir questioned if the State licensing required for the project would be affected by the current moratorium. Chair Grabiell indicated the license would be applied for half way through the construction project and the City's approval would be made based on City Code and not the State's licensure process.

Christine Henninger, 5816 Jeff Place, clarified that the PRD5 zoning classification was for rest homes, convalescent homes or nursing homes licensed through the State of Minnesota. She indicated the State currently had a moratorium on licensing for new rest homes, convalescent homes or nursing homes.

Chair Grabiell indicated this would be addressed by Mr. Jensen. He clarified with the residents that if the Commission were to vote against the proposed plan this evening, The Waters Senior Living of Edina would proceed as previously approved.

Mr. Jensen commented there was a moratorium on new nursing home facilities without specific approval from the Department of Health. He indicated his organization has received approval for a new facility in the cities of Minneapolis and Little Falls in the past year. Approval would be granted for a project in Princeton as well.

Chair Grabiell questioned the difference between the proposed development and those that have a moratorium. Mr. Jensen explained the licensing for nursing homes had a moratorium while assisted living and memory care units were allowed. This was determined under Minnesota State Statute 144D, in addition to Minnesota Rule 9505.0290.

Mr. Johnson commented assisted living facilities receive permits in the State of Minnesota and do not require a license in the same manner as nursing homes. He indicated if the proposed project were an assisted living facility and not a convalescent home the project did not fit City Code.

Commissioner Staunton explained a PRD5 allows for a convalescent home, nursing home or rest home. He stated City Ordinance defined a convalescent home as a building or group of buildings licensed by the Minnesota Department of Public Welfare for the care of children, the aged, or infirmed. This goes on to say, or a place of rest and care for those suffering physical or mental disorders.

City Attorney Knutson indicated that the City has already approved a PRD5 zoning classification for this property. The property is zoned PRD5 and in addition, a preliminary plat has already been approved. Knutson stated that the proposed use has been deemed appropriate by the City Council.

Commissioner Fischer questioned Mr. Johnson when the Sunrise development was approved. He indicated this was a similar development with assisted living in a residential neighborhood and was approved by Mr. Johnson when he served on the Planning Commission. Mr. Johnson was uncertain of the year this was approved. He

commented the City should clarify its code regarding assist living facilities before proceeding with the proposed development.

John St. Pierre, 6005 Arbor Lane, explained he had a cardiac procedure last week and requested that Jeff Duncan read his comment for the record.

Jeff Duncan, 5820 Jeff Place, addressed the flood concerns of the property in question. He commented the developer has not taken into consideration the parking stalls that will be lost in the floodplain. Mr. Duncan stated the 100 year flood risk on this site should be considered. He noted the public's safety would be a concern if the parking lot had 12+ inches of standing water.

Julie Appel, 5820 Jeff Place, addressed safety concerns in the neighborhood. She stated Jeff Place was a quiet street with very little traffic. Ms. Appel did not want to see the proposed development impact her street or her children's safety. While she supported senior citizens she understood that their driving habits and response times could become compromised at times. She did not want to see overflow parking from the assisted living facility spilling onto her street. Ms. Appel encouraged the Commission to keep her neighborhood streets safe and free of overflow parking.

Ms. Kerzner reviewed the differences between the licensing processes for nursing homes and assisted living facilities. She requested the Commission consider another model for the proposed assisted living, such as Rose Cottage and deny the current request.

Mr. Duncan questioned how the parking issues would be addressed after the fact. He indicated there was no room for a ramp or additional lot. All of the overflow parking would spill into the Countryside neighborhood. Property values would be affected in the long run. He requested the Commission vote no to the amended plan and no for the plat.

Barbara Hoganson, 5829 Jeff Place, indicated the residents were thankful to be heard this evening and hoped the Commission would work with the residents and clarify how the PRD5 fit the proposed use. She noted the parking regulations did not take into account the real needs of the development. Ms. Hoganson spoke with Staff regarding the issue and felt the site should have been zoned PSR4, like all other assisted living facilities in the community.

Chair Grabiell asked why the subdivision plat was allowed to lapse. Mr. Jensen stated the size of the building was being altered and the process was delayed more than expected.

Chair Grabiell questioned how the development would limit the number of residents to 167. Mr. Jensen indicated care suites and memory units would never have more than one person. He stated based on his experience no more than one person lives in a

single bedroom. Mr. Jensen noted he did not foresee more than two people living in a two bedroom unit.

Chair Grabiell inquired the number of employees that would work on a single shift. Mr. Jensen estimated the peak number of employees to be 30.

Chair Grabiell questioned the number of handi-cap parking stalls on the site. Mr. Jensen stated this was regulated by State Code and two or three handi-cap stalls would be available both outside the building and within the parking garage.

Chair Grabiell asked the difference between affordable housing units and low income housing units. Mr. Jensen explained the affordable housing units required elderly waivers.

Chair Grabiell requested further comment on the potential flooding of the parking lot. Mr. Jensen stated the parking lot would have signage. During a 100 year flood event, all staff would be bused to the site from the Eden Prairie facility.

Chair Grabiell questioned how the City could guarantee that the facility would continue to operate as an assisted living facility. Mr. Jensen noted all zoning requirements would have to be met by The Waters Senior Living and he encouraged the residents to visit the Eden Prairie assisted living facility.

Chair Grabiell asked how parking concerns would be addressed during weddings or funerals at the church. Mr. Jensen stated The Waters Senior Living has partnered with the church and he would be coordinating with the church for large events to assure there was no overlap.

Ms. Hoganson indicated the City had no legal standing to assure that the assisted living facility would maintain its PRD5 function. She stated the PSR4 zoning classification would assure that the site would have to meet senior needs.

Mr. Jensen explained the financing for The Waters Senior Living required seniors to be housed in the facility. The loan was a 40 year loan and could not be prepaid for 10 years. His intention was to have seniors in the development for the long term.

**Commissioner Scherer moved to close the public hearing. Commissioner Fischer seconded the motion. All voted aye; motion to close public comments carried.**

### **Discussion**

Chair Grabiell questioned if the Commission had the scope of the authority to approve the subdivision request. In addition, he asked if the request met the terms for City approval. City Attorney Knutson noted that the City Council has already approved the preliminary plat and at that time the Council determined the request met all City

requirements. Knutson further explained that approval of preliminary and final plats was a quasi-judicial function of the Council and Planning Commission. The Commission was to determine the objective requirements of the Ordinance. Chair Grabel asked if the proposed development met the City's requirements. Planner Aaker stated the project met City requirements.

Commissioner Forrest noted she was in favor of the reduced sized building for this project. She was concerned with the definition of a nursing home and felt the proposed development was an assisted living facility. The City's Ordinance was worded more loosely and as trends in senior healthcare have evolved, the Ordinance should have been amended. Continuing, Commissioner Forrest did not feel the property should be zoned PRD5 for several reasons. Nursing homes and assisted livings required differing licenses and permits from the State. She indicated the parking calculations were made based on nursing home standards and not assisted living functions. Commissioner Forrest read City Ordinance 850.03, Section 2. She recommended the zoning be reviewed for this property and that the City review the PRD and PSR language.

Commissioner Fischer commented the building size was a concern to residents when first presented, along with the price of the units. He stated the developer has reduced the size of the building and proposed seven units to be affordable. Fischer encouraged the neighboring residents to speak with the police department and traffic enforcers regarding parking concerns in their neighborhood and not blame the proposed development for the current concerns.

### **Motion**

**Commissioner Fischer recommended the City Council approve the amendment to the approved site plan to reduce the size of the approved 139-unit convalescent home by 28 feet to provide seven units of affordable housing subject to Staff findings and recommendations. Commissioner Scherer seconded the motion.**

### **Discussion**

Commissioner Carpenter suggested the Commission consider an additional condition to address parking concerns.

Commissioner Forrest agreed with this suggestion, stating she would enjoy seeing cooperation on this issue.

**All voted aye; motion carried. 7-0.**

**Commissioner Fischer recommended the City Council approve the Preliminary and Final Plat to create a new lot for the approved 139-unit convalescent home subject to Staff findings and recommendations. Commissioner Carpenter seconded the motion.**

## **Discussion**

Commissioner Forrest commented that because this was a preliminary plat approval, the evaluation of this project should consider the impact on the neighborhood and if the building fits the character of the neighborhood. Chair Grabiell noted that the action this evening was for both; preliminary and final plat.

### **Motion carried. 6-1 (Forrest).**

Chair Grabiell thanked the residents for their comments this evening and for participating in the Planning Commission's approval process.

**2011.0005.09a      Kirby Herman  
5829 Brookview Avenue, Edina**

### **Subdivision with Variance**

This item has been continued to the August Planning Commission by request of the applicant.

## **VII. REPORTS/RECOMMENDATIONS**

None.

## **VII. CORRESPONDENCE AND PETITIONS**

Chair Grabiell noted receipt of the Council Connection.

## **VIII. CHAIR AND COMMISSION MEMBERS COMMENTS:**

Chair Grabiell noted the Commission would be reviewing the Zoning Ordinance in the fall. He indicated an assisted living facility could be further addressed at that time.

**IX. ADJOURNMENT:**

**Commissioner Scherer moved adjournment at 9:45 pm. Commissioner Carpenter seconded the motion. All voted aye; motion carried.**

**Respectfully submitted,**

*Heidi Guenther*

*TimeSaver Off Site Secretarial Services*