

Planning Commission Meeting
August 29, 2019
7:00 PM

Call to Order

Chair Mark Azman, Temporary Chair, called the meeting to order at 7:00 p.m. and swore in new Planning Commissioner Jim Hara.

Roll Call

Present were Chair Mark Azman, Commissioners Stig Hauge, Yoshimura –Rank, Nick Sandell, Jim Hara, City Planner Bob Kirmis, City Administer Mike Robertson, Recording Secretary Debbie Breen, Absent: Commissioners Nancy Reid and Sara Shah

Approval of Agenda

Motion to Approve by Commissioner Hauge, seconded by Yoshimura-Rank. Unanimously approved.

Approval of July 25,2019 Regular Meeting Minutes

Motion to approve made by Commissioner Yoshimura-Rank, seconded by Commissioner Hauge. Unanimously approved.

Public Hearing – Request for Subdivision Approval / Split – Vacant Lot at 42 Mallard Road – Sarah Kudebeh

Chair Azman opened the Public Hearing at 7:05 p.m. City Planner Kirmis reviewed the application made by Sara Kudebeh, which is a vacant 3 acre parcel of land at 42 Mallard Road. Applicant is proposing to subdivide into 2 residential parcels, zoned as Residential Single-Family low density (RSL). This parcel abuts South Mallard Pond and is subject to Shoreland District regulations. This request needs preliminary plan approval, then later again final plan approval by North Oaks City Council. As part of future ordinance update, Planner Kirmis suggests that maybe simplify application process for subdivision of just lot lines to a single approval. Within RSL zone designation the minimum lot size is 1.45 acres, shoreland regulations require a minimum 1 acre lot size. In cases where 2 ordinances apply to a request the most restrictive would apply which is the 1.45 acre minimum size. Both proposed parcels would be 1.5 acres so they would meet this requirement. The shoreland setback requirement is 150 feet – which this also meets. RSL zoning states no septic systems are allowed within 30 feet of lot lines and the updated version of the plan reflects this. The parcel on the North is bordered by East Oaks Drive which is a busier road, therefore City staff is requiring driveway access off of Mallard Road. The City Engineer recommends the driveway location be a minimum of 100 feet south of North Oaks Road, with the driveway of Parcel B located at least 100 feet south of the driveway of Parcel A. Each proposed parcel would require space allocated for 2 individual septic systems. Conditions for approval also include: certificate of survey indicate primary and secondary facilities at both parcels, as well as the water main must be illustrated on the final plan along with connections. The parcel would have 3 easements – East Oaks Road/ Mallard road, drainage/utility and a bridal path easement along South Mallard Pond which is 10 feet in width. If the Planning Commission finds that it does not meet requirements, they must detail findings that justify that action. The final option is for the Planning Commission to table the application for further review and study.

Chair Azman asked if both parcels can support ISTS systems, with Planner Kirmis confirming that they could. Chair Azman mentioned that to subdivide an existing lot it is thought that permission may need to be granted by North Oaks Company (NOC). Administrator Robertson stated the Applicant has been advised that they would need to speak with NOC.

Scott Bardwell with Coldwell Bank and Sarah Kudebeh, owner of 42 Mallard Road

Mr. Bardwell is helping the applicant submit the application and will be working with her on the sale of the lots. He mentioned the existing driveway on the south lot would be the logical place for a driveway and he believes the 100 feet separation can be met. They are simply looking for a lot split at this time. The house pad location will be based on the new owner's construction plan and location of the septic. He indicated that tapping into the water line may be cost prohibitive, therefore the new owners may go with a well. Robertson said there is plenty of room on both parcels to place a home and septic and soil tests were taken at several locations. Robertson stated that if new owners came with plans requesting any variance it would be denied since this plan has been approved. Mr. Bardwell will look at ensuring there are no deed restrictions through the North Oaks Company and complete a title search.

Raleigh Brodin – 40 Mallard Road

Mr. Brodin doesn't have any issues with the application. It's an empty lot and the foundation for a home is there. He came into the meeting concerned with setbacks, covenants and was happy to have all of his questions already answered in the City Planner's report. He also has 5 acres which he could possibly entertain splitting later.

Anne Conroy, Chris Hansen – 10 East Oaks Road.

Ms. Conroy lives on the other side of South Mallard Pond. She wanted to be sure that the drain field from the old house that used to be there was not used in the calculations. The lot has a steep drop off from the high ground and also wanted to be sure there was a plan in place for erosion control. Administrator Robertson agreed and mentioned that it is probably more suited to a walk out home. Ms. Conroy is concerned about the water quality, and that the landscape plan is closely reviewed to ensure the pond doesn't get additional stress. She stated the pond is listed as a DNR protected wetland and asked the Planning Commission to take this into account. She indicated that there are other lots around the area that are also large and she is concerned about setting a precedent for future lot splits. Robertson stated only 2 lots within North Oaks have been subdivided in his last 6 years. He added that each lot must be a minimum 1.45 acres to subdivide and very few people build their house based on future subdivision. Their house is placed where they want it, and the need for two new septic sites along with the required well setback make it difficult to create a building lot.

Chair Azman asked Planner Kirmis to review the items in the ordinance that the Planning Commission must consider in their decision. Planner Kirmis stated that the City of North Oaks require accordance with: lot area, lot width, building and shoreland setbacks, ISTS two septic locations, suitable access to both lots. Final plan must also meet conditions that illustrate drain field sites and that all conditions protecting public health must be approved. Commissioner Hauge stated that so far he is not seeing anything that they could use as just cause to prohibit the subdivision. Commissioner Sandell noted that there is no request for variance, and everything appears to meet City ordinance requirements.

With no further comments, Commissioner Hauge motioned to close public hearing 7:40 pm, Commissioner Hara seconded the motion. The motion was unanimously approved.

Commissioner Hauge motioned to approve the application based on the conditions provided by City Planner. Commissioner Yoshimura-Rank seconded. The conditions include:

- 1. Driveway access to proposed Parcel A shall be from Mallard Drive and shall be at least 100 feet south of East Oaks Road, with the Parcel B driveway at least 100 feet south of the driveway access to Parcel A.**
- 2. Homes on the two lots shall satisfy the maximum 12% floor area ratio requirement for structures within the RSL zoning district.**
- 3. Any dock construction shall comply with applicable regulations of the Shoreland Management Ordinance (Section 153.110.D3)**
- 4. The certificate of survey (preliminary subdivision plan) shall be modified to illustrate primary and secondary septic drain fields for both proposed lots.**
- 5. Individual sewage treatment systems shall comply with applicable Minnesota Department of Health requirements.**
- 6. The location of the wet tap(s) in the watermain, if they choose to connect, shall be subject to approval by City engineer.**

Chair Azman also does not see any reason to deny the application and believes each future application will be considered on its unique individual circumstances so there is no precedent being set.

Commissioner Yoshimura-Rank mentioned that when the home plans are presented for approval it would be reviewed to ensure setbacks are met and DNR concerns addressed with the new buyer having to prove it meets erosion control. Robertson said that the Planning Commission cannot put North Oaks Company or NOHOA landscape plan approvals as conditions of Planning Commission approval since this is out of their purview. Chair Azman confirmed with Administrator Robertson that soil samples were taken from areas other than the original drain field. Commissioner Yoshimura-Rank asked about possibility of needing a 3rd ISTS location. Administrator Robertson mentioned that the septic inspector has stated there is almost always a means for septic options, they just get more expensive as the primary locations are used up.

All Commissioners voted in favor of the Approval of the application to subdivide 42 Mallard with conditions noted. Motion carried.

Public hearing -Request for Conditional Use Permit for 33 Mallard Road – Combined Garage Space over 1,500 Square Feet- Fady Daw

Continuation of public hearing from the July 2019 Planning Commission meeting. Administrator Robertson stated that at the last meeting the Planning Commissioners requested a site plan and elevations with the garage door highlighted along with a landscape plan. These items have been provided to the Commission. Chair Azman asked for the location of the septic and well or if it is hooked up to the water system. Robertson stated that the City Engineer did confirm that the drainage was adequate.

Applicant Fady Daw – 33 Mallard Road

Commissioner Hauge thanked Mr. Daw for attending and asked him to describe how the garage would work. Mr. Daw stated that it would not be an issue driving down to it as it would not be used in the

wintertime. It would most likely will be used as an exercise room but he added the garage door in case he wanted to store his summer cars. He does not want to leave them outside for safety purposes, and it would also keep the driveway clean.

Commissioner Hara asked for clarification on what doors are currently in place. Mr. Daw stated that it was originally planned as bifold doors, but he would be taking off the glass doors and changing it to a high-end garage door. Commissioner Hara indicated that he is aware of other homes within North Oaks that have multiuse space such as this. Planner Kirmis mentioned that it requires a Conditional Use Permit because it is in excess of 1,500 square feet of garage space. The of CUP concern to review are: potential negative impacts of appearance and neighbor impacts, architecture, appearance, orientation of garage doors, etc. In this situation, the garage is on lower level therefore would not impact neighbors based on the orientation. Mr. Daw stated that the garage is not visible from the road, and that issues have been resolved with NOHOA. Mr. Daw believes home is valued at \$2.3 million and should add value to the area for surrounding homeowners.

With no further comments Commissioner Hara motioned to close the public hearing at 7:59 p.m., seconded by Joyce Yoshimura-Rank with unanimous approval.

Commissioner Hara motioned to approve the Request for Conditional Use Permit for Combined Garage Space over 1,500 Square Feet with two conditions. Commissioner Yoshimura-Rank seconded.

Chair Azman stated that the proposed findings look appropriate. Commissioner Yoshimura-Rank believes it meets all the criteria.

All commissioners voted to recommend approval of the Conditional Use Permit with two conditions.

Planning Commission Training – City Attorney Kory Land

Commissioner Yoshimura-Rank confirmed that the City Attorney firm has been officially approved. Attorney Land stated a contract is in place and provided background on both herself and Attorney Bridget Nason. She reviewed the second portion of the training manual for Planning Commissioners. Highlights include the following.

Different categories of zoning ordinances:

- Permitted Use- A use is permitted as of right with no special approval required or findings needed.
- Conditional Use Permit (CUP) – Permitted use to which reasonable conditions may be attached based on factual findings. Needs a little extra attention to the request.
 - Criteria for approving a CUP: Must be compatible with the neighborhood, in accordance with the Comprehensive Plan, can't endanger public health, safety, welfare. There may be additional local regulations. CUP are important to a property owner, because it is attached to the land – and goes to any new owner. Can only get rid of them if a condition has been violated or revoked by Council.
- Interim Use- Temporary use of the land in which reasonable conditions will expire on a certain date, or when zoning ordinance no longer allows it. Examples: seasonal gardens in parking lots. Examples: seasonal garden sales in parking lot.

Variances:

A variance is permission to break a rule. The commission does not have to grant a variance but is permitted to do so. A variance is approval to depart from the requirements of the zoning ordinance; permission to “break the rules”. The standard test is “practical difficulty”. Commissioner Hara asked if

each applicant can be considered on own or precedent. Attorney Land stated that each variance stands on its own, but it can look bad if applications have similar circumstances but City action is different. If going to grant a variance it must meet the following test.

- **Practical difficulty test:** Property cannot be used in reasonable manner, unique circumstances to the property NOT created by the homeowner. (can't be financial only and homeowner can't be caused by the homeowner).
- **Unique Circumstances not created by the homeowner:** If a landowner purchases property knowing it will need a variance is his situation self-created and therefore he cannot meet the unique circumstances? Her view is that he did not create the physical characteristics, they pre-existed ownership, there is not guarantee it will be approved, but hope it can be approved. Economic circumstances are not a justified reason for variance.
- **Character of Neighborhood:** Will look at whether the result will be out of scale, out of place or otherwise inconsistent to the area.

Keep in mind there are rules enacted for a reason and need to stick to those rules wherever possible as to not set a precedent.

Planning Commission is responsible for reviewing any Zoning Ordinance Amendments.

Zoning Ordinance Amendment: In order to approve a zoning ordinance amendment-

- Must comply with Comprehensive Plan
- Must not impede orderly development
- Must not endanger, injure, detrimentally impact surrounding properties.

Rezoning a Map amendment: Commissioners must look at the request as a whole and how it is connected to possible impact in other areas.

- Greater burden on applicant than on government to change zoning
- Relationship to comprehensive plan important, cannot allow spot zoning
- Rezoning residential to commercial or industrial requires 2/3 vote

Must make sure that Comprehensive Plan Amendment accompanies a Zoning Map Amendment because they must be in synch. When a conflict with Zoning Ordinance, the Comprehensive Plan always wins. There is a state law that now states the zoning must be in synch with Comprehensive Plan.

60 Day Rule:

- Failure of the City Council to act on a zoning application within 60 days after receipt of the completed application results in automatic approval of the request. The PC has 1-2 meetings to consider an application.
- Statutory exceptions: Can extend the time to act on an application for up to an additional 60 days with a Staff letters with reasons for the request and length of extension. Applicant can also request an extension. All applications must be acted upon within 120 days.
- If application is denied, an Applicant can reapply with new information.

Conflict of interest:

Can't have a direct or indirect personal or financial interest in any matter upon which you can make a decision. Remove yourself from the situation. Examples: rezoning your own property, applicant is a client, or neighbor applies for a variance. If so: disclose the conflict, do not participate in the discussion or the vote, leave the room during the vote.

Gift Law:

City Officials cannot accept gifts from interested persons, which could be anyone within North Oaks because applications may come up in future from any neighbor. City Official is any elected or appointed officer (Planning Commission is appointed). This includes money or personal property, service, etc. Nothing over \$5 in value.

Commissioner Yoshimura-Rank asked for clarification when a public hearing is needed. Attorney Land indicated that any requests for Variances, CUP, final plats, zoning and text amendments require a public hearing by Statutory regulation. Administrator Robertson stated that our ordinance currently states that no public notice is required for ISTS variance hearings, but the new attorneys will be reviewing this. He also mentioned that the City of North Oaks has a very consistent track record of not approving variances, with few exceptions. Administrator Robertson stated he will send the report on past variances to all the Planning Commissioners.

Chair Azman announced the next meeting as Thursday, September 26, 2019.

Administrator Robertson discussed his upcoming retirement. He will stay until a new replacement begins. There have been 10 applications received to date and City Council will decide who is interviewed. He noted that the October Planning Commission meeting will fall on Halloween and asked if they wanted to change the date.

Motion to move the move the meeting to October 24, 2019 made by Commissioner Sandell, with Commissioner Hauge seconding. Unanimously approved.

The November and December meeting dates will be discussed at the next Planning Commission meeting.

At 8:57 p.m., Commissioner Yoshimura-Rank motioned to adjourn, seconded by Commissioner Hauge, with all in favor.