

**AGENDA
PLANNING COMMISSION MEETING
CITY OF SHOREVIEW**

DATE: JULY 25, 2017

TIME: 7:00 PM

PLACE: SHOREVIEW CITY HALL

LOCATION: 4600 NORTH VICTORIA

1. CALL TO ORDER

ROLL CALL

APPROVAL OF AGENDA

2. APPROVAL OF MINUTES

June 13, 2017 Workshop

June 27, 2017

3. REPORT ON CITY COUNCIL ACTIONS

Meeting Date: July 17, 2017

Brief Description of Meeting process- Chair John Doan

4. NEW BUSINESS

A. VARIANCE

FILE NO: 2664-17-17

APPLICANT: John Madden

LOCATION: 239 Nichols Ct.

B. PUBLIC HEARING -TEXT AMENDMENT/SMALL CELL WIRELESS*

FILE NO: 2663-17-16

APPLICANT: City Of Shoreview

LOCATION: City Wide

5. MISCELLANEOUS

A. City Council Meeting Assignment for August 7 and 21 is Commissioners Peterson and Thompson

B. Community Conversation – Land Use and Development, August 10th

C. Planning Commission Workshop - Comprehensive Plan, August 8th

6. ADJOURNMENT

**These agenda items require City Council review or action. The Planning Commission will hold a hearing, obtain public comment, discuss the application and forward the application to City Council. The City Council will consider these items at their regular meetings which are held on the 1st or 3rd Monday of each month. For confirmation when an item is scheduled at City Council, please check the City's website at*

www.shoreviewmn.gov or contact the Planning Department at 651-490-4682 or 651-490-4680

MINUTES
PLANNING COMMISSION WORKSHOP
JUNE 13, 2017

The meeting commenced at approximately 7:00 pm.

ROLL CALL

The following Commissioners were present: Chair Doan; Commissioners, McCool, Peterson, Solomonson, Thompson, Wolfe and Yarusso.

Workplan

The Staff presented the Workplan for the Planning Commission. The Commission will work on the Comprehensive Plan over a 10-month process beginning in June of 2017 when the Planning Commission starts the review of the Land Use Chapter. The Draft Plan will be completed in the Spring/Summer of 2018. Formal adoption of the Plan by the City Council is expected in December of 2018.

Demographics

Information regarding demographics was reviewed by the Commission. Commission members commented on changes pertaining to the age of the population, household characteristics and increase in diversity. There was discussion about the increasing turnover that is occurring as it appears younger individuals and families are moving into the City as seniors and empty nesters sell their homes.

The Metropolitan Council forecasts were also reviewed. The Commission indicated that population and housing forecasts are attainable due to recent development approvals. There was some question regarding employment figures since the City is limited in the land supply available for economic growth.

Commission members asked for further demographic information on housing and economic development.

Metropolitan Council Land Use Policies

The Staff reviewed the Metropolitan Council's land use policies for communities. Shoreview is classified as a suburban community. The Metropolitan Council has identified general land use policies for all communities within the 7-County Metropolitan Area but has also developed policies for each of the community designations. These policies are attached and need to be reflected in the Comprehensive Plan.

Residential Land Use Designations and Density

One of the policies discussed related to the required density of 5 units per acre for new growth, development and redevelopment. There was some discussion about the impact this density will have on established neighborhoods and the quality of life. Staff did review densities of some of the existing higher density residential apartment/condominium projects and summarized how other communities use density in their residential land use designations. A Commission member did ask that the City look further into supplementing densities using bonuses.

Further information was requested on the densities of our existing neighborhoods. There was consensus to revisit this topic after discussion on the Policy Development Areas.

Policy Development Areas

Since the plan was adopted in 2008, there have been a number of changes affecting the PDA's. A table has been provided that identifies which PDA's need to be updated and potentially revised per the recommendations of the Highway Corridor Transition Study. Further, Staff has included some other candidate areas where PDA may be useful to address development related impacts.

The Commission began discussion on the Policy Development Areas.

- 1) Brookside Manufactured Home Park – the Commission supported adding a MU designation to the future land use. Any change in land use needs to a higher density needs to address affordable housing.
- 2) 1300 County Road I – proposed designation of RM and RL. The property is constrained with wetland area and access. Because of these constraints and the proximity to other low and medium density residential land uses as well as the elementary school, the property is suitable for low density and medium density residential. While higher density was discussed, there were concerns that this property did not have the capacity due to the constraints.

Adjournment

Meeting was adjourned at approximately 9:00 pm

Kathleen Castle, City Planner

**SHOREVIEW PLANNING COMMISSION
MEETING MINUTES
June 27, 2017**

CALL TO ORDER

Chair Doan called the June 27, 2017 Shoreview Planning Commission meeting to order at 7:00 p.m.

ROLL CALL

The following Commissioners were present: Chair Doan; Commissioners, McCool, Peterson, Solomonson, Thompson and Wolfe.

Commissioner Yarusso was absent.

APPROVAL OF AGENDA

MOTION: by Commissioner Solomonson, seconded by Commissioner Thompson to approve the June 27, 2017 Planning Commission meeting agenda as submitted.

VOTE: **Ayes - 6** **Nays - 0**

APPROVAL OF MINUTES

Commissioner Solomonson corrected the last two sentences on page 3, which should read “proposed garage,” not “property.”

MOTION: by Commissioner Peterson, seconded by Commissioner Solomonson to approve the May 23, 2017 Planning Commission meeting minutes as corrected.

VOTE: **Ayes - 4** **Nays - 0** **Abstain - 2 (Thompson, Wolfe)**

REPORT ON CITY COUNCIL ACTIONS

City Planner Kathleen Castle reported that no Planning Commission items were considered by the City Council in June.

Ms. Castle urged all Commissioners to attend the first Community Conversation for the Comprehensive Plan to be held on July 12, 2017, at 6:30 p.m. in the Shoreview Community Room, at the Community Center. The topic is demographics. The presenter is Susan Brower, State Demographer.

OLD BUSINESS

CONDITIONAL USE PERMIT*/VARIANCE

FILE NO: 2660-17-13
APPLICANT: Max and Beth Segler/Moser Homes
LOCATION: 1265 Sunview Court

Presentation by Economic Development and Planning Associate Niki Hill

This application to construct a detached accessory structure of 1350 square feet was reviewed by the Planning Commission at its May 17, 2017 meeting. The size of the structure requires a Conditional Use Permit (CUP). A variance is also requested for height. At that meeting, the Planning Commission tabled this item and extended the review period to 120 days due to concerns about height, vegetation/screening and setback. The Commission questioned whether there would be space for additional screening in the 20-foot setback area. It was suggested the structure be moved further west to increase the setback to 25 to 30 feet. However, additional setback could impact maintenance of the sanitary sewer line located west of the garage site. The Commission also encouraged the applicants to explore lowering the requested height of 23.5' 1/8". The maximum peak height allowed is 18 feet.

The property is zoned R-1, Single Family Detached Residential and consists of 5.2 acres. It is developed with a single-family home with a foundation area of 2,405 square feet; and there is an attached garage with 918 square feet. City Code allows detached accessory structures to exceed the maximum 440 square feet stipulated on parcels that exceed 2 acres under the CUP process.

The revised plan shows that the 20-foot setback is retained. The height is reduced to 20 feet 10 1/16 inches, which still requires a variance. The maximum wall height allowed with a CUP is 10 feet; 12 feet is requested. The foundation area is the same at 1350 square feet. Two variances are requested for the peak height and wall height.

The applicant states that the proposal complies with all City requirements for a CUP with the exception of peak and wall heights. Shifting the proposed structure further west from the property line will cause it to become more prominent than the home. City Code does not allow an accessory structure to be the focal point on a property. The required setback is 10 feet; the proposal is for 20 feet.

The applicant believes construction can occur without any negative impact to adjacent properties. There is a significant buffer of trees between the proposed building and the nearest property owner who is in excess of 110 feet away.

Staff finds that the proposal is consistent with the City's land use and housing policies. Practical difficulty is present. The additional peak and wall heights requested are reasonable for the large 5.2 acre property and size of the home. The proposed structure is located in the rear yard with proximity to the open wetland area immediately to the east. With the sewer line west of the proposed location, the 20-foot rear setback is reasonable. A buffer is provided for properties to the east with existing mature evergreen and deciduous trees. The additional 10 feet of setback

amounts to 3.5 feet of additional setback for each additional foot of height requested. This is over a 3.5:1 ratio. The proposed structure is near the home and uses the existing driveway access.

Unique circumstances exist in that a 5.2 acre property for single-family residential is unusual in Shoreview. It is one of 11 single-family residential properties greater than 5 acres. The property is also isolated by natural features from adjoining residential townhouse units. The vegetation buffer on the east property line and the wetland immediately to the east and south create separation from the adjacent townhouse development. The closest adjacent residence is over 110 feet.

The increase in height will not adversely impact adjoining land uses or alter the character of the neighborhood due to the unique features of the property. The location of the proposed garage will minimize any impact due to existing vegetation, wetland and increased setback. The style will match the existing home. Staff also believes that the modest increase in height will have less impact than a one-story structure with a larger footprint. Per Code a foundation area of up to 2,127 square feet is allowed but would disturb more existing vegetation and have a greater impact to adjacent neighbors. The application complies with location and design requirements for the CUP for this detached accessory structure. The total of all accessory structures is less than 125% of the primary structure.

Notice of the proposal was sent to area property owners. Three written comments were received to the initial proposal expressing concern about the impact on neighbors' views and the natural environment. One comment requested 10-foot trees in the buffer area and that natural tones be used for the paint color of the garage.

Six written comments have been received regarding the revised proposal. All are opposed to the height, color and size of the structure. One phone call was received questioning the amount of storage needed with a request for reduced height so as not to be seen from Sunview Court.

Staff believes the proposal complies with the standards in the Development Code for a CUP. The use is consistent with the Comprehensive Plan. Staff recommends the proposal be forwarded to the City Council with a recommendation for approval for the CUP, subject to the conditions listed in the staff report and that the Planning Commission approve the two variances.

Commissioner McCool noted that this application does not use the maximum square footage allowed for accessory structures on their property. Potentially, there could be another application. He asked if the square footage of the second story is counted in the calculation for total amount of accessory structure. Ms. Hill answered that the applicants are allowed two detached accessory structures and another 700 square feet could be requested. The second story is not counted, only the foundation area.

Chair Doan opened the discussion to public comment.

Mr. Gordon Rosine, 5718 Silverthorne Place, stated that his is the closest townhouse to the proposal. Increasing the 20-foot buffer is not as big a concern because there is a chain link fence

that allows space for the existing trees to get air and sunlight. His biggest concern is the color red. Typical billboards along the highway are 14 feet in height, 48 feet in length. The new structure at a height of 12 feet and length of 45 feet will be like a billboard and a wall of red. The south wall is 30 feet by 12 feet. There is also a gable which will be an additional 8 feet of red. That is a lot of red wall that neighbors will see 7 months out of the year. He requested use of the khaki brown that would match the house and improve the visual impact to residents. The barbed wire above the chain link fence has been removed but is coiled around three posts that face the Silverthorne neighborhood. The barbed wire needs to be removed.

Ms. Maggie Rosine, 5718 Silverthorne Place, reiterated the huge size of the structure and her concern for the bold red color that will be seen daily when there are no leaves on the trees.

Commissioner Wolfe asked if there is a guideline or definition of color that should be followed. Ms. Castle responded that Code states the detached accessory structure must compliment the residence on the property. Only in the shoreline districts are neutral colors required.

Commissioner Peterson noted that the rear of the structure has exposed footings for grade transition. He asked how much higher that part of the building will be than Sunview Court. **Mr. Bob Moser**, Moser Homes, Contractor, responded that at the rear property line adjacent to Silverthorne is an elevation of 897. In comparison, the elevation at the structure is 900, a 3-foot differential. Commissioner Peterson asked the height of the exposed footing. **Mr. Moser** answered, 2 feet. He noted that at a maximum under a CUP, Code would allow this building to be 30 feet by 69 feet with a height of 18 feet, which would be much more obtrusive than what is being requested.

Commissioner Solomonson stated that he was looking for a reduction in height, additional setback and additional screening. The height has been somewhat reduced, but there is no additional setback or screening. His concern is the exposed understory that will be red. He would suggest additional screening and asked if the Commission can stipulate color. City Attorney Beck stated that color can be stipulated, but he would not recommend the Commission make design decisions.

Commissioner Peterson stated that there has been significant reduction in height. However, the application should be denied unless there is a change in color and increased setback with additional screening. The applicant previously indicated that the structure could be pushed back another 5 feet. The variances can be denied on the basis that there are not unique circumstances to the property; the issue is the unique design of the building.

Commissioner Thompson requested the applicant to address the issue of color. **Mr. Segler**, Applicant, stated that the setback minimum required by the City is 10 feet, which has been doubled. Anything more and the new garage will become a focal point for the property, which is not allowed. There are many mature trees and close to 30 evergreens that he has already planted. There is not room to plant more trees. He has made a big effort to provide screening. More trees could be planted on the other side of the fence, if the Association would allow it and if there would not be interference with utility lines. He does not want a two-toned building. Red is the preferred color, but he would be willing to use the taupe color on the gables. There is a

home on County Road E between Victoria and Lexington that is purple and yellow with flowers on it. The City cannot tell homeowners what color to paint their homes.

Commissioner McCool asked if there are plans for another accessory structure and if the applicant would forfeit allowed square footage for the additional height. **Mr. Segler** answered, no. He does not want to maximize accessory structure square footage because they plan to stay in the home and the future is unknown. He would be unwilling to give up any square footage for height.

Commissioner Solomonson asked if design features could be used on the east wall to break up the red wall effect. **Mr. Segler** indicated the location of the new garage that would be directly behind trees. The Silverthorne homes cannot be seen from his property. He is not planning features to break up the red wall. Neighborhoods change. When the townhouses were built as a long row, no features were added to break up the mass. He did not oppose them. He could have subdivided and put many homes on his property, which would have had a greater impact on the neighborhood.

Commissioner Solomonson expressed his appreciation for the changes made and agreed that the City cannot dictate the color. He would like to see a couple of more trees to mitigate the height and asked if two or three additional trees could be planted on the south toward residents. **Mr. Segler** stated that he needs space on the back side for maintenance of the garage. If more trees are planted, branches from others may have to be trimmed.

Commissioner Wolfe noted that if this application is not approved, a garage could be built that is extended 24 feet longer, which would be a longer red wall.

Commissioner McCool stated that a larger structure would still require a CUP, which does not have to be approved. His concern is that another application could come in for another 700 square feet. One of the aspects of a large lot is that accessory structures can be built with minimal visibility. Unfortunately, the location on this property does impact neighbors. The three feet of additional height is his concern. One approach might be to trade out square footage for the added height. The uniqueness is the size of the property.

Chair Doan asked about requiring additional trees on the other side of the fence, which is Silverthorne property. Ms. Castle stated that would require approval from the Home Owners' Association. A general condition could be added for the applicant to work with adjoining property owners to explore additional landscaping on the east side of the fence.

Commissioner Solomonson stated that he does not believe screening should be required on property the applicant does not own and on which he does not have rights. The south side is mitigated by distance. Three coniferous trees could be planted as close to the fence as possible within the 20-foot setback on Mr. Segler's property. **Mr. Segler** offered to give the neighbors three flags to put where they would desire trees to be planted. Once the flags are posted, he will bring in three trees and have them planted subject to utilities and at his cost. **Mr. Rosine** stated that he would like to see three trees on the south side and three on the east. There are utility lines between the curb and fence on the Silverthorne side. The east side is not in his sight line so

would not be a gain for him. The side along the lake is where there is room for trees to be planted.

Commissioner McCool stated that he would support the proposal with added landscaping on the southeast side of the fence to mitigate the additional 3 feet in height. He recommended the applicant work with staff on placement of additional trees.

Chair Doan added that the two-toned gable should be included as a condition.

MOTION: by Commissioner McCool, to adopt Resolution No. 17-33, approving an accessory structure peak height of 20' 10 1/16" and a wall height of 12' and recommending the City Council approve the conditional use permit for the 1350 square foot detached accessory structure submitted by Max and Beth Segler, 1265 Sunview Court. the approval is subject to the following conditions and with the addition of condition No.7:

Variance

1. The project must be completed in accordance with the plans submitted as part of the Variance application. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. This approval will expire after one year if a building permit has not been issued and work has not begun on the project.
3. The structure shall be used for the personal storage of household and lawn equipment.
4. The structure shall not be used in any way for commercial purposes.
5. This approval is subject to a 5-day appeal period. Once the appeal period expires, a building permit may be issued for the proposed project. A building permit must be obtained before any construction activity begins.
6. The approval is contingent upon approval of the Conditional Use Permit.
7. The applicant shall install additional screening on the property and or, if permitted, on the neighboring property to the east to screen views of the new structure from the neighboring properties. Applicant must provide a screening plan for approval by the City Planner before a building permit may be issued for the garage.
8. South side must be two-toned, with the gable color matching gable color of house.

This approval is based on the following findings:

1. The proposed improvements are consistent with the Land Use and Housing Chapters of the Comprehensive Plan.
2. Practical difficulty is present as stated in Resolution 17-33.

Conditional Use Permit

1. The project must be completed in accordance with the plans submitted with the applications. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. The exterior design of the garage shall be consistent with the plans submitted and complement the home on the property.

3. The applicant shall obtain a building permit for the structure. The structure shall comply with the Building Code standards.
4. The applicant shall retain existing vegetation between the structure and the eastern property line for screening purposes. If vegetation is removed, replacement screening in the form of landscaping, berming, fencing or a combination thereof is required.
5. The structure shall not be used in any way for commercial purposes.
6. Said structure may be increased to a peak height of 20' 10 1/16" and a wall height of 12' per Resolution 17-33, approving the Variance.
7. The second-floor area shall be used for interior storage only and cannot be used as habitable or living space.

Discussion:

Commissioner Solomonson offered an amendment to add condition No. 8 to the variance portion of the motion: "South side must be two-toned, with the gable color matching gable color of house." Commissioner McCool accepted the amendment.

Commissioner Solomonson seconded the motion.

VOTE: **AYES: Doan, McCool, Peterson, Solomonson, Thompson, Wolfe**
 NAYS: None
 ABSENT: Yarusso

NEW BUSINESS

SITE AND BUILDING PLAN REVIEW*

FILE NO: **2662-17-15**
APPLICANT: **CLASSIC CONSTRUCTION INC.**
LOCATION: **MIDLAND TERRACE - 3505 OWASSO ST.**

Presentation by Senior Planner Aaron Sedey

The application is to remove three existing garages and rebuild two new garages with larger capacity, one with 34 stalls and one with 21 stalls. Approximately 3,689 square yards of parking area would be repaved. New concrete curb and gutter would be installed to replace existing pre-fab concrete parking stops. The apartments have a mansard roof and cedar siding; the existing garages have a flat roof and mansard facade. The exterior of the new garages will use shingled, hip roof with cedar siding to complement apartment buildings and will be of the same design as used for the garages built in 2013 and 2016. Staff believes the variation in roof design will not impact aesthetics of the complex.

The, property is zoned R-3 Multi Dwelling Residential District and developed with apartment buildings. Adjacent land consists of the railroad to the north, Light Industrial zoning to the east, Low Density Residential to the south, and Institutional to the west across Victoria Street.

The apartment development was approved by the City in 1967. It was reviewed as a PUD rather than a strict R-3 development, although no formal PUD designation was codified at the time. The plat approved the location and design of 10 apartment buildings and 11 detached garages. Very few setbacks were specified for the buildings from property lines. The southern garage has a 5-foot setback from the lot line.

The development currently has 244 indoor parking stalls, which is less than the 420 required by Code. The approved plan in 1967 included a total of 745 parking stalls with 210 enclosed stalls. The proposal will increase 11 covered stalls and decrease the same number of surface stalls. No change is anticipated in impervious surface coverage. The impervious surface restriction is 65%. The development is approximately 55%. Most of the storm water is discharged directly to Lake Shoreview. The new paving will direct a majority of surface runoff to the City storm sewer. The high water table limits management practices. Rain gardens cannot be used. The project will include filter strips for runoff. Staff is recommending gutters on the south garage that would be directed to the City storm sewer. The City Engineer has commented that the project will divert an additional 0.7 acre of more storm water runoff into the City's storm water collection and treatment system.

The Fire Marshall has requested the complex retain fire apparatus width requirements.

Ramsey Washington Metro Watershed District has requested more information to determine whether or not a permit is needed.

Property owners within 350 feet of the whole complex were notified of the proposal. No comments were received.

The proposed improvements are consistent with the Planned Land Use and the policies of the Housing Chapter of the Comprehensive Plan. Staff recommends the application be forwarded to the City Council with a recommendation of approval subject to the conditions in the staff report.

Commissioner Solomonson commended the applicant for this improvement and investment in the property. He verified there would be no loss in the number of parking stalls. He asked about truck access to the garbage area. Mr. Sedey explained that the garbage area will be in one garage stall.

Chair Doan opened the discussion to public comment. There were no comments or questions.

MOTION: by Commissioner Peterson, seconded by Commissioner Thompson to recommend the City Council approve the Site and Building Plan review application submitted by Classic Construction to demolish three existing garages and construct two new garages in the middle and south of the apartment complex at 3505 Owasso St.

This approval is subject to the following:

1. This approval permits the construction of two garages as shown in the submitted plans to be used for tenant vehicle parking at the apartment building at 3505 Owasso St.
2. Approval from Ramsey-Washington Metro Watershed District and any necessary permits needed prior to submitting for a building permit.
3. Approval of the final grading, drainage, and erosion control plans by the Public Works Director, prior to the issuance of a building permit for this project. These plans shall include the practice(s) used for treatment of stormwater runoff.
4. The applicant is required to enter into an Erosion Control Agreement with the City. Said agreement shall be executed prior to the issuance of any permits for this project.
5. A six foot privacy fence is to be installed on the southern property line. A permit is required.
6. Gutters are required for the southern garage and should be directed to the street and the City storm sewer system.
7. The Building Official is authorized to issue a building permit for the project, upon satisfaction of the conditions above.

This approval is based on the following findings of fact:

1. The proposed land use is consistent with the designated Residential (8-20 units per acre) land use of the Comprehensive Plan.
2. The proposed development complies with the standards identified in the City's Development Code.
3. The proposed improvements meet the spirit and intent of the Comprehensive Plan and the Development Code.
4. The improvements further the goals outlined in the Housing Chapter of the Comprehensive Plan regarding neighborhood reinvestment and housing maintenance.

VOTE: AYES: Doan, McCool, Peterson, Solomonson, Thompson, Wolfe

NAYS: None

ABSENT: Yarusso

**TEXT AMENDMENT – WIRELESS TELECOMMUNICATION
FACILITIES/SMALL CELL WIRELESS***

FILE NO: 2663-17-16
APPLICANT: City Of Shoreview
LOCATION: City Wide

Presentation by City Planner Kathleen Castle

Notice for a public hearing was published for an amendment to Chapter 200, Section 405 of the Municipal Code. Since that time the Minnesota legislature adopted

legislation affecting local government regulation of small cell wireless facilities in the right-of-way. Staff recommending the public hearing be continued in order to review the legislation and how it might impact the regulations being proposed.

MOTION: by Commissioner Solomonson, seconded by Commissioner Thompson to continue the public hearing for text amendment to Development Code Section 405, Right-of-Way Management, pertaining to wireless telecommunication facilities, including small cell wireless. Additional time is needed for staff to review the recently adopted state law that addresses local regulation of small cell wireless facilities. Said public hearing is continued to the July 25th meeting.

VOTE: AYES: Doan, McCool, Peterson, Solomonson, Thompson, Wolfe

NAYS: None

ABSENT: Yarusso

MISCELLANEOUS

Council Meeting

Commissioner Wolfe is scheduled to attend the July 17, 2017 City Council meeting.

Planning Commission Workshop

Chair Doan noted that the Planning Commission will have a workshop meeting to discuss land use on July 11, 2017, at 7:00 p.m. in the Council Chambers.

Chair Doan noted that he would not be able to attend the workshop meeting.

ADJOURNMENT

MOTION: by Commissioner McCool, seconded by Commissioner Peterson to adjourn the meeting at 8:45 p.m.

VOTE: Ayes - 6 Nays - 0

ATTEST:

Kathleen Castle
City Planner

TO: Planning Commission
FROM: Aaron Sedey, Associate Planner
DATE: July 19, 2017
SUBJECT: File No. 2664-17-17; Variance – John Madden, 239 Nichols Ct.

INTRODUCTION

The City received a variance application from John Madden, 239 Nichols Ct., to reduce the 30-foot minimum rear yard setback permitted to 24.8-feet for a proposed family room addition to the current home. The proposed addition would square off the northwest portion of the home and the new space would be for an additional family room.

The application was complete July 7, 2017.

BACKGROUND AND PROJECT DESCRIPTION

The property is located at the north end of Nichols Court. The property is irregular in shape and has an area of approximately 13,068 square feet. Improvements on the property include a two-story single-family residential dwelling with an attached tuck under garage, driveway, and concrete patios. The property also has mature trees.

At its closest point, back of the home is setback 18'10" from the rear property line. Based on records on file, it appears a building permit was issued in 1981 for an addition to be placed 18'10" from the property line, however, a variance was not processed for the setback. A previous owner in 1996 was granted a variance to build a similar addition as the one proposed 18' from the rear property line for a handicapped accessible bedroom and bathroom but was never constructed.

DEVELOPMENT ORDINANCE REQUIREMENTS

The property is located in the R-1, Detached Residential District. According to Section 205.082(D)(2) - the minimum structure setback from the rear property line shall be thirty (30) feet.

VARIANCE CRITERIA (SECTION 203.070)

When considering a variance request, the Commission must determine whether the ordinance causes the property owner practical difficulty and find that granting the variances is in harmony with the Comprehensive Plan, and in keeping with the spirit and intent of the ordinance. Practical difficulty is defined as:

- 1. Reasonable Manner. The property owner proposes to use the property in a reasonable manner not permitted by the Shoreview Development Regulations.*
- 2. Unique Circumstances. The plight of the property owner is due to circumstances unique to the property not created by the property owner.*

3. *Character of Neighborhood. The variance, if granted, will not alter the essential character of the neighborhood.*

For a variance to be granted, all three of these criteria must to be met.

APPLICANT'S STATEMENT OF JUSTIFICATION

The applicant states that they are requesting a variance to enable building a proposed 201 square foot addition that is into the rear yard setback.

The applicant states that the shape of the current rear addition is highly irregular creating seven corners on each side (sawtoothing). The applicant wants to remove some of these corners while adding a functional living room. The home with its many short jogs in foundation walls has created non-functional, awkward and highly inefficient spaces which hamper efficient use and enjoyment of the home.

See the attached statement and plans.

STAFF REVIEW

Staff has reviewed the application in terms of the Comprehensive Plan and Development Code, as discussed below. The proposed improvement is consistent with the City's land use and housing policies related to housing maintenance and re-investment in single-family residential neighborhoods. However, in Staff's opinion, practical difficulty isn't present.

Reasonable Manner. The property owner proposes to use the property in a reasonable manner not permitted by the Shoreview Development Regulations.

The applicant is currently using the property in a reasonable manner with the home that has a foundation area of 3,365 square feet. The proposed addition of the living space is mainly comprised of windows and could be viewed as encroachment into neighboring properties sightlines and privacy. Although, adding another livable space is a permitted single-family residential use this proposed addition could be viewed as excessive use of the property by bypassing the Development Code further. A smaller addition could be constructed and comply with the minimum 30-foot setback.

Unique Circumstances. The plight of the property owner is due to circumstances unique to the property not created by the property owner.

As the applicant believes the unique circumstances are related to the principal structures' design and the 1981 addition, these conditions do not create a unique circumstance for the proposed addition. The property has sufficient buildable area when the required structure setbacks are applied. Further, the property is developed with a home that has a foundation area of 3,365 square feet which, in Staff's opinion, is ample for a single-family residence. An addition can be constructed within the required building setbacks.

Character of Neighborhood. The variance, if granted, will not alter the essential character of the neighborhood.

If approved at its current request, the house will extend further into the rear yard and have an impact on adjoining properties. The intent of the setback requirements is to maintain open space and yard area between structures. In general, the majority of homes, including adjoining properties, maintain or exceed the minimum 30-foot rear yard setback required. The further encroachment of the applicant's home into the rear yard setback is out of character for the area. In staff's opinion the variance will not be favorable to those property owners that border the rear yard property line.

PUBLIC COMMENT

Property owners within 150 feet were notified of the applications and this hearing. Two comments have been received, one that was neutral and one that said the outcome should be left to the neighbor at 4056 Virginia Ave.

STAFF RECOMMENDATION

The application was reviewed by Staff in accordance with the standards of the Development Regulations and appreciates the redevelopment effort of the applicant. In staff's opinion, a conforming 30-foot rear yard setback for the addition provides reasonable use of the property and so cannot make affirmative findings that practical difficulties are present to allow the 24'8" setback. A motion and resolution for denying have been prepared to assist the Commission.

Staff does recognize that the proposed addition is located no nearer to the rear property line than the addition that is currently there or the previously approved variance. In the event that the Planning Commission can make affirmative findings facts for practical difficulties, the Commission should complete and adopt Resolution 17-46 approving the variance. The following conditions are recommended if the variance is approved:

1. The project must be completed in accordance with the plans submitted as part of the Variance application.
2. This approval will expire after one year if a building permit has not been issued and construction commenced.
3. Rainwater shall be collected by gutters and distributed away from neighboring properties.
4. Erosion control will be installed in accordance with City Code requirements prior to any site disturbance. Vegetation shall be restored in accordance with City Code standards.
5. This approval is subject to a 5-day appeal period.

Attachments

- 1) Resolution No. 17-46
- 2) Location Map
- 3) Aerial Pictometry
- 4) Submitted Plans
- 5) Comments
- 6) Proposed Motion to Deny
- 7) Proposed Motion to Approve

**EXTRACT OF MINUTES OF MEETING OF THE
PLANNING COMMISSION OF SHOREVIEW, MINNESOTA
HELD JULY 25, 2017**

* * * * *

Pursuant to due call and notice thereof, a meeting of the Planning Commission of the City of Shoreview, Minnesota was duly called and held at the Shoreview City Hall in said City at 7:00 PM.

The following members were present:

And the following members were absent:

Member _____ introduced the following resolution and moved its adoption.

**RESOLUTION NO. 17-46 DENYING A VARIANCE TO DECREASE THE REAR YARD
SETBACK**

WHEREAS, John Madden submitted a variance application for the following described property:

*The East 15 ft of lot 6 and all of lot 7 Block 2, SHOREVIEW ESTATES, RAMSEY
COUNTY, MINNESOTA*

(This property is more commonly known as 239 Nichols Court)

WHEREAS, the Development Regulations establish that in the R-1 Detached Residential District a minimum 30-foot setback from a rear property line is required; and

WHEREAS, the applicant proposes a 201 square foot addition onto the house; and

WHEREAS, the applicant has proposed an addition to the existing house and requested to reduce the rear setback to 24-feet 8-inches; and

WHEREAS, the Shoreview Planning Commission is authorized by State Law and the City of Shoreview Development Regulations to make final decisions on variance requests; and

WHEREAS, on July 25, 2017 the Shoreview Planning Commission made the following to deny based on findings of fact:

1. *Reasonable Manner.* The property owner proposes to use the property in a reasonable manner not permitted by the Shoreview Development Regulations.

The applicant is currently using the property in a reasonable matter. A smaller addition could be constructed and comply with the minimum 30-foot setback.

2. *Unique Circumstances.* The plight of the property owner is due to circumstances unique to the property not created by the property owner.

The plight of the owner is due to the design used for the proposed project. It appears possible to add living area to the property in compliance with the required setbacks.

3. *Character of Neighborhood.* The variance, if granted, will not alter the essential character of the neighborhood.

The home will extend further into the rear yard and have an impact on adjoining properties altering the character of the neighborhood. The variance will not be favorable to those property owners that border the rear yard property line.

NOW, THEREFORE, BE IT RESOLVED BY THE SHOREVIEW PLANNING COMMISSION, that the variance request for property described above, 239 Nichols Court, be denied.

This decision is subject to a 5-day appeal period.

The motion was duly seconded by Member _____ and upon a vote being taken thereon, the following voted in favor thereof:

And the following voted against the same:

Adopted this 25th day of July, 2017

John Doan, Chair
Shoreview Planning Commission

ATTEST:

Aaron Sedey, Associate Planner

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)
)
CITY OF SHOREVIEW)

I, the undersigned, being the duly qualified and acting Manager of the City of Shoreview of Ramsey County, Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a meeting of said City of Shoreview Planning Commission held on the 25th day of July, 2017 with the original thereof on file in my office and the same is a full, true and complete transcript therefrom insofar as the same relates to adopting Resolution 17-46.

WITNESS MY HAND officially as such Manager and the corporate seal of the City of Shoreview, Minnesota, this 25th day of July, 2017.

Terry C. Schwerm
City Manager

SEAL

**EXTRACT OF MINUTES OF MEETING OF THE
PLANNING COMMISSION OF SHOREVIEW, MINNESOTA
HELD JULY 25, 2017**

* * * * *

Pursuant to due call and notice thereof, a meeting of the Planning Commission of the City of Shoreview, Minnesota was duly called and held at the Shoreview City Hall in said City at 7:00 PM.

The following members were present:

And the following members were absent:

Commissioner _____ introduced the following resolution and moved its adoption.

**RESOLUTION NO. 17-46 APPROVING A VARIANCE TO REDUCE THE REAR YARD
SETBACK**

WHEREAS, John Madden submitted a variance application for the following described property:

*The East 15 ft of lot 6 and all of lot 7 Block 2, SHOREVIEW ESTATES, RAMSEY
COUNTY, MINNESOTA*

(This property is more commonly known as 239 Nichols Court)

WHEREAS, the Development Regulations establish that in the R-1 Detached Residential District a minimum 30-foot setback from a rear property line is required; and

WHEREAS, the applicant has proposed an addition to the existing house and requested to reduce the rear setback to 24-feet 8-inches; and

WHEREAS, the Shoreview Planning Commission is authorized by State Law and the City of Shoreview Development Regulations to make final decisions on variance requests; and

WHEREAS, on July 25, 2017 the Shoreview Planning Commission made the following findings of fact:

1. *Reasonable Manner. The property owner proposes to use the property in a reasonable manner not permitted by the Shoreview Development Regulations.*

2. *Unique Circumstances. The plight of the property owner is due to circumstances unique to the property not created by the property owner.*

3. *Character of Neighborhood. The variance, if granted, will not alter the essential character of the neighborhood.*

NOW, THEREFORE, BE IT RESOLVED BY THE SHOREVIEW PLANNING COMMISSION, that the variance request for property described above, 239 Nichols Court, be approved, subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the Variance application.
2. This approval will expire after one year if a building permit has not been issued and construction commenced.
3. Rainwater shall be collected by gutters and distributed away from neighboring properties.
4. Erosion control will be installed in accordance with City Code requirements prior to any site disturbance. Vegetation shall be restored in accordance with City Code standards.
5. This approval is subject to a 5-day appeal period.

The motion was duly seconded by Commissioner _____ and upon a vote being taken thereon, the following voted in favor thereof:

And the following voted against the same:

Adopted this 25th day of July, 2017

John Doan, Chair
Shoreview Planning Commission

ATTEST:

Aaron Sedey, Associate Planner

ACCEPTANCE OF CONDITIONS:

John Madden,

Jenny Madden
239 Nichols Court

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)
)
CITY OF SHOREVIEW)

I, the undersigned, being the duly qualified and acting Manager of the City of Shoreview of Ramsey County, Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a meeting of said City of Shoreview Planning Commission held on the 25th day of July, 2017 with the original thereof on file in my office and the same is a full, true and complete transcript therefrom insofar as the same relates to adopting Resolution 17-46.

WITNESS MY HAND officially as such Manager and the corporate seal of the City of Shoreview, Minnesota, this 25th day of July, 2017.

Terry C. Schwerm
City Manager

SEAL



239 Nichols Ct



Legend



- City Halls
- Schools
- Hospitals
- Fire Stations
- Police Stations
- Recreational Centers
- Parcel Points
- Parcel Boundaries

Notes

Variance

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

400.0 0 200.00 400.0 Feet

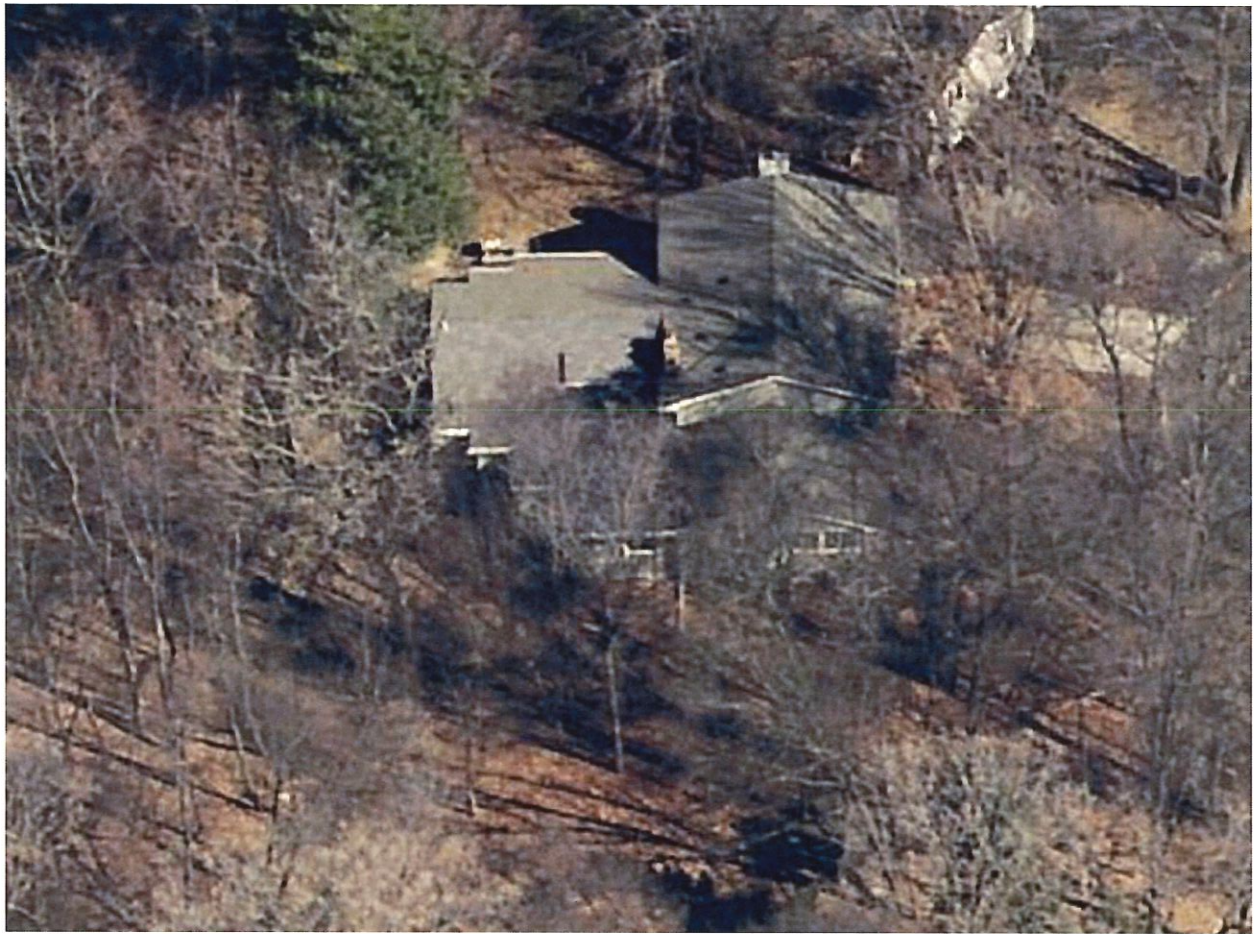
NAD_1983_HARN_Adj_MN_Ramsey_Feet
© Ramsey County Enterprise GIS Division



Looking North



Looking East



Looking West



Looking South

June 22, 2017

Department of Community Development
City of Shoreview
4600 North Victoria Street
Shoreview, MN 55126

651-490-4680

Re: Rear set back variance for proposed addition at 239 Nichols Ct Shoreview MN.

General overview

We the owners are requesting a variance to the 30 ft rear yard setback requirement of section 205.081 to accommodate the construction of a 200 sf addition. The addition will square off the irregular jogs of the exterior walls in the northwest corner of the home and will serve as a living room. The nearest extent of the addition will be approximately 24'-9" from the rear (north) property line and 10 ft from the side (west) property Line.

Relevant Background information

The original 4 level split home was built in 1970. A 1500 sf indoor pool addition was added to the rear of the home in 1981, which is currently situated 18'-10" from the rear (north) property line and 11'-8" from the side (west) property line. The shape of the existing rear addition is highly irregular creating seven corners on each side (sawtoothing) with approximate 6' wall lengths. In review of city records in 1996 a similar addition was proposed and a variance was granted, but it was never built.

City Comprehensive plan

The proposed use of the addition is the same use as the current home. No change in the use is proposed.

Practical Difficulties

Reasonable Manner: The proposed addition will function as a living room for our family. The addition is the final piece to create a functional layout to our currently non-functional and poorly laid out home.

Character of the Neighborhood: The proposed addition will be constructed in a manner to improve the overall quality and aesthetics of our home. The addition will visually flow with existing roof lines while removing several of the short awkward foundation wall jogs of the existing exterior wall system. The addition would clean up the back corner of the home creating a more visually appealing exterior, while upgrading windows and siding along the entire side of the home which faces the rear of the neighbor's home.

Unique Circumstances:

We purchased the home in 2008 with a rear setback of 18'-10". The home has many short jogs in the foundation wall creating non-functional, awkward, and highly inefficient spaces which hamper efficient use and enjoyment of the space. These conditions were inherited when we purchased the home. The intent of the addition is to improve the current layout of the home by removing several of the jogs

within the boundaries of the existing setbacks of the home. The proposed addition will be situated 24'-9" from the property line which is nearly 6 ft inside the current rear setback of the home.

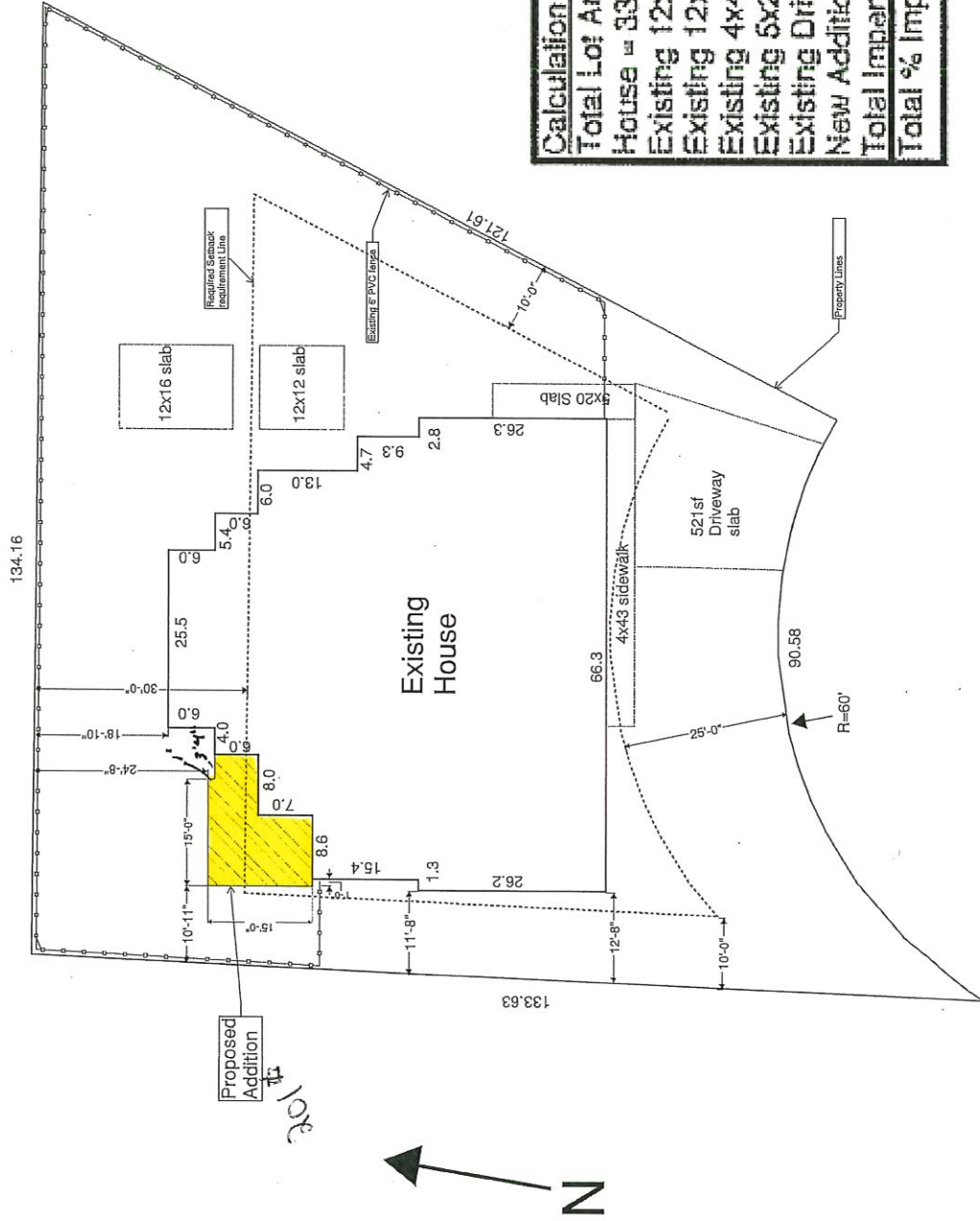
Thank you for considering the proposed variance to the rear set back requirements of the home. It is our opinion that the proposed addition will improve the quality of the neighborhood by improving the quality of the home. My family and I look forward to improving the layout of this home and living in this home for years to come.

Respectfully,

A handwritten signature in blue ink, appearing to be 'John', written over a horizontal line.

The Madden's - John, Jenny, Grace, Emma, Nick, and Jake
239 Nichols Ct
Shoreview, MN 55126

239 Nichols Ct Shoreview MN
 John Madder

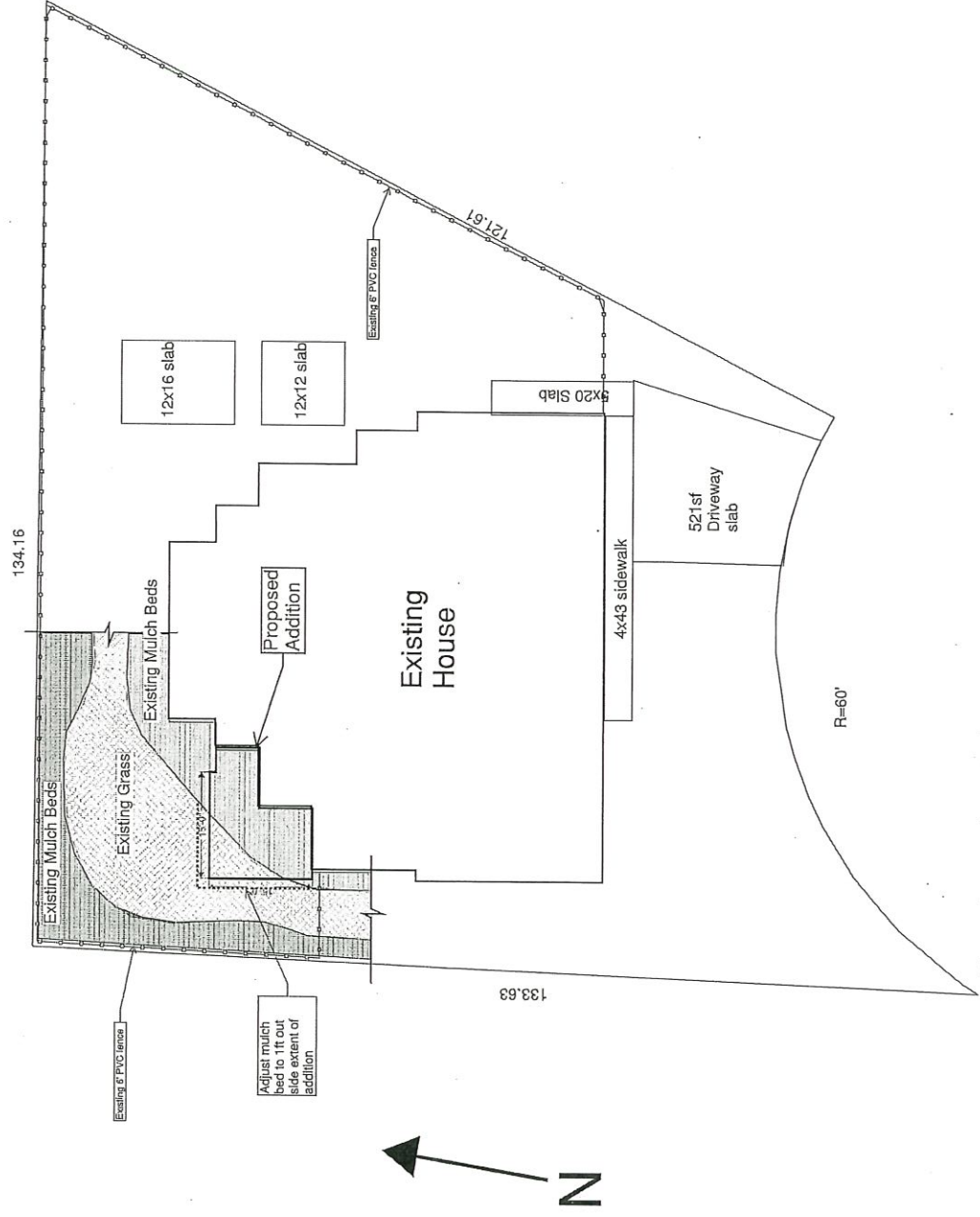


Calculation	
Total Lot Area =	13067 sf
House =	3365 sf
Existing 12x12 slab =	144sf
Existing 12x16 slab =	192sf
Existing 4x43 sidewalk =	172sf
Existing 5x20 slab =	200sf
Existing Driveway =	521 sf
New Addition =	201sf
Total Impervious =	4795
Total % Impervious =	36.6%

Site Plan 239 Nichols Ct Shoreview, MN

Scale 1/8"=1'

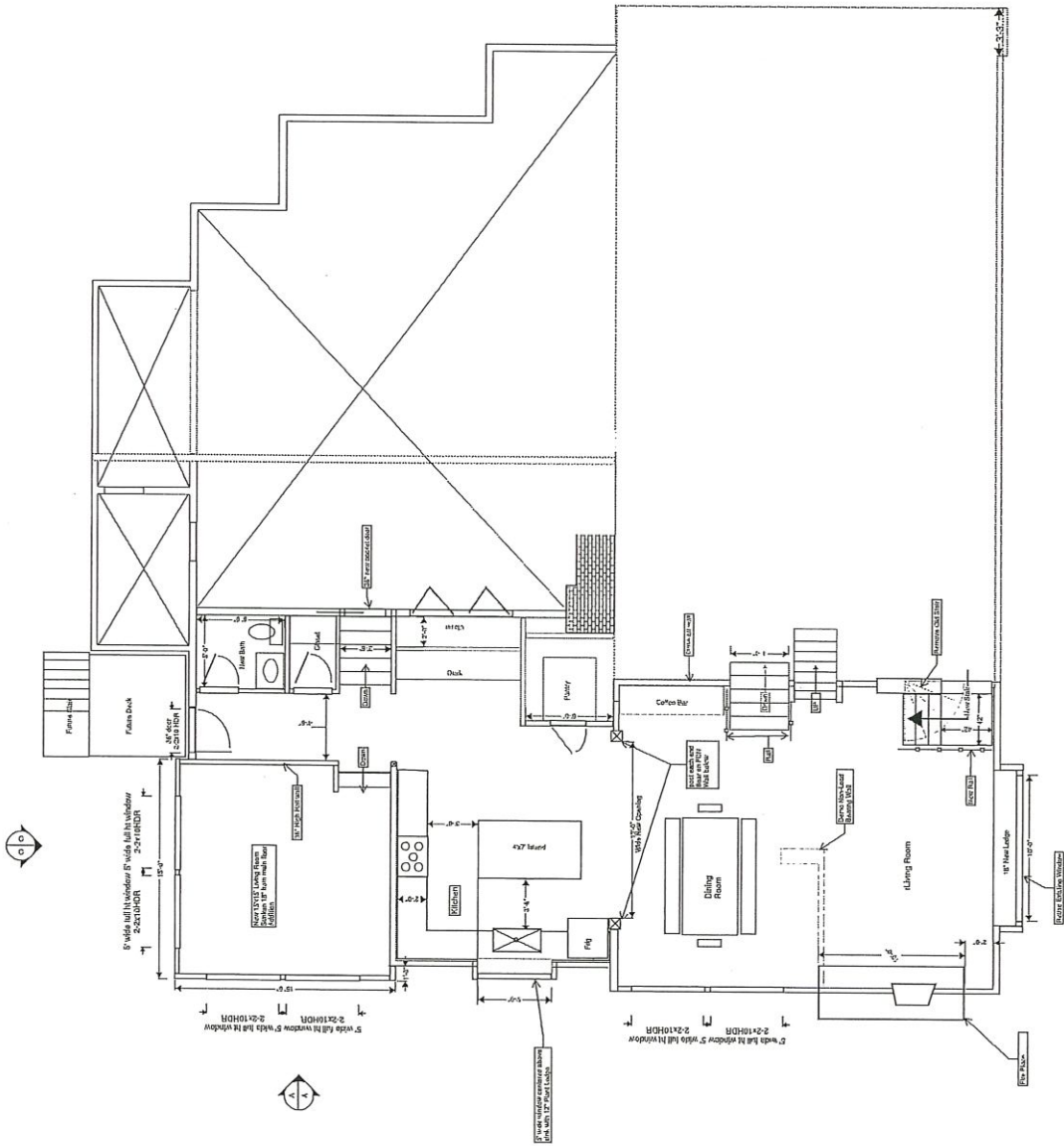
239 Nichols Ct Shoreview MN
John Madden



Landscaping Plan 239 Nichols Ct Shoreview, MN

Scale 1/8"=1'

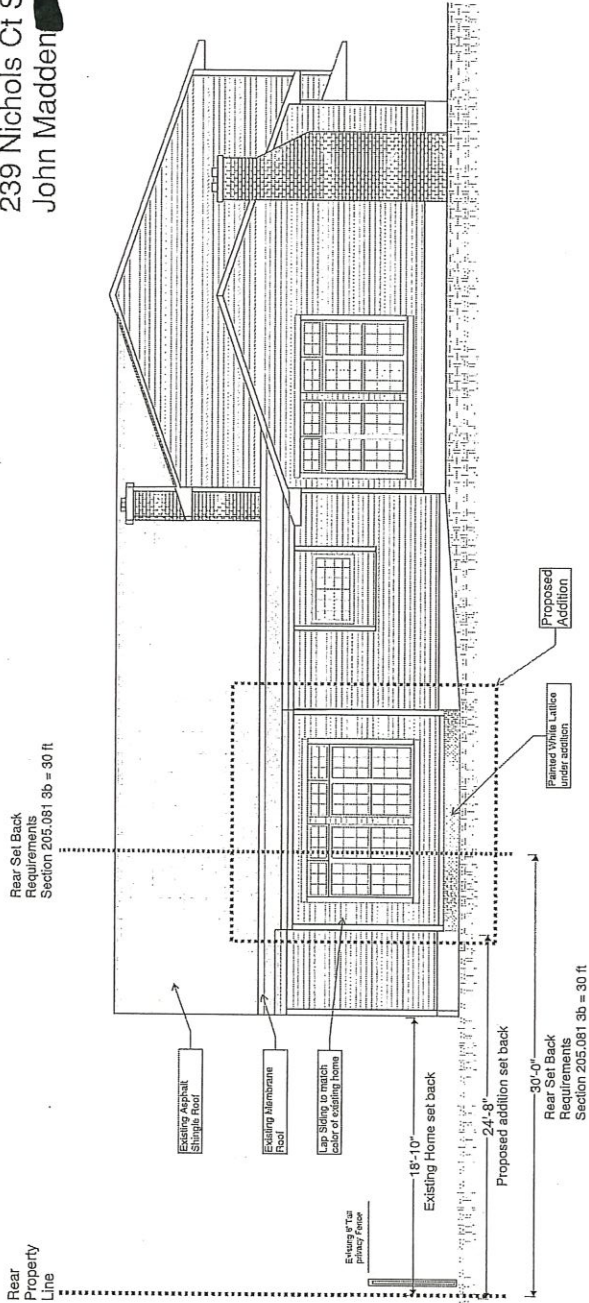
239 Nichols Ct Shoreview MN
 John Madden



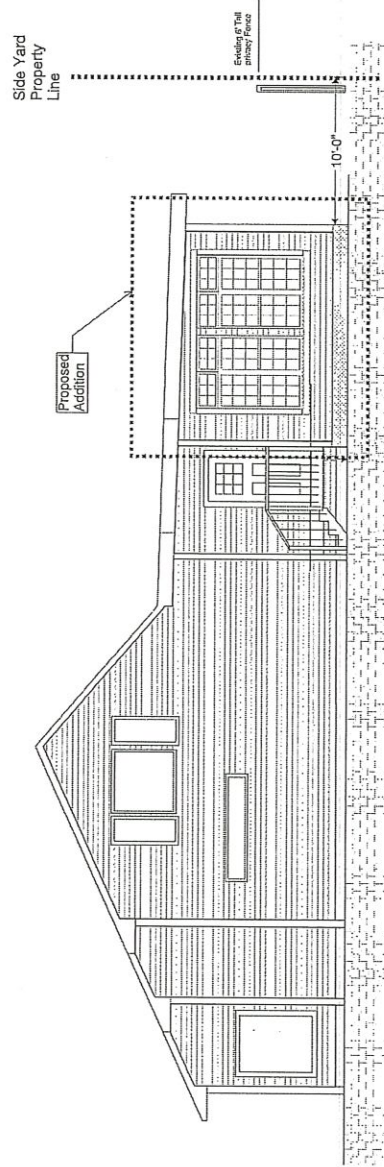
Level 1.5 EL = +3'-3"

Scale 1/4"=1'

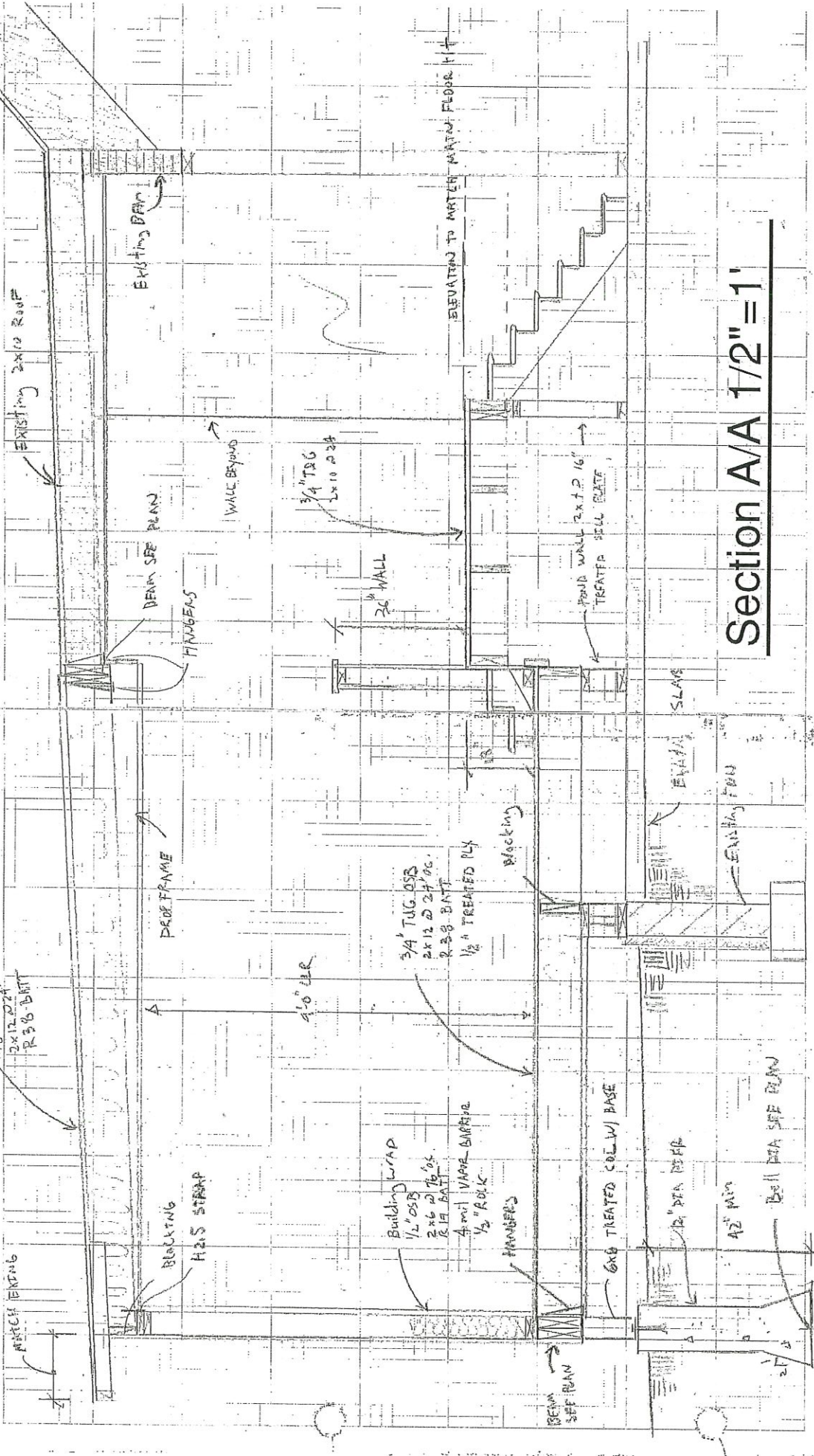
239 Nichols Ct Shoreview MN
 John Madden



Side Elevation B/B



Rear Elevation C/C



Section A/A 1/2" = 1'

July 7, 2017
File No. 2664-17-17
239 Nichols Court

Comments:

We believe the decision should be
solely based on the opinion of their
neighbor and owner of the connecting lot

Sheri Bay. Sheri is an original owner
of her property for over 30+ yrs.

Name: Wisniewski

Address: 4040 Virginia

**PROPOSED MOTION
TO DENY**

MOVED BY COMMISSION MEMBER _____

SECONDED BY COMMISSION MEMBER _____

To adopt Resolution No. 17-46, denying the variance request to decrease the allowed rear yard setback of 30-feet to 24-feet 8-inches for a proposed addition, submitted by John Madden for the property located at 239 Nichols Ct, subject to the following condition:

1. This approval is subject to a 5-day appeal period.

This action is based on the following findings:

1. The applicant is currently using the property in a reasonable matter. A smaller addition could be constructed and comply with the minimum 30-foot setback.
2. The plight of the owner is due to the design used for the proposed project. It appears possible to add living area to the property in compliance with the required setbacks.
3. The home will extend further into the rear yard and have an impact on adjoining properties altering the character of the neighborhood. The variance will not be favorable to those property owners that border the rear yard property line.

VOTE: AYES: NAYES:

Regular Planning Commission Meeting
July 25, 2017

**MOTION
TO APPROVE**

MOVED BY COMMISSION MEMBER

SECONDED BY COMMISSION MEMBER

To adopt Resolution No. 17-46, approving the variance request to reduce the rear yard setback to 24-feet 8-inches for the proposed 201 square foot addition, submitted by John Madden for the property located at 239 Nichols Court. This approval is subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the Variance application.
2. This approval will expire after one year if a building permit has not been issued and construction commenced.
3. Rainwater shall be collected by gutters and distributed away from neighboring properties.
4. Erosion control will be installed in accordance with City Code requirements prior to any site disturbance. Vegetation shall be restored in accordance with City Code standards.
5. This approval is subject to a 5-day appeal period.

This approval is based on the following findings:

VOTE: AYES: NAYES:

Regular Planning Commission Meeting
July 25, 2017

PROPOSED MOTION

MOVED BY COMMISSION MEMBER _____

SECONDED BY COMMISSION MEMBER _____

To recommend the City Council approve the attached ordinance amending Section 207.040 permitting small cell wireless facilities in the public right-of-way and Section 405, Right-of-Way Management, allowing said facilities in the public right-of-way provided certain conditions are met.

VOTE:

AYES:

NAYS:

Regular Planning Commission Meeting – July 25, 2017

TO: Planning Commission

FROM: Kathleen Castle, City Planner

DATE: July 20, 2017

SUBJECT: Wireless Telecommunications Ordinance – Small Cell Sites

Introduction

The wireless telecommunications industry is constantly evolving with technology advancements. These advancements have primarily been in the form of new technology antennas, remote radio heads and fiber-optic components at existing macro sites (water towers and monopoles) to improve telecommunications speed and capacity.

Wireless cell providers are also expressing interest in developing small cell sites which are designed to support cellular coverage within a macro site cell area that has high coverage needs or poor site coverage. Small cell site technology consists of a small radio unit and antenna that is directly linked to local macro sites by fiber optics and infrastructure located in public rights-of-ways.

The State passed a new law earlier this year that allows small cell wireless equipment to be placed on city-owned infrastructure in the public right-of-way. This law does permit local governments to enact permitting requirements and establish standards for small cell wireless facilities provided the regulations are reasonable. The proposed ordinance incorporates relevant sections of the State law.

Planning Commission Review

The Planning Commission has discussed small cell wireless facilities at several meetings. The public hearing scheduled for June 25th was continued to permit staff time to review the recently enacted State law and make modifications to the ordinance as needed.

Discussion with the Commission has primarily focused on the aesthetic impact of these structures on adjoining land use and users of public right-of-ways. The draft ordinance contains provisions addressing color, camouflage, concealment and height requirements. Small cell wireless would be permitted on free-standing poles or other poles (traffic signals, utility, light) that are designed to integrate the small cell facility in the pole so it is concealed.

Public Hearing

Notice of the proposed text amendment was published in the City's legal newspaper on June 7, 2017. No comments have been received.

Ordinance

The proposed ordinance allows small cell sites in local (City) rights-of-way provided a permit is received and standards are met. The following summarizes key provisions of the draft ordinance (see attached).

- 1) Amending Section 207.040 (B) (3) deleting language that prohibits wireless telecommunication facilities in the public rights of way.
- 2) Amending Section 405, Right-of-Way Management to permit small cell wireless in public rights-of-ways provided a Right-of-Way permit is granted.
- 3) Establishing standards small cell facilities need to meet for a permit to be granted. These address: color, camouflage and concealment; integration in poles used for street lighting, traffic signals, utility power poles; establishing a maximum height of 50 feet; and limiting one small cell facility per pole.

Recommendation

The Planning Commission needs to hold the public hearing for the text amendment. The proposed ordinance establishes a permitting process for small cell facilities in the public right-of-way. In addition, the proposed standards related to color/camouflage/concealment, height, spacing and design address the aesthetic impact. The proposed ordinance addresses concerns related to this type of facility in local rights-of-ways while meeting the requirements of State Law. Staff is recommending the Planning Commission recommend approval of the ordinance to the City Council.

Attachments

- 1) Proposed Ordinance
- 2) League of Minnesota Cities Information Memo – Cell Towers, Small Cell Technology & Distributed Antenna Systems

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207.040 Towers and Antennas

(B) Commercial Antennas and Towers.

(3) Wireless Telecommunication Facility Standards (WTFs).

(a) Siting. New WTFs shall only be located on parcels that fall within the Telecommunications Overlay District. ~~WTFs are not permitted in public rights-of-way.~~

Section 405 – RIGHT OF WAY MANAGEMENT

405.020 Definitions

Camouflaged. Using shape, color, and texture to cause an object to appear to become part of something else. Camouflage does not mean invisible but rather appearing as part of the landscape or another structure. Includes wireless telecommunication facilities disguised to appear as another structure such flag pole, light pole, sign, tree, or utility pole.

Collocation is the sharing of structures by two or more wireless service providers on a single support structure or otherwise sharing a common location.

Concealed. Fully hidden from view. Refers to a wireless telecommunication facility that is not evident and is hidden or integrated into a structure such as a pole, building, wall, or roof.

Distributed Antenna System (DAS) is a network of spatially or geographically separated antenna nodes that are connected to a common source through a transport or communication medium in order to provide wireless communication service in a specific locality or building. A DAS can be deployed indoors (iDAS) to provide network or cellular connectivity throughout a building or outdoors (oDAS) in areas where regular wireless coverage does not reach.

DAS Hub Ancillary equipment usually contained in a shelter or other enclosure which does not have any wireless transmission or receive equipment contained therein but is utilized in the deployment and operation of wireless DAS receive/transmit infrastructure that is located elsewhere.

Equipment Enclosure. A structure, shelter, cabinet, box, or vault designed for and used to house and protect the electronic equipment necessary and/or desirable for processing wireless telecommunication signals and data, including any provisions for mechanical cooling equipment, air conditions, ventilation, and/or auxiliary electric generators.

Height, Pole. The distance measured to the highest point of the antenna or tower from the mean ground level measured at the base of a free-standing facility or the projected base as determined

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by extending the antenna or tower base down vertically to the ground. For building mounted antennas, height is measured to the highest point of the equipment enclosure from the top of the cornice of a flat roof, from the top line of a mansard roof, from a point on the roof directly above the highest wall of a shed roof, from the uppermost point on a round or other arch-type roof, or from the highest gable on a pitched or hip roof

Inventory of Small Cell/DAS Sites refers to an accurate and current inventory of all Small Cell/DAS Sites approved by Permittee pursuant to a Lease Agreement, including sites that become inactive for any reason.

Maintenance means to repair unscheduled and scheduled deficiencies in telecommunications equipment or performing routine actions which keep the equipment in working order (known as scheduled maintenance) or prevent trouble from arising (preventive maintenance).

Micro wireless facility is a small cell wireless facility.

Public Utility Structure is a structure which is owned by a governmental agency or utility company and which may be/can be used to support illumination devices or lines and other equipment carrying electricity or communications.

Radio Propagation Study. The propagation of radio waves is described through the modeling of the different physical mechanisms (free-space attenuation, atmospheric attenuation, vegetation and hydrometer attenuation, attenuation by diffraction, building penetration loss, etc). This modeling is necessary for the conception of telecommunications systems and, once they have been designed, for their actual field deployment. Propagation models are implemented in engineering tools for the prediction different parameters useful for the field deployment of systems, for the study of the radio coverage (selection of the emission sites, frequency allocation, powers evaluation, antenna gains, polarization) and for the definition of the interferences occurring between distant transmitters.

Small wireless facility. A wireless facility that meets both of the following qualifications:

- (A) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and
- (B) all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and

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any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume; or

(C) A micro wireless facility.

Small Cell Site is defined as a low-power radio access facility, together with associated antennas, mounting and mechanical equipment, which provides and extends wireless communications systems' service coverage and increases network capacity.

Traffic Light/Traffic Signal System are electrically operated colored signaling devices positioned at road intersections, pedestrian crossings, and other locations to control conflicting flows of traffic.

Transmission Media is all of the Permittee's radios, antennas, transmitters, wires, fiber optic cables, and other wireless transmission devices that are part of the Small Cell/DAS Equipment.

Upgrade or Capital Improvement is the construction, installation, or assembly of new telecommunications equipment or the alteration, expansion, or extension of an existing equipment to accommodate a change of function or unmet programmatic needs, or to incorporate new technology.

Utilities. Underground or overhead gas, electrical, steam or water transmission or distribution systems; collection, communication (excluding wireless telecommunication facilities), supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants or other similar equipment and accessories in conjunction therewith; but not including buildings.

Utility Pole is a structure that is: (1) owned or operated by: (a) a public utility; (b) a communications service provider; (c) a municipality; (d) an electric membership corporation; or (e) a rural electric cooperative; and (2) designed and used to: (a) carry lines, cables, or wires for telephone, cable television, telecommunications or electricity; or (b) provide lighting.

405.080 Right-of-Way Permit Requirement.

(A) Right-of-Way Permit Required. Except as otherwise provided in the City's regulations, no person may obstruct or excavate any right-of-way or utilize land area or infrastructure without first having obtained the appropriate Right-of-Way Permit from the City Manager and posting of the appropriate performance security with the City Manager.

(3) Small Cell Wireless Facilities/DAS Hub Permit. A Small Cell Wireless Facility/DAS Hub Permit is required by the registrant to install facilities and equipment over a specified portion of the right-of-way by placing or utilizing infrastructure therein located.

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- (a) An applicant may file a consolidated permit application to collocate up to 15 small wireless facilities, or a greater number if agreed to by the City, provided that all the small wireless facilities in the application:
- (i) are located within a two-mile radius;
 - (ii) consist of substantially similar equipment; and
 - (iii) are to be placed on similar types of wireless support structures.
- (b) In rendering a decision on a consolidated permit application, the City may approve a permit for some small wireless facilities and deny a permit for others, but may not use denial of one or more permits as a basis to deny all the small wireless facilities in the application.
- (c) The City shall have 90 days after the date a Small Cell Wireless Facilities/DAS Hub Permit application is filed to issue or deny the permit, or the permit is automatically issued. To toll the 90-day clock, the City must provide a written notice of incompleteness to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Information delineated in the notice is limited to documents or information publicly required as of the date of application and reasonably related to the City's determination whether the proposed equipment falls within the definition of a Small Cell Wireless Facility/DAS Hub and whether the proposed deployment satisfies all health, safety, and welfare regulations applicable to the small wireless facility permit request. Upon an applicant's submittal of additional documents or information in response to a notice of incompleteness, the City has ten days to notify the applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify documents or information that were not delineated in the original notice of incompleteness.
- (d) If the City receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than 30 small wireless facilities, the City may extend the 90-day deadline imposed in 405.080(A)(3)(c) by an additional 30 days. If a City elects to invoke this extension, it must inform in writing any applicant to whom the extension will be applied.
- (e) A wireless service provider may collocate small wireless facilities on wireless support structures owned or controlled by the City and located within the public roads or rights-of-way provided a standard small wireless facility collocation agreement is executed.

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- (i) Any initial engineering survey and preparatory construction work associated with collocation must be paid by the applicant.
- (f) A permit may be issued upon satisfaction of the following criteria:
 - (i) Compliance with applicable and reasonable health, safety, and welfare regulations consistent with the City's public right-of-way management;
 - (ii) Compliance with the standards set forth in Section 405.
 - (iii) All facilities shall make reasonable accommodations for decorative wireless support structures or signs; and
 - (iv) Submittal shall address the restocking, replacement, or relocation requirements when a new wireless support structure is placed in a public right-of-way.
- (g) A Permit may be denied upon the following findings:
 - (i) Denial is necessary to protect the health, safety, and welfare or when necessary to protect the public right-of-way and its current use.
 - (ii) The facility does not comply with the standards set forth in Section 405.
 - (iii) Any denial of a right-of-way permit for a small wireless facility permit must be made in writing and must document the basis for the denial. The City must notify the telecommunications right-of-way user in writing within three business days of the decision to deny the permit. If a permit application is denied, the telecommunications right-of-way user may cure the deficiencies identified by the City and resubmit its application. If the telecommunications right-of-way user resubmits the application within 30 days of receiving written notice of the denial, it may not be charged an additional filing or processing fee. The City must approve or deny the revised application within 30 days after the revised application is submitted.

405.95 Small Cell Wireless Facility/DAS Hubs

- (A) Small Cell Wireless Facilities and DAS hubs may be placed in the public right-of-way provided a Right-of-Way Permit is issued. The City shall consider the following when reviewing a permit application:
 - (1) Demonstrated need for the Small Cell Wireless Facility/DAS Technologies within the geographic area as identified by a radio propagation study in order to deliver adequate service;

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~~Text Stricken is proposed for Deletion~~

- (2) Proof that all co-location sites in the area of need are/were pursued and have been denied; or that there does not exist the ability to co-locate using existing structures. The Applicant must demonstrate all actions taken to achieve collocation.
 - (3) The character of the area in which the Small Cell Wireless Facility/DAS hub is requested, including evidence of surrounding properties and uses;
- (B) Small Cell Wireless Facilities and DAS Hubs located in the public right-of-way shall comply with the following standards:
- (1) Color and Camouflage. All facilities and hubs shall be camouflaged and use design, materials, colors, textures, screening, and landscaping to blend in with the surrounding natural setting and built environment. All facilities and hubs shall be designed to minimize the visual impact and, in the sole discretion of the City, so appear compatible with the surroundings:
 - (a) Color. The facilities and hubs shall use colors to minimize the visual impact when viewed from the public right-of-way and nearby property, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration.
 - (b) Camouflage. Small cell wireless facilities must be integrated into a pole structure that is also utilized for athletic field or parking lot lighting or a utility power lines.
 - (c) Equipment Enclosures shall be placed in underground vaults, unless the City determines an above-grade installation is appropriate for the site. These cabinets shall be heavily screened from view with landscape materials.
 - (1) Safety and Environmental Standards.
 - (a) Unauthorized Climbing. All facilities and hubs shall be designed to prevent unauthorized climbing or entry.
 - (b) Noise. If the proposed facility includes a back-up generator or otherwise results in significant increased sound levels, sound buffers may be required including, but not limited to, baffling, barriers, enclosures, walls, and plantings, so that the wireless telecommunications facility is operated in compliance with the requirements specified in Section 209.020, **Noise**.
 - (c) Radio Frequency (RF) Emissions and Interference. Small cell wireless facilities and DAS hubs shall comply with Federal Communication Commission standards for RF emissions and interference. Wireless

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telecommunication facilities shall be tested for compliance with FCC RF emissions standards after installation.

- (d) Maintenance. All small cell wireless facilities and DAS hubs times be kept and maintained in good condition, appearance, order, and repair so that the same shall not menace or endanger the life or property of any person.
 - (e) Occupational Safety. Small cell wireless facilities and DAS hubs shall comply with applicable State of Minnesota and Federal regulations for occupational exposure to non-ionizing radiation
- (2) Signs. The use of any portion of Small Cell Wireless Facility/DAS Hub for signs or advertising other than warning or small equipment and emergency contact information signs is prohibited.
 - (3) Lighting. Small cell facilities shall not be illuminated by artificial means and shall not display lights unless such facilities are incorporated into the approved design of a support pole, fixtures used to illuminate sport fields, parking lots or similar areas may be attached to the pole.
 - (4) Equipment Enclosures and Underground Vaults. All equipment enclosures and underground vaults shall comply with the following standards:
 - (a) Underground vaults and equipment enclosures shall be of the smallest size necessary.
 - (b) Equipment enclosures shall be located in underground vaults, unless the City determines an above-grade installation is appropriate for the site.
 - (c) All above ground equipment enclosures shall be screened from view by suitable vegetation, except where non-vegetative screening (e.g., a decorative wall) better reflects and complements the character of the neighborhood.
 - (5) Pole-mounted: Small Cell Wireless Facilities may be freestanding or integrated into freestanding poles provided the following standards are met:
 - (a) Small Cell Wireless Facilities are prohibited on existing poles that have been designed exclusively for use as street lighting, traffic signal systems, parking lot lighting and utility power lines.

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- (b) Small Cell Wireless Facilities shall only be permitted on poles that are designed to integrate the Facility into the pole structure. Said pole structure may be free-standing or also utilized for street lighting, traffic signal systems, parking lot lighting and utility power lines.
- (c) Design. The design of the pole shall be similar in appearance to other poles located in the right-of-way that are not being used for Small Cell Wireless Facility.
- (d) Maximum Height. The maximum pole height permitted is 50-feet as measured from the ground grade to the highest point of the pole structure, including the small cell facility.
- (e) Concealment. Small Cell Wireless Facilities located on poles shall be concealed, placed inside the pole structure and have no exposed hardware or equipment.
- (f) Maximum number permitted per pole: There shall be no more than one (1) small cell facility per pole.
- (g) Structural Capacity. To pole must have the structural capacity to carry the loading Small Cell Wireless Facility.
- (6) Maintenance and Modifications of Small Cells/DAS.
 - (a) Coordination of Maintenance and Equipment Upgrade Activities - Prior to Permittee engaging in planned or routine maintenance activities, or equipment upgrades concerning Small Cell/DAS Equipment attached to a City, County, or Utility owned pole, Permittee shall provide twenty (20) days advance notice to the City of Shoreview in order to coordinate such maintenance activities or other public safety functions. Permittee shall obtain a ROW Permit prior to engaging in any maintenance or equipment upgrade activities in the Right-of-Way regardless of pole ownership. Such twenty (20) day advance notice shall not be required in the case of an emergency.
 - (b) Prior to making any future modifications to the Small Cell/DAS Site described in Section 405.95B (6)(a) above, other than maintenance and repair of site specific Small Cell/DAS Equipment as provided in the Lease Agreement, Permittee shall file a Small Cell/DAS Site Application with the City of Shoreview describing the proposed modifications. The City shall review the Small Cell/DAS Site Application pursuant to the terms and conditions in the Lease Agreement, and if approved such Small Cell/DAS Site Application shall be attached as an Exhibit and made a part hereto. Any additional site modifications shall be incorporated hereto in the same manner.

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- (7) Removal of Non-Compliant Installations. The City shall have the authority at any time to order and require Permittee to remove and abate any Small Cell/DAS Equipment or other structure that is in violation of the City Municipal Code. In case Permittee, after receipt of written notice and thirty (30) days opportunity to cure, fails or refuses to comply, the City shall have the authority to remove the same at the expense of the Permittee, all without compensation or liability for damages to the Permittee.

Focus on New Laws: Right-of-Way Management for Small Wireless Facilities

The final bill language preserves local authority over small cell wireless companies' access to the public right of way.

(Published Jun 19, 2017)

A new law was enacted during the 2017 legislative session that would allow small cell wireless equipment to be placed on city-owned infrastructure in the public right of way.

As introduced, the bill would have allowed wireless companies unregulated access to the public right of way, but the League strongly opposed the bill and actively negotiated new language to maintain local control. The resulting bill language successfully preserves local authority over access to the public right of way.

Read a previous Bulletin article for more background on the bill (*Link to:* <http://www.lmc.org/page/1/smallcellwirelessupdate.jsp>)

The negotiated bill language was included in Chapter 94 (*Link to:* <https://www.revisor.mn.gov/laws/?year=2017&type=0&doctype=Chapter&id=94>), the omnibus jobs and economic growth appropriations act. Article 9 describes the new law, and the notable sections are outlined below.

Zoning (Section 14)

Local government units retain ability to deny permits for reasonable public health, welfare, and safety reasons with no definitions or limitations on those reasons. Minimum separation distances are allowed between new wireless support structures.

Permitted use (Section 12)

General presumption of permitted use exists in all zoning districts except for being able to require a conditional use permit for districts zoned residential or historical districts established either by federal law or ordinance. Also, the local government's ability to deny a permit for public health, welfare, and safety still applies.

Separate agreements between cities and providers (Section 13)

Local government units can still enter into a separate contract with wireless providers. This way, local governments can negotiate different rent amounts (within the confines of the law) and address specific situations, such as indemnity, insurance, waiver of liability, and removal.

Permit fee (Section 3)

There is no cap on right-of-way management costs that are recoverable in permit fees, and the law still grants fees allowed under Minnesota Statutes, section 237.163.

Time frame for responding to permits (Section 15)

The local government has 90 days (which is longer than in other states) to issue or deny a permit, with a tolling period allowed upon written notice to the applicant if notice is given by the government unit within 30 days of receipt of the application.

Numerous permit requests at one time ("batch processing") (Section 13)

The batch numbers are lower than in other states (15 small wireless facilities) and geographic restrictions apply (must be within a two-mile radius, consist of substantially similar equipment, and be placed on similar types of wireless support structures).

Rent (Section 17)

Rent is allowed and it is not tied to the FCC formula or just costs. The flat amount (\$150/year plus \$25 maintenance) for rent exceeds any other states' rent with additional dollars for maintenance and electricity allotted. Cities can still require separate metering.

If electricity is not purchased directly from a utility, the rate is \$73/node using less than or equal to 100 watts, \$182/node using more than 100 watts, or actual costs if they exceed the flat rates.

Application information (Section 13)

Existing law still applies regarding specific information that can be requested, with one exception. Cities cannot request information from the applicant that the application already provided to the city in another small wireless facility application if the applicant has provided the city with the reference number to their other applications.

Application timeline extension (Section 13)

The number of simultaneous applications a city receives may trigger an extension. Thirty small wireless facilities applications triggers an additional 30 days for review. Cities can get the extension based on that number alone without asking the applicant, but must inform the applicant of the extension.

Height of pole (Section 14)

The height of wireless support structures shall not exceed 50 feet (lesser of either 50-foot pole or 10 feet above highest pole), unless the local government unit agrees to higher heights to match other poles within the vicinity.

Wireless support structure definition (Section 10)

The definition limits a support structure to a new or existing structure that the local government unit deems capable of supporting small wireless facilities.

Moratoriums (Section 12)

The law prohibits moratoriums; however, the Legislature included an extended effective date of Jan. 1, 2018, on the moratorium provision for cities that have not enacted an ordinance regulating public rights of way as of May 18, 2017. This allows those cities time to get ready for the new law.

Exemptions and grandfather clause (Section 20)

All 125 cities with municipal utilities are exempt from this law. This law also does not affect cities with existing agreements before May 31, but the new law will apply to agreements in those cities moving forward.

Next steps for cities

It is recommended that cities take the following actions to ensure compliance with this new law:

Work with your city attorney to adopt a right-of-way ordinance, if your city does not have one, or amend your existing right-of-way ordinance to accommodate for telecommunications right of way users. In the alternative, or in addition, adopt a separate telecommunications ordinance to include provisions specific to the installation of wireless facilities on existing poles or similar facilities, and addressing the potential installation of new “wireless support structures.”

Whether implemented by amending an existing right-of-way ordinance or adopting a new, separate ordinance, be sure to incorporate the application process requirements noted above.

If necessary, amend your zoning ordinance or code to make small wireless a permitted use, with the exception of making it a conditional use in residential zones and historical districts.

Work with your city attorney to draft a template agreement governing the attachment of wireless facilities to municipal poles or other infrastructure in the right of way.

Educate the decision-makers to make and record reasonable findings documenting health, welfare, and safety reasons for denials.

Work with wireless providers on locations.

Read the current issue of the Cities Bulletin (*Link to: <http://www.lmc.org/page/1/cities-bulletin-newsletter.jsp>*)

* By posting you are agreeing to the LMC Comment Policy (*Link to: <http://www.lmc.org/page/1/comment-policy.jsp>*).