

**CITY OF MENDOTA HEIGHTS
DAKOTA COUNTY, MINNESOTA**

**PLANNING COMMISSION MINUTES
August 25, 2009**

The regular meeting of the Mendota Heights Planning Commission was held on Tuesday, August 25, 2009, in the Council Chambers at City Hall, 1101 Victoria Curve at 7:00 P.M.

The following Commissioners were present: Chair Lally, Commissioners McManus, Povolny, and Hennes. Those absent: Commissioners Norton, Viksnins and Field. Those present were Public Works Director John Mazzitello, Assistant to the City Administrator Jake Sedlacek, and Planner Steve Grittman. Minutes were recorded by Rebecca Shaffer.

Approval of July 28, 2009 Minutes

COMMISSIONER HENNES MOVED, SECONDED BY COMMISSIONER MCMANUS, TO APPROVE THE MINUTES OF JULY 28, 2009 AS CORRECTED.

**AYES: 4
NAYES: 0**

Hearings

PLANNING CASE #09-29

Maureen Haggerty

790 Ridge Place

Conditional Use Permit and Wetlands Permit

Chair Lally said this case was tabled from the July Planning Commission meeting. Chair Lally said a letter has been received from Ms. Haggerty's lawyer requesting to table the matter until the September meeting. Chair Lally said it was his understanding that Ms. Haggerty would be back at this meeting with a plan showing where the fence will be located as well as what type of fence it would be. At that meeting, the Planning Commission had indicated that the location of the current fence was too close in the front and not on the property line along the side and back, as well as the different variations of materials throughout.

Assistant to the City Administrator Jake Sedlacek said staff received word that Ms. Haggerty had retained an attorney and they need time for him to get up to speed on the issues.

Commissioner Hennes asked what the timeline is now. Mr. Sedlacek said there is an order for compliance that laid out a time schedule where the fence must come down or else a conditional use permit and a wetland permit must be applied for by a certain date. According to the City Attorney, while there is an active planning application regarding this matter it is best to hold on that enforcement action until there has been a motion one way or another heard by the Council. Mr. Sedlacek opined that City Council is comfortable with the Planning Commission taking their time to get this right. Code enforcement action is on hold at this time and will be adjusted accordingly.

Chair Lally said if this is held until September 22nd and the first Council meeting is October 6th, there would not be any action on it until at least October 6th. Mr. Sedlacek said that is correct.

Commissioner Povolny asked if Ms. Haggerty will be able to get this completed before the snow flies. Mr. Sedlacek said it is possible to get it done before there is frost in the ground.

Planner Steve Grittman noted that the public hearing had been closed at the July meeting.

COMMISSIONER POVOLNY MOVED, SECONDED BY COMMISSIONER HENNES, TO TABLE THIS APPLICATION UNTIL THE SEPTEMBER PLANNING COMMISSION MEETING SO THAT THE APPLICANT CAN SUBMIT AN ACCURATE MAP OF THE PROPOSED PLANNING INCLUDING THE AESTHETICS SO THAT THE PLANNING COMMISSION CAN CONSIDER WHAT IS SEEN AS A COMPLETE APPLICATION.

AYES 4
NAYES 0

PLANNING CASE #09-20
Kerry Kern
531 Marie Avenue West
Wetlands Permit

Mr. Grittmann reviewed a map showing the property located at 531 Marie Avenue West, which contains a single family home, and zoned R-1. The applicant has applied for a wetlands permit for previously conducted drainage management work, which included installing rip-rap and culverts on his property.

The applicant has a pond on his property and wanted to improve the drainage of this area, which was a routine issue for this property. The City Engineer has reviewed the improvements and will be joining the meeting shortly to give his comments. Mr. Grittmann said had the applicant made application prior to the improvements, the proposed improvements would have been appropriate for the overall area. Mr. Grittmann said it is unusual to approve applications that are within the wetlands, but in this case it was found that the improvements were very good for this location. The applicant had installed two culverts (one of the south and one of the north) in the rear of his property to assist in managing some problem drainage in his yard. This is an after the fact application, and staff has found upon review of the site that the work was conducted satisfactorily and is a good solution for the drainage issues. Therefore, staff is recommending approval of the requested wetlands permit as the project has resulted in an improvement to the wetland water quality and does not appear to have adversely impacted the surrounding environment, meeting the intent of the ordinance.

Commissioner McManus asked several questions and Mr. Grittmann said these questions would have to be addressed by the applicant:

- What the source of the water for this pond is.
- When the pond was so neatly bermed and the grass was planted.
- How was this work discovered.

Commissioner Hennes asked if the applicant was simply not aware that a permit was needed. Mr. Grittmann said he is assuming that this is the case.

Public Works John Mazzitello said a lot of this work has been going between the transition of outgoing Director Sue McDermott and incoming Mr. Mazzitello. Over the past couple of years, the applicant has been working in his back yard on the pond along Marie Creek. A neighbor called the engineering department to report that someone was working in the wetland and asked if this person had a wetland permit. Since there was no permit on file, staff followed up on this activity.

Mr. Mazzitello said he and Civil Engineer Ryan Rutzik visited the site and found that what the applicant was doing was improving the flow through the culverts, establishing the buffer area around the pond helping to control the flow of Marie Creek. The city has a fund in their storm utility budget to do stream bank stabilization and Marie Creek and Valley Creek were two of the main focuses of this fund. This project is beyond what the city would have been capable of for enhancing the stream bank stabilization. Being of a legal neutral attitude, the applicant should have applied for a wetland permit and when the landowner was told of this, he immediately went through the process.

Commissioner McManus said he lives in this area and asked to be excused from the discussion as it might be a conflict of interest for him.

Chair Lally said it would seem that the commission would not have a quorum. Mr. Grittmann assured the commission that there was a quorum at the start of the meeting and therefore, that quorum still stands.

Mr. Kerry Kern, 531 Marie Avenue West, said Mr. Grittmann gave a good overview of the application.

Commissioner Povolny asked how long this work has been going on. Mr. Kern said about seven years, and talked about how his yard was being destroyed from the creek's erosion of his yard. Mr. Kern then talked about how he put the culverts in to keep this erosion in control. Mr. Kern said he was not aware that he needed to obtain a permit.

Chair Lally opened the public hearing. Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER POVOLNY MOVED, SECONDED BY COMMISSIONER HENNES, TO CLOSE THE PUBLIC HEARING.

AYES 3
NAYES 0

COMMISSIONER HENNES MOVED, SECONDED BY COMMISSIONER POVOLNY, TO RECOMMEND APPROVAL OF THE WETLANDS PERMIT FOR THE PROPERTY LOCATED AT 531 MARIE AVENUE WEST AS PRESENTED.

AYES 3
NAYES 0

PLANNING CASE #09-30

David Kutoff

Zoning Ordinance Amendment (I District)

Mr. Grittmann reviewed a map showing the property located at 2300 Pilot Knob Road, and presented the application request for an amendment to the Zoning Ordinance text. Mr. David Kutoff, on behalf of Materials Processing Corporation (MPC), is the applicant, and wishes to change this language to allow retail sales in the Industrial Zoning District.

MPC collects and recycles electronic equipment from corporate, municipal and consumer sources. MPC also owns a retail store known as "The Reboot Store" which offers new, used and refurbished electronics for sale. Their corporate headquarters is located in Eagan, MN and now they would like to relocate to Mendota Heights.

The property is located near the intersection of Highway 13 and Highway 55 and is currently owned by Triple S Investments. The parcel is 6.24 acres in size and is zoned I, Industrial District. The company currently employs 71 people and occupies 86,000 sq. ft. but they are growing in size and needs more space. The proposed location on Pilot Knob Road has 125,833 sq. ft. and will provide additional room for the business to expand.

Staff has drafted a language amendment for the Planning Commission review. The industrial district is intended for manufacturing, warehouse, and office operations and there is a small amount of retailing occurring in this district as the city amended the ordinance a while ago to allow for a certain amount of retail along the interchanges and the freeway. This language has been written as a conditional use permit for an accessory retail operation.

Mr. Grittmann noted some of the conditions of the conditional use permit in his report and in this application; the retail space would not be in an accessory building, but rather the main building. Other provisions in the conditional

use include site requirements, building requirements, building design, parking, signage, landscaping, screening, hours of operation, and all of the standards of the I-Industrial District.

The applicants are hoping that the city will approve a conditional use permit at this time should the text amendment be approved, however it is staff's belief that there is no adequate materials at this time to make a determination on issuing a conditional use permit.

Mr. Gritman said there may be some issues with truck traffic as is usual in an industrial park.

Staff feels that this text amendment is appropriate as presented and recommends approval of the Zoning Ordinance Text Amendment as laid out in the draft form in the Planners Report. Once the text amendment has been adopted and published, staff would recommend the applicant apply for a conditional use permit.

Commissioner Hennes asked what in on that property now. Mr. Sedlacek said it is empty now and was used formerly for Checker Auto Parts as office and warehouse.

Commissioner Hennes asked how many situations such as this are currently in the city. Mr. Sedlacek said there are none as it is currently not allowed in the city. There have been similar requests, but no one has ever made a formal application. Commissioner Hennes said this would be then a precedence. Mr. Gritman said there have been some allowances made for a retail center under subject to specific conditions along the freeway area.

Commissioner Hennes asked if this type of use is fairly typical in other suburbs. Mr. Gritman said it is not uncommon. Mr. Sedlacek said it would be allowed if it were a web-based retail store, but this particular application would allow for transactions to take place on the site.

Commissioner Povolny said he is a customer of MPC and spoke of his experiences with this company and how well this operation is run.

Mr. David Kutoff, President and CEO of MPC, 2805 West Service Road, Eagan, MN said he would like to move his headquarters into Mendota Heights. The company has been in business for about 25 years, always operating in a small surplus type store. MPC operates currently from Tuesday through Friday, 11:00 am to 5:00 pm. They have separate areas for their parking away from the truck traffic. They currently have about 15 semi's at their docks each day and have never had issues with retail traffic. MPC also runs a retail store in Uptown.

Mr. Kutoff said his company receives a lot of equipment from big corporations.

Mr. Ted Carlson, NAI Welsh, said they have been working with staff and noted that they are under a very tight timeframe to achieve their goals and would like to have a conditional use permit approved as well. Mr. Sedlacek said staff had a conversation with Mr. Carlson and with the City Attorney regarding this, the conditional use permit cannot be processed at this time as there has not been a public notification made in regards to the conditional use permit. The next planning deadline is August 31st. If the Planning Commission makes a finding at this time that conditions of the proposed zoning amendment are sound, and if the Planning Commission finds the floor plan of the subsequent application favorable, they could recommend approval of the conditional use permit upon the approval of the text amendment.

Commissioner Hennes asked if the applicant would have to make application before the next Council meeting. Mr. Sedlacek said they could. Commissioner Hennes asked the applicant if they could have this turned around before next Monday. Mr. Carlson said they could. Commissioner Hennes asked the applicant if they are comfortable with the conditional uses laid out in the Planners Report. Mr. Kutoff said they were.

Commissioner McManus asked for clarification on how the MPC operates. Mr. Kutoff said this is in no way like a pawn shop as most of the equipment they receive will be reconditioned and the materials they don't use are always hauled away and recycled. At no time do they ever send anything to a landfill.

Chair Lally opened the public hearing.

Tony Weinstein, a real estate consultant for MPC, said he was born and raised in Mendota Heights and talked about a variety of suburbs in the metro area that have these sorts of incidental retail uses within their industrial district. Mr. Weinstein said the industrial district permits the conducting of a process for fabrication, storage, manufacturing or wholesale sales of a variety of uses and said this application should be viewed as wholesale as well.

Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER HENNES, TO CLOSE THE PUBLIC HEARING.

AYES 4
NAYES 0

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER HENNES, TO RECOMMEND APPROVAL OF THE TEXT LANGUAGE AMENDMENT TO THE ZONING ORDINANCE TO PERMIT RETAIL USES AS PREPARED BY THE PLANNER SUBJECT TO THE CONDITION USE CONDITIONS AS OUTLINED IN THE PLANNERS REPORT, NOTING THAT THIS MOTION DOES NOT INCLUDE THE APPROVAL OF A CONDITIONAL USE PERMIT AT THIS TIME, AND THAT THE HOURS OF OPERATION TO BE 8:00 AM TO 5:00 PM.

Further Discussion

Commissioner Hennes said according to the Planners Report, the city did create an amendment allowing the same kind of limited retail use in Industrial districts but it was specific to freeway oriented properties and asked why and when this was done and why it is limited to freeway use. Mr. Grittmann said it was related to the retail strip center and retail project that was done along I-494 and the city considered rezoning that site as an option but wanted more control over what uses could be there, creating a subdistrict with the Industrial district.

Chair Lally asked if there are any suggestions that the same be done in this situation or would it be more broad in terms of planning. Mr. Grittmann said that has not been suggested as given the site that this application is working with is not as uncommon to allow this in industrial districts if size and extent is limited and the city would like to retain the control to deny or add on conditions. Commissioner Hennes said it seems that this application is uncommon enough to the city of Mendota Heights.

Chair Lally said he is comfortable with this application as the conditional use permit gives the city a lot of additional input on what happens on this property as well as from an economic standpoint, it brings in employers to the city and it would be good to give some flexibility to these employers.

Commissioner McManus said this business seems to be an ecologically sound and useful project.

AYES 4
NAYES 0

PLANNING CASE #09-31
Matthew Cunningham
561 Hiawatha Avenue
Variance

Planner Steve Grittmann reviewed a map showing the property located at 561 Hiawatha Avenue, which contains a single family home, and zoned R-1. The applicant has applied for a variance from the required 10-ft. side yard setback and a variance from the required 5-ft. setback between the principle building and an accessory structure in order to accommodate an addition to their single family home. Mr. Grittmann noted the small size of the lot and the

various non-conformities of the parcel. The applicant is seeking to correct some of these non-conformities with this application.

The applicant wishes to construct a 10-ft deep addition to the rear of the home approximately 6-ft from the side/west property line which would result in a 4-ft. encroachment into the side yard. The addition would be located approximately 2-ft. from the detached garage which is located northeast of the existing home and would result in a 3-ft. encroachment into the required setback.

Mr. Gritman shared a layout of the proposed floor plan and noted that the applicant has not yet determined a final floor plan and is still working with some contractors on this project. Due to the size and layout of the home, the applicant finds difficulty finding an appropriate dining area as the home currently has a galley style kitchen with no dining area. There is also limited bedroom space. The application is designed to correct those problems. The issue that if the applicant extends to the rear portion of the property, they are creating another setback encroachment as well as having the garage being too close to the home.

Mr. Gritman said he visited the property and noted that constrictions and said there is room to build an addition but the issue is whether or not that addition is sufficient to meet the setbacks and resolve the restrictions of the family.

Planning staff feels that it is clear that the property is not allowing a reasonable use per code and that this property is unique in its small size, narrow configuration and small buildings and therefore recommends approval of both of the variances.

Commissioner Povolny asked how close the garage will be to the house. Mr. Gritman said it would be about 3-ft. There is currently a 5-ft. separation.

Matthew and Jean Cunningham, 561 Hiawatha Avenue, explained that the home is a 1952 rambler with 832 sq. ft. The home currently has a living room, a small bathroom and two bedrooms. The Cunninghams are a family of 5 and they like their home. Mrs. Cunningham said it is financially feasible to live there and they would like to improve the home to fit their needs.

Mrs. Cunningham said since the application was submitted, they have considered another plan from another builder that would include attaching the garage, and the Cunninghams said they have found this plan to be financially feasible as well. This way, the attached garage would eliminate the 3-ft space encroachment between the two buildings.

The existing single car garage would be demolished and a new 16' x 22' garage would be constructed and attached to the home. This would require a 1-ft. variance to the side lot line along the garage. It is noted that in the original plan, the existing garage does meet the setback requirement. Mrs. Cunningham said they have not had the property surveyed and they are having difficulty finding the lot line. With this plan, the variance to the other lot line would still be needed.

Commissioner Hennes asked if the existing garage would be kept if the applicants go with the original plan. Mrs. Cunningham said that was correct. Mrs. Cunningham said this is a single car garage and is not in good shape.

Commissioner McManus asked if, in the newer plan, the garage would be a single car garage with some additional storage space. Mrs. Cunningham said it is her understanding that it would be a 1.5 car garage or a 2-car garage, which would connect into the proposed dining room.

Commissioner McManus asked which proposal is to be considered at this time. Mrs. Cunningham said they would prefer the one with the attached garage, and at the time of application, they were in the process of getting additional bids.

Commissioner Hennes said one of the suggestions that the planner made was to decrease the width of the addition so that it meets the 10-ft setback and asked if the applicant could do that and still have the space that they need or would the lopping off of 5-ft to the addition eliminate the needed space. Mrs. Cunningham said it would limit the

space. The bedroom is proposed to be 10' x 12' off the back. Commissioner Hennes suggested taking that footage off the side and making the addition larger by going toward the back of the home.

Commissioner McManus said there is plenty of room in the back yard area and the applicant needs to prove that this is the only way that the home can be added onto in order to qualify for the variance. Commissioner McManus said he believes what the applicant wishes to do is wonderful, but does not believe that this is the only way to do that. Mrs. Cunningham said that is certainly possible but this is what the builders are suggesting.

Commissioner Hennes said he is not sure that the commission can recommend approval of the new plan as it was not properly submitted. Mr. Sedlacek said staff has been debating on this, and it would be a matter of legal opinion that the notice of the hearing was sufficient for a side yard variance (east side of the lot) and there is a provision in the ordinance that if there are signatures from all property owners within 100-ft of the boundaries that the city could waive the public hearing. Mr. Sedlacek said it appears there are not signatures from all of the property owners at this time. Mr. Sedlacek said in terms of the revised application, the commission could potentially take action on it but it would be conditional upon the City Attorney's review and feedback to the City Council prior to their consideration.

Commissioner McManus said the site itself is not crucial as the neighbors to that side will probably approve this, but does not know if it is wise to go ahead without some approval and the applicants do the best they can to try to meet the requirements.

Commissioner Povolny said this is a small lot with a small house with a tight situation. The applicants are getting very little to what they already have. The city has in the past on several occasions, granted variances to several homes in this area because of their small size. Commissioner Povolny said he believes that jogging the home on the side and extending more to the rear would make the home look bad, and this is not a large amount of encroachment, and in addition, the existing home is already in the encroachment. Commissioner Povolny said there would be some major issues with the roof line if the home is jogged over along the addition.

Commissioner Hennes asked if the neighbor at 605 Garden Lane is okay with this. Mrs. Cunningham said they have signed off with their approval. Commissioner Hennes noted that there is an empty lot to the west. Mrs. Cunningham said that was correct and she believes that this lot is not buildable.

Commissioner Povolny said he has a problem with the original option and the 3-ft space between the existing garage and the home.

Chair Lally said he believes that there is some solution as the property owners at 605 Garden Lane has signed off on this, but the property owners on the other side signed off on a proposal that was different than the revised plan, and that with the new plan, the new garage would be just a bit closer to the empty lot. That may be the only legal issue in terms of whether those neighbors would approve that change. Mrs. Cunningham assured the commission that those property owners would have no objection to that.

Chair Lally said he is also concerned about the jogging of the other side, and said by approving a variance here would continue to non-conforming use.

Commissioner Povolny asked if it were better if this is tabled until the next meeting to give the applicants time to decide on a final plan and make the proper notification. Mr. Grittmann said that would be the cleanest way to do it.

Chair Lally asked if another option would be to recommend approval of the application and allow the City Council make the final determination, giving the applicants some additional time to decide what they want to do. Mrs. Cunningham said she would like to get this done in a timely fashion as the contractor would like to get started before there is frost in the ground. The project is already projected to run into January 1, 2010. Mr. Cunningham said the neighbors are in full support of whatever it takes to make improvements to the home.

Mr. Sedlacek said typically the City Council relies on the Planning Commission to develop findings and statements and given the fact that there is a slight change in the application, if the Planning Commission seeks to go that route, it

would be appropriate to look at these findings and change some of the conditions of approval so that the City Council is sure about what they need to consider. Mr. Sedlacek said that although the public hearing is only at the Planning Commission meetings, the Mayor has on most occasions invited the public to make comments at the City Council meetings. Because there is a shift in this plan, it would be appropriate for the commission to list this as a condition that there be an opportunity to allow further public input.

Chair Lally opened the public hearing.

Resident Jack Vitelli said it is not clear as to which application the commission will be voting on at this time. Mrs. Cunningham said they would prefer the new plan with the attached garage.

Commissioner McManus said the commission is making compromises for processes, procedures, applications and signatures, and he wants these people to do this as bad as anyone does, but why can't the commission take an additional thirty days to do this right so that the procedures are not compromised. Chair Lally said he would not want to put processes ahead of procedures but feels that they have looked at different options and there is clearly a need for this family with three small children to have additional space. Commissioner McManus said he agrees and hopes that they will get it, but he does not feel that an additional thirty days will stop the construction process. They might even have a different drawing that may be better. Chair Lally said he believes that this new revised proposal is the one that the applicant is favoring.

Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER HENNES, TO CLOSE THE PUBLIC HEARING.

AYES 4
NAYES 0

COMMISSIONER HENNES MOVED, SECONDED BY COMMISSIONER POVOLNY, TO RECOMMEND APPROVAL OF THE VARIANCE REQUESTS FOR A 3-FT VARIANCE TO THE WEST SIDE YARD SETBACK FOR THE HOUSE AND A 1-FT VARIANCE TO THE EAST SIDE YARD SETBACK FOR THE GARAGE, AND TO RECOMMEND APPROVAL OF THE NEW REVISED PLAN AS SUBMITTED, WITH THE FINDINGS OUTLINED IN THE PLANNERS REPORT, AS WELL AS THE ADDITIONAL CONDITION THAT THE ENCROACHMENT OF THE NEW ATTACHED GARAGE MEETS THE INTENT OF THE CITY CODE.

Further Discussion

Commissioner Hennes said he would rather have a clean well defined proposal, but feels that the revised plan is a good one. Giving the time of year, he would recommend the revised application with the attached garage.

Commissioner McManus said he would like the applicants to move ahead, but does not feel that the project will be stopped by allowing for better process.

AYES 3 (Chair Lally, Commissioners Povolny, Hennes)
NAYES 1 (Commissioner McManus)

PLANNING CASE #09-32

Thomas Ademite
804 Park Place
Variance

Planner Steve Gritman reviewed a map showing the property located at 804 Park Place Drive, which contains a single family home, and zoned R-1. The applicant has applied for variance to the required front yard setback of 30-

ft. for the construction of an enclosed front porch entrance that also includes a roof. The front porch is proposed to be setback 25'-2" from the front property line/right of way of the Park Place Drive cul-de-sac. The variances request is for 4'-10".

The applicants have indicated that over the years, they have had a series of incidences that have caused damage to the front entryway because of the exposure to the elements. An addition in this case is designed to protect that area from the elements.

The city has considered a number of these types of requests in the past. This one varies from those in that the proposed roof would be enclosed and not an open type cover. This particular request is to enclose the sides to allow for more protection. The applicants have indicated that the hardship is that the weather issue has interfered with putting their home to reasonable use and causes damage to the home.

Planning staff feels that reasonable use of the home includes the avoidance of weather-related destruction to the features of the home as well as the comfort and protection of guests waiting to enter the home. Allowing a front entrance with a roof overhang will help alleviate this hardship. However, planning staff also believes that a solid, wall-enclosed front entrance that encroaches into the front yard setback is much more imposing than an open design with a roof overhang and supporting posts. Therefore, staff is recommending approval of the variance request, with the condition that the front entrance cannot be enclosed with walls as identified in Option 2. To comply with this condition, the porch must be an open design with support posts or pillars for the overhang roof.

Commissioner McManus asked for clarification of what the defined front yard is. Mr. Grittman noted that this property is a corner lot and the property owner has defined the front yard as fronting on the cul-de-sac, noting that the setbacks for both sides are the same.

Commissioner Povolny referred to the drawing numbered 2/3 and asked what the differences between Plan A is to Plan B, both showing different setback lines. Mr. Grittman said he is not sure and that the applicant may be able to answer that question better, but it would seem that one of the drawings would indicate that there is a foundation below the bay window.

Mr. Sedlacek said staff had a similar question on this setback and did the public notice on a 5-ft variance which would cover both scenarios.

Chair Lally asked why the enclosed porch would be more undesirable and more intrusive. Mr. Grittman said it was merely for a visual impact.

Mr. Thomas Ademite, 804 Park Place Drive, said the confusion on the diagram was generated by himself in that he was not sure if the setback was from the overhang out and asked his architect to draw it both ways just in case. Mr. Ademite said the correct plan would be Plan A.

Mr. Ademite said he has a unique situation because he is on a cul-de-sac and is also surrounded by Park Place and Wachtler to the rear of his property, being a bit land locked. Mr. Ademite said he has done some significant improvements to the home, and talked about the need for protection from the elements and the damage that he has experienced in the past. Mr. Ademite said he is also hoping to add some curb appeal to his home. Enclosing the sides will help eliminate damage from the northerly winds that hit the front of his home, causing numerous replacements of storm doors and feels that the enclosure will also contribute to energy efficiency of his home.

Commissioner Hennes asked the applicant if he feels that the open sided option would be just as efficient. Mr. Ademite said based upon on how the wind blows, an open design would help but not as well as the enclosure would.

Commissioner McManus said he does not feel there would be any negative visual impact because the only neighbor he has is already impacted by the trees and therefore sees no issues with visual impairment.

Chair Lally opened the public hearing. Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER HENNES MOVED, SECONDED BY COMMISSIONER MCMANUS, TO CLOSE THE PUBLIC HEARING.

AYES 4
NAYES 0

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER POVOLNY, TO RECOMMEND APPROVAL OF THE VARIANCE REQUEST TO THE 30-FT FRONT YARD SETBACK REQUIREMENT, AS SUBMITTED WITH SOLID SIDE WALLS, BASED ON THE CONCLUSION THAT A UNIQUE CONDITION EXISTS CREATING A HARDSHIP IN PUTTING THE PROPERTY TO REASONABLE USE AND WITH THE CONDITIONS OUTLINED IN THE PLANNERS REPORT.

AYES 4
NAYES 0

PLANNING CASE #09-33

**Jake Sedlacek / City of Mendota Heights
Zoning Ordinance Amendment (R1 District Assisted Living Facilities)**

Mr. Grittmann introduced a request for a zoning ordinance amendment from the City of Mendota Heights to include language that allows for assisted living facilities in the R-1 District. Minnesota State Statute 462.357 requires that licensed residential facilities serving six or fewer persons be treated as a single family resident for zoning purposes. The City of Mendota Heights currently has a number of facilities meeting this definition, serving a variety of residential care needs. In general, such facilities have generated very few issues related to property maintenance and public safety.

Because of high demand and limited available of space within licensed care facilities, it is common for elderly (married) couples to separate when one or both individuals require assisted living. As a result of this condition, the City Council has directed staff to prepare a zoning ordinance amendment which would allow assisted living facilities to have up to seven persons in the city's R-1 Single Family Residential Zoning District as a conditional use. The objective of such amendment is to allow elderly (married) couples to remain together as they transition into assisted care by providing an allowance for such couple to share a common room in the assisted living facility.

The city is not required to do this, but this is an option that the state law allows for. Staff has proposed some draft language for that option and can be applied through a conditional use permit. Because this would be a conditional use permit process and not a required permitted use, the city will have this reviewed with the City Attorney for any additional input.

Commissioner Hennes asked if there is any reason to restrict this to seven people. Mr. Grittmann said the idea is to open up the door with small steps to see how this process continues.

Chair Lally asked in regards to age, marital status and disability, would there be other disabilities that this would apply to? Mr. Grittmann said this is written to only apply to age as the state licenses these facilities under that requirement. Memory care facilities or criminal offense facilities would not qualify, and these would be only for state facilities licensed for the elderly.

Mr. Grittmann clarified that there could be more than one married couple in any one facility, but that the threshold for the maximum number of people is only seven.

Commissioner Povolny said he has toured some of these facilities in the community and said they are very nice places.

Commissioner McManus asked if there are any standards for size of a room so that two people are not crowded in a room that would only be suited for a single person. Mr. Grittmann said the state mandates certain requirements for that to make sure that two people have sufficient space. Commissioner McManus asked the city can make an additional requirement that two people cannot be put into a room that is only for a single person to make certain that these facilities are not overcrowding the rooms. Mr. Grittmann said this language can be incorporated into the ordinance for extra protection of the residents. Commissioner McManus said if there would be any problems, then these issues can be brought to the City Council's attention. Commissioner McManus said this is a very good idea.

Mr. Sedlacek said assisted living facilities with up to six people do not currently require a conditional use permit as it is a permitted use. The city currently has 13 of these facilities and in checking with public safety personnel, there have been no issues or additional load put upon those services. This was a request specific to the demographics of the growing and aging community. Regarding the bedroom size requirement, the applicant (being the City of Mendota Heights) would be comfortable with a condition that would add language that would require the applicant to provide proof that the room will meet current state standards for two persons, and that would allow for flexibility of any state standard adjustments or revisions.

Chair Lally opened the public hearing.

Councilmember Jack Vitelli, 1334 Sylvandale, said he is very proud of the city and all the processes that the city goes through, and of the excellent work that staff continues to provide. Councilmember Vitelli said he was the person that generated this request, and spoke of his experiences with some elderly couples in the community that have been separated because one person needs assisted living, while that person's spouse must be forced to live elsewhere. Councilmember Vitelli said he feels that these residential assisted living facilities are wonderful in the community and gives residents who live there a wonderful quality of life.

Commissioner McManus asked if every time someone wants to move into a facility, if they need to go through the conditional use permit process. Mr. Grittmann said that is the way this language is structured and the city could certainly change this to be a permitted use. Commissioner McManus said the conditional use process may set back the owners and the people waiting to move in, and asked under what basis would the city be using to make decisions? Mr. Grittmann said if the commission and the City Council is comfortable that these conditions will be met, this could be built into the performance standards to the code and make it a permitted use.

Commissioner McManus asked how would the city ensure that the married couple will have an adequate shared space? Mr. Grittmann said it would be up to the code enforcement staff to apply whatever regulations is necessary. Mr. Sedlacek said the city only enforces code violations on a complaint basis. Staff would have to rely upon the state's regulatory authority to that license. Commissioner McManus asked if would provide better protection to the city and to these residents by requiring a conditional use permit or making this a permitted use. Mr. Grittmann said it is his opinion that in the beginning it would be best to have this as a conditional use so that the city can review applications that come in even though there will be some delays for the owner and the residents,

Commissioner Hennes said he likes the idea of the permitted use because it does not seem that this kind of use would create many problems.

Commissioner Povolny said the City Council can always change this procedure if there are issues. Mr. Sedlacek said it is easier to go from a more restrictive process to a more permissive process. Residents would also have the opportunity to give input on a case by case basis. Mr. Grittmann said by requiring a conditional use permit, there is a public hearing process to gather this input

Tom Minea, 770 Ridge Place spoke of his concern that there are not operators of these homes in attendance and it seems that the city, in this case, is promoting this on behalf of private businesses. Testimony should be taken from the property owners of these homes. Residents have expressed concerns regarding group homes in the community and it was the City Attorney's opinion at that time that the state preempts any city control. Would this proposal then make the city more attractive to group homes.

Mr. Gritman said that this discussion is for elderly assisted living care only and would not pertain to any other type of group homes such as chemical dependency group homes. Commissioner McManus added that assisted living pertains only to the age requirement of 65 years or older.

Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER POVOLNY MOVED, SECONDED BY COMMISSIONER MCMANUS, TO CLOSE THE PUBLIC HEARING.

AYES 4
NAYES 0

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER POVOLNY, TO RECOMMEND APPROVAL OF THE ZONING ORDINANCE AMENDMENT SUBJECT TO THE CONDITION THAT THE RESIDENTS ARE 65 YEARS OF AGE OR OLDER, AND THAT TWO PEOPLE SHARING ONE ROOM WOULD BE LEGALLY MARRIED, AND BASED ON THE FINDING THAT ASSISTED LIVING FACILITIES PROVIDE ACCOMODATIONS FOR UP TO SEVEN PEOPLE UNDER THE CONDITIONAL USE PROCESS WITHIN THE R-1 ZONING DISTRICT.

AYES 4
NAYES 0

Verbal Review

Mr. Sedlacek gave the following verbal review:

PLANNING CASE #09-27 Thomas Fahey Critical Area Permit
• Approved by the City Council as recommended by the Planning Commission.

PLANNING CASE #09-28 Ronald Kammueler Variance
• Approved by the City Council as recommended by the Planning Commission.

PLANNING CASE #09-29 Maureen Haggerty Conditional Use Permit/Wetland Permit
• This case has been tabled by the Planning Commission until the September Planning Commission meeting.

COMMISSIONER POVOLNY MOVED, SECONDED BY COMMISSIONER HENNES, TO ADJOURN THE MEETING AT 9:20 P.M.

AYES 7
NAYES 0

Respectfully submitted,
Rebecca Shaffer, Recording Secretary