



**PLANNING COMMISSION MEETING
OF THE CITY OF WHITE BEAR LAKE, MINNESOTA
MONDAY, JANUARY 30, 2023
7:00 P.M. IN THE COUNCIL CHAMBERS**

1. CALL TO ORDER AND ATTENDANCE

Chair Jim Berry called the meeting to order at 7:01 p.m.

MEMBERS PRESENT: Mike Amundsen, Ken Baltzer, Jim Berry, Pamela Enz, Mark Lynch, Erich Reinhardt, Andrea West

MEMBERS ABSENT: None

STAFF PRESENT: Jason Lindahl, Community Development Director; Ashton Miller, City Planner; Shea Lawrence, Planning Technician

OTHERS PRESENT: Gary Dahle, Elizabeth Dahle, Mark Goodman, Bruce Englund, Joanne Englund, Mitch Honsa, Bart Schultz, Graham Westra, Don Gilbert, Heather Gilbert, John Jacobsen, Rebekah Goodspeed, Josh Winchell, Erika Winchell, Julie Longueville, Brad Longueville, Rose Miller, Mike Miller, Brianna Tahdooahnippa

2. APPROVAL OF AGENDA

It was moved by Member **Lynch** and seconded by Member **West** to approve the agenda as presented.

Motion carried, 7:0

3. APPROVAL OF THE MINUTES

A. Minutes of November 28, 2022

It was moved by Member **Baltzer** and seconded by Member **Enz**, to approve the minutes of November 28, 2022 meeting as presented

Motion carried, 7:0

4. CASE ITEMS

A. Case No. 23-3-CUP: A request by **The Minnesotan** for a conditional use permit, per code section 1303.160, subd.5.b, in order to convert the existing retail use to a liquor lounge with accessory retail at the property located at 2186 4th Street.

Community Development Director, Jason Lindahl discussed the case. Staff recommended approval of the request as proposed.

Member Berry opened up the public hearing.

Corey Roberts, the owner of the Minnesotan and applicant introduced himself and stated he has been a proud member of the downtown White Bear Lake Community since 2019 and is looking to expand their brand and enhance their offerings for their customers, such as by introducing a self-pour system in the proposed liquor lounge.

Member Baltzer asked if they will continue to sell their current retail products or if they will be eliminating that. Roberts responded that no, they will continue to sell their present retail products.

Member Berry asked if Roberts is okay with the conditions listed in the staff report. Roberts replied yes, he is okay with all of the conditions.

Member Berry closed public hearing.

It was moved by Member **Baltzer** to recommend approval of Case No. 23-3-CUP, seconded by Member **Amundsen**

Motion carried, 7:0

- B. Case No. 22-20-V :** A request by **Joshua Winchell** for a variance from the side yard setback, per code section 1302.030, Subd.4.e, and a variance from the total accessory structure square footage allowed, per code section 1302.030, Subd.4.2.b, in order to construct a 160 square foot shed at the property located at 2338 South Shore Boulevard.

Ashton Miller, City Planner, discussed the case. Staff recommended approval of the request as proposed.

Member Lynch asked if the house was 50 sq. ft. bigger if there wouldn't be a need for a variance. Miller responded that they would not need a variance for the accessory structure size if that were the case.

Member Berry opened the public hearing.

Josh Winchell, owner of the property and applicant for this case, stated he doesn't agree with a couple of the conditions of approval listed in the staff report. He explained he doesn't agree with the condition of the City not being responsible for any damage resulting from a repair to the utility. He explained that part of the variance includes him placing the new shed closer to his property line so he can remove his current shed off the utility. Winchell, also expressed he does not agree with the condition requiring him to sign easement paperwork for the utilities on the property. He explained that there is

an easement in place already, which was discovered when he had his property surveyed about 10 years ago. He does not know where that easement paperwork is today—he sent over all this title paperwork and the easement paperwork was not found amongst the paperwork.

Member Amundsen asked for clarification if Winchell is referring to condition number 6 from the staff report.

Lindahl responded with some additional information regarding the case. Lindahl explained that he and Winchell had a conversation about the case earlier that day. He explained that based on the research done by the Engineering Department, it still remains unclear if there is an easement in place. Lindahl explained that the utilities were placed after the property was created in 1959 or 1960 and that it appears there was an easement that was supposed to cover the utilities on the west side of the property. He explained that after going through the documents and speaking with the City Attorney, it was discovered that the easement was only generally recorded at the county and not specifically at this property. Lindahl explained that more research is needed to determine if there is a valid easement in place.

Lindahl went on to say that if the research shows there is an easement in place, the City would not require an additional one, but if there isn't, the City Engineer recommends one be put in place. Additionally, if the shed encroaches on that easement there should be a release of the City's liability if there is resulting damage from accessing the utilities. Lindahl explains that the City does not have the intention to go into the easement for periodic repair—the easement is meant to allow access for necessary repairs and replacements, as the infrastructure will not last forever. He explains there is a public interest in maintaining the infrastructure because it serves the surrounding community.

Member Amundsen asked for clarification because the survey image shows the shed will be placed 6 ft. from the sewer line. He asked how that is considered encroachment. Lindahl responded that because we don't exactly know how deep the pipe is, the shed could be in a resulting easement. He explained that easements have a 1:1 correlation to the depth. Member Amundsen asked if the utility line is 6 feet deep, if the resulting easement would then be 6 feet on either side of the utility. Lindahl responded yes. Member Lynch then asked if the issue comes from our not knowing how deep the utility is, to which Lindahl responded yes.

Member Berry then asked if the applicant is penalized if the shed is too close to the utility and repair needs to take place. Lindahl responded that if there's an easement in place, we won't create a new one, but if creating one is necessary, we would work to make it as narrow and tight fit as possible. If the engineering department needs less than 6 feet of space, then no encroachment agreement would be necessary. Lindahl continued that staff is sympathetic to the applicant about how complicated this case has become in order for him to build a shed. Lindahl noted that the couple weeks between

now and the City Council meeting will give staff time to research more about whether there is an easement in place.

Winchell expressed that his biggest concern is where the liability lies. If he must redo an easement agreement and release the City of liability, he wondered if the easement could also have an impact on his house, as it could be expensive if it does and he has to repair his shed and house.

Lindahl explained that he understands Winchell's concerns, but the challenge is that the proposed location has a slight encroachment to the easement. It could be possible to, but less practical, to locate the shed within the setback and away from the utilities, but he understands that there are other reasons why the applicant has chosen the proposed location – convenience of accessing shed, topography, and aesthetics of placing the shed in the side yard as opposed to in the rear yard, between the house and the pond. Lindahl explained that there are some tradeoffs if the applicant wants to place the shed within the setback and so close to the utilities and those tradeoffs include establishing the easement and releasing the City of liability for damage. But because there are some unknowns about the lot, Lindahl suggested that staff makes every effort to work this out prior to the City Council review.

Winchell explained that there is nowhere else on the property to locate the shed. He explained that placing the shed elsewhere would impede his neighbor's view of the pond. The back corner of the lot is unavailable because it has a fire pit. Winchell wants to be cognizant of his neighbors, and place the shed at the bottom of the hill outside of their view. Winchell explained that the only place to locate the shed without impeding their view is in the proposed location.

Member Reinhardt asked the applicant if the easement were to impact the location of the shed, if that would cause him to not build the shed.

Winchell explained that he is at a crossroads and that this could get really expensive so he may move away from building the shed. The original intention of the shed was to provide extra storage space because he has limited garage space because it does not have a pitched roof. He explained that he appreciates the city working with him on this process.

Member Berry closed the public hearing.

Member Lynch asked city staff what the chances are the unknowns of this case would be resolved before the City Council meeting.

Lindahl responded that the City and the homeowners want the same things – they have a reasonable ask for a reasonable use. He explained that staff try to have these resolved

prior to Planning Commission, but at this time, there is still the need for more research. Lindahl explained he is hopeful that we will get to an outcome that works for everyone.

Member Lynch proposed that the Planning Commission, when thinking about this case, should move forward with the assumption that the easement is in a reasonable spot. He continued that the City Council will deal with what comes up in the next couple weeks as further research into the case occurs. Member Lynch suggested that the Planning Commission members express what their concerns are and the best way to move forward and that the City Council will have more information to go off of. Member Lynch continued to say he believes that the easement should be solidified and that the shed should not be built on it or the City should not be liable for damages if it is.

Member Berry explained that the commissioners will look at conditions 6 and 7 and act on this case as if conditions 6 and 7 will be resolved before the City Council meeting or the case will have to be continued.

Member Lynch agreed with Member Berry that based on current knowledge, conditions 6 and 7 are a good idea, knowing that they may change prior to the City Council Meeting.

Member Amundsen asked about the wording of condition 7 which says that the City will not be responsible for any damage to the structure in the event of a utility repair. He asked if the mention of an easement was purposely left out of the wording.

Lindahl responded that the condition was written generally to cover the topic of encroachment. If it gets to the point where an encroachment agreement is necessary, then there would be a more specific template the City Attorney would create for this case.

Member Lynch asked, in the case of the City potentially damaging a shed that is nowhere near the easement, if the city would be responsible.

Lindahl explained that there is a public need of the easement and utilities and that if the City needs to access it, it is because something is wrong or the infrastructure is going to fail soon. He continued that the City would come in to do their work as quickly and carefully as possible and try to restore the area to the way it was. But in construction projects like that, which could be an emergency situation, there could be quick work that needed to be done that could cause some damage. The city does not try to cause damage and would try to make it right if they did.

It was moved by Member **Amundsen** to recommend approval of Case No. 22-20-V, seconded by Member **West**.

Motion carried, 7:0

- C. Case No. 23-1-V:** A request by **Heather Gilbert** for a variance from the side yard setback, per code section 1303.040 Subd.5.c.2, in order to construct a two story home in approximately the same footprint of the existing home at the property located at 4556 Highway 61.

Miller discussed the case. Staff recommended approval of the request as proposed.

Member West asked for staff to elaborate on the ordinary high water level.

Miller responded that ordinary high water level is an average of lake levels and it is determined by the DNR. The setback is based on an average of the two neighbors on the lakeside to protect views.

Member Berry opened the public hearing.

Gary Dahle, an attorney representing Michael and Rosalie Miller, who live at the neighboring property 4552 Highway 61 welcomed the Gilberts to the neighborhood and wished them many years of enjoyment of the existing home. Dahle explained there is a close proximity between the two structures, 7 ft. 3 inches at the closest point, and that the existing foundation is closer than what the setback rules require. Dahle listed seven health and safety concerns about the proposed project as follows:

1. There is a greater fire hazard because of the close proximity.
2. In the winter, icicle formation creates an injury hazard.
3. In the winter, there is also a higher hazard risk for surface icing in the space between the buildings.
4. The close proximity of the foundation creates water damage issues. Water falling from the structure could fall on the neighboring property and drain into the foundation. The proposed doubling of the roof height means rain dropping off the roof falls twice as far which exacerbates erosion.
5. The proximity of the structures could leave inadvertent damage to the neighboring structure from construction activity or moving soils.
6. The close proximity and narrow space could create a wind tunnel effect which could be strong because the property is located near White Bear Lake. The increased wind could blow up additional dirt and grit which could lead to additional maintenance work for the neighbor at the 4552 Highway 61 property.
7. Lakeward extension of the project would amplify any of the previously listed concerns.

Dahle continued to cite the White Bear Lake zoning code and that its purpose is to establish minimum regulations in regards to altering structures and land. He explained that regulations are in part created to provide adequate light, air and convenience of access to property and prevent overcrowding and that the overall purpose of the zoning

code is to protect health, safety and general welfare. He stated the Miller's access to light and air would be impaired and the access to the property may be affected.

Dahle continued to reference that the zoning code requirement for issuing variances includes the proposal will not impair adequate supply of air and light and increase fire hazard or endanger fire safety. Dahle stated that adding a second story to the house would violate these requirements. The code states that a variance should not be granted if the proposed project will diminish nearby property values, and the possible damage that could be caused by the construction and drainage issues could impact the Miller property's value. Dahle continued to reference the Structural Engineer report that states construction could affect the structural performance of the Miller's property.

Heather Gilbert, the applicant, explained that she is not opposed to the conditions of approval listed in the staff report and that her builder is present to answer questions.

John Jacobsen, the builder for the Gilberts, addressed some of the issues brought up by Mr. Dahle. Jacobsen explained they will leave the existing foundation wall so there isn't any excavation in the alleyway abutting the Miller property. The building will be pushed in 1.8 feet in the back, away from the lake and will not encroach on the 20 ft. front yard setback, which is consistent with the rest of the nearby houses so it shouldn't affect the light. There will be gutters and a downspout on the house, and they can put a heat tracing on the gutters to prevent icicle formation. The current distance between the 2 buildings will remain the same with the proposed structure. He explains that the grading shouldn't change.

Member Amundsen, asked what the height difference is between the current and proposed structure, because it looks like the second story appears to be more like a loft space. Jacobsen responded that he doesn't know the exact difference but that they plan to stay within the 35 feet limit. Amundsen then asked if the second story won't have full walls with trusses on top. Jacobsen responded that there will be some wall there.

Member Amundsen asked if the building materials will be fire rated because the walls are so close. Jacobsen responded that they wouldn't be using the same materials that may be used for a fire wall in a condominium such as fire treated lumber.

Member Enz asked what type of materials they will be using. Jacobsen responded they will be using 2x4s and 2x6 and sheathing with an LP material – a high density non burnable material.

Member Enz asked Gilbert if the lower level is intended for rental because there appears to be a full kitchen and could be a separate entrance. Gilbert explained that the lower level is meant to be an additional space to entertain and she does not intend to rent the space.

Member Berry closed the public hearing.

Member Amundsen asked city staff if the code requires different building materials depending on the distance between buildings.

Miller responded that the City follows the state building code which does have certain requirements, and there are extra layers that need to be applied when you encroach into a setback. Miller stated that is something the building official will weigh in on. Amundsen followed up, asking if the variance is approved, if it would come up in the building permit process that the buildings are too close and would require certain building materials. Miller responded yes, and that the City cannot provide a variance from the state building code.

Member Lynch, asked how far away the two properties are built from the lot lines. He continued that it appears 4552 is about 3.2 ft away from the lot line and 4558 is about 10 ft from the property line. Miller confirmed that yes, that is what the survey shows.

Member Lynch said that because they are building on practicably the same footprint and because it appears that the home on 4552 Highway 61 similarly encroaches on the setback as well, it seems reasonable to allow this variance. He continued saying that if there is any damage during construction then that would be something that the property owners would deal with separate from this process.

Member Enz asked if the issue of water mitigation would come up now, or during the building phase.

Miller responded that the engineering department has reviewed the application and has brought up water mitigation in the review memo. The zoning code does not allow for any impact of runoff onto any other property.

It was moved by Member **Amundsen** to recommend approval of Case No. 23-1-V, seconded by Member **Lynch**.

Motion carried. 7:0

- D. Case No. 23-2-CUP:** A request by **Guidepost A LLC** for a conditional use permit, per code section 1302.140, in order to convert an existing office building into a daycare facility at the property located at 3220 Bellaire Avenue.

Ashton Miller, City Planner, discussed the case. Staff recommended approval of the request as proposed.

Member Lynch asked if the requirements for schools are much different from the requirements for daycares, in reference to a community comment that thought the Montessori daycare should be considered a school.

Miller answered that there are actually fewer requirements for schools as the city's zoning code section regarding day cares is exhaustive.

Member Berry opened the public hearing.

Mark Goodman, a representative with Guidepost A LLC extended his thanks to city staff for their assistance through this process. He stated that Guidepost LLC only goes where there is a demand. He asked if the condition of approval in the staff report that requires a landscaping letter of credit, can be revised to include the phrasing "or other financial instrument acceptable to the City Finance Department". He explained that Guidepost A LLC does not typically issue letters of credit so it would be more amenable to them to have another option available.

Lindahl explained that the recommendation is based on the standard practice from the City, but that staff is agreeable to the change that the applicant is proposing. Lindahl explained that the City's attorney would review whatever mechanism the applicant proposes.

Member Enz asked if the building will have a secured entrance.

Goodman responded that there are Guidepost Facilities all over the world and country. The Lake Forest location does not have a secured entrance, but there are and will be procedures in place for child pickup.

Member Berry said that if the facility is similar to the graphic provided that it will be an improvement. He also expressed that he likes that Guidepost A LLC, does not purchase property based on speculation and they know they will fill it.

Goodman explained that if they didn't think they would fill it, they wouldn't be able to finance the project.

Rebekah Goodspeed who lives at 2569 Oak Drive, asked how Guidepost A LLC determines need. She also explained she had a discussion with the homeowner just north of the property, who wondered what the fencing would look like.

Joanne Englund of 2537 Sumac Circle, expressed that she and her husband believe that the day care is a great idea for the property. She explained that it isn't a loud area, and she's excited it will be used as a productive venture.

Brianna Tahdoahnippa of 3244 Bellaire Ave, commented that the neighborhood is noisy with road traffic and that she wants to suggest a lower speed limit in the area. She doesn't agree with the proposal because of the increased noise. She would ask that if it is approved that the fencing would be more durable or higher than proposed. She added that there have been squatters on the property, so she does agree it should be occupied but that it shouldn't be a daycare. She also expressed concern because she has seen wolves in the area.

Goodman explained that fencing height is required by state licensing. He continued that the daycare won't contribute any more street noise and that the children won't add much more noise because of the placement of the play areas on the lot and the site being surrounded by large trees.

Member West asked what the fence will look like.

Miller explained that a black iron fence is what was proposed and that there are certain limitations about what types of fencing can be used and how tall the fences can be in the front yard.

Goodman explained they are going to use the highest quality and security fencing as possible and reiterated that they will be regulated by state licensing requirements.

Lindahl explains that there are two applications of fencing in this case, one required by state licensing for children's safety. He explained that because the property is zoned medium density residential, the City applied the medium density zoning requirement which limits front yard fence height. Lindahl continued that the second application of fencing is screening from the adjacent properties. Fencing can be effective, but the city typically looks to do screening through natural planting to create a more natural environment. Lindahl explained that the city could consider additional fencing to the site, if that is more agreeable to the Planning Commission.

Goodman explained that he doesn't see how additional fencing would add much more screening because of the distance from the building and play areas to other residential properties. They are trying to minimize their costs and fencing the entire property could be very expensive.

Member Berry asked how the need for daycare was determined for the area.

Goodman responded that they have a staff that goes out and digs into demographics of communities and that they have an in depth approach to determine need. He reiterates that this facility is only a daycare, not a school and that there will be plenty of parking on site in the parking lot.

Member Berry closed the public hearing.

Member Lynch said he would like to help connect the community member who was interested in suggesting a lower speed limit on the road.

Miller responded that the City has a safety committee that can take concerns and requests from the community and that City staff can help her get in touch with them.

Member Baltzer said that he believes the day care is a good use for the building since it's been empty for so long.

It was moved by Member **Baltzer** to recommend approval of Case No. 23-2-CUP, seconded by Member **Lynch**.

Member Amundsen asked for clarification if the approval includes the previously mentioned amendment to requirement 7 in the conditions of approval.

Member Baltzer confirmed yes.

Member **Lynch** re-seconded.

Motion carried, 7:0.

- E. Case No. 85-11-Sa2:** A request by **Silverstar Carwash** for an amendment to a conditional use permit, per code section 1301.050, in order to modify the existing car wash and add vacuums at the property located at 2180 7th Street.

Miller discussed the case. Staff recommended approval of the request as proposed.

Member Amundsen asked if we know the reason for the significant difference in water usage over the years.

Miller responded that in 2018 Hogwash came in and installed a second wash for motorcycles which could have impacted the numbers. Change of usage could also explain the reduction.

Member Berry opened the public hearing.

Bart Schultz, who works for Houston Engineering, the company working with Silverstar Carwash explained that Silverstar Carwash has been around since 2010 and is located out of Sioux Falls. They have recently moved into Minnesota. He continued that they use high quality equipment at their carwashes and that customer loyalty and customer service is important to them. Schultz explained that the proposal shows they intend to change the exterior façade of the building to have the standard Silverstar Carwash look

and in order to prevent intensification of the building they have removed the standard Silverstar Carwash parapet from their design and moved the vacuum area inside the building. He explained the facility will always be staffed with 4 people during operating hour to assist customers.

Member Amundsen asked Schultz if he is okay with the condition that lists the acceptable hours of operation.

Schultz responded yes and that the hours listed in that condition are their standard hours of operation.

Member Berry closed the public hearing.

It was moved by Member **Amundsen** to recommend approval of Case No. 85-11-Sa2, seconded by Member **Enz**.

Motion carried, 7:0.

- F. Case No. 23-5-CUP:** A request by **White Bear Lake Area Schools** for a conditional use permit, per code section 1303.245, for a gym addition at the Central Middle School building located at 4857 Bloom Avenue.

Miller discussed the case. Staff recommended approval of the request as proposed.

Member West thanked Miller for going over the parking information for the facility.

Member Berry opened the public hearing

Tim Wald, the Assistant Superintendent for Finance and Operations for White Bear Lake Area Schools explained this project is part of the 2019 referendum. He stated that two of their architects are present and can answer any questions.

Member Amundsen asked if they plan to acquire the 4th property, near the three that the school district has already acquired.

Wald responded that there is a purchase agreement in place for that property.

Member Amundsen stated that plays into the setbacks, because acquiring that lot will provide them with even more space to work with.

Wald stated that they intend for that lot to be green space.

Member Enz expressed that watching this process for the school district come together has been exciting.

Wald responded that the high school recently welcomed students into the building.

Member Berry agreed it's been exciting watching it all come together.

Wald expressed his appreciation to the City's Building Department during the last couple years.

Lindahl explained that the Building Department staff have been working hard to make sure the school's projects are moving along and expressed that the school district has been a great partner throughout the process and they are making an incredible investment in the community and the education of the kids.

Wald explained that there are always challenges to getting supplies which has created some challenging timelines for the inspectors and construction managers, but they were able to pull it off.

Member Berry closes the public hearing.

It was moved by Member **Enz** to recommend approval for Case No. 23-5-CUP, seconded by Member **Baltzer**.

Motion carried. 7:0

5. DISCUSSION ITEMS

A. Election of Officers

Lindahl discussed the memo about processes for election of officers.

Member Lynch asked about the timeline for electing officers in the future.

Lindahl explained that the bylaws state the elections should occur at the end-of-the-year meeting and then take effect in the following meeting in January. He continued that elections have typically happened in January because the end of the year agendas tend to be very full. Lindahl explained that staff will continue to consider any changes that should be made to the bylaws as we go through the year.

Member Berry opened the nominations for Chairperson.

Member **Baltzer** nominated Member Berry.

It was moved by Member **Amundsen** to close the nominations, Member **Baltzer** seconds.

It was moved by Member **Berry** moved to elect himself by unanimous consent to the position of Chairperson, Member **Amundsen** seconds.

Motion carried, 7:0.

Member Berry opened nominations for Vice Chair.

Member **Baltzer** nominated Member Amundsen.

It was moved by Member **Lynch** to close the nominations, Member **Baltzer** seconds.

It was moved by Member **Lynch** to elect Member Amundsen to Vice Chair by unanimous consent.

Motion carried, 7:0.

Member Baltzer made a comment that the Chair must first say that he will entertain a motion before members move to approve cases.

Member Amundsen said he will review the process.

Lindahl said that we may be a little rusty since there hasn't been a Planning Commission meeting for a couple months.

Member Baltzer explained he just wanted to mention the procedure.

B. City Council Meeting Overview

Lindahl discussed the Planning Commission cases that have been to City Council since the last Planning Commission Meeting. He explains that Smarte Carte and the Herkenhoff cases were both approved by City Council. The Winchell case was a part of the November agenda but continued at the request of the applicant, which the Commission heard tonight.

Lindahl explained that the sign application from Acqua, was withdrawn by the applicant because the State of Minnesota brought to the City's attention that they have their own sign standards for off premise signs. Acqua would not have been able to meet the State standards.

Member Lynch asked if the spacing requirement that they could not meet was the State or City's requirement.

Lindahl explained the City has setback requirements for signs and spacing requirements

for billboards. Based on the City's definition of signs and billboards, Aqua's proposal fell under the definition of a sign, but based on the State's definition, it was considered a billboard. It was because Aqua couldn't fit within the state required standards for spacing that they chose to withdraw their application

Lindahl continued that the Concept Plan and Neighborhood Meeting text amendment had its first and second reading so it has been officially approved. The Commission will have their first concept plan proposal during the February Planning Commission Meeting

6. ADJOURNMENT

There being no further business before the Commission, it was moved by Member **Baltzer**, seconded by Member **West** to adjourn the meeting at 9:19 p.m.

Motion carried, 7:0.