

CITY OF APPLE VALLEY  
PLANNING COMMISSION MINUTES  
MAY 6, 2015

**1. CALL TO ORDER**

The City of Apple Valley Planning Commission meeting was called to order by Chair Melander at 7:00 p.m.

Members Present: Tom Melander, Tim Burke, Paul Scanlan and David Schindler.

Members Absent: Ken Alwin and Keith Diekmann.

Staff Present: City Attorney Sharon Hills, Community Development Director Bruce Nordquist, City Planner Tom Lovelace, Planner Kathy Bodmer, Planner Margaret Dykes, Assistant City Engineer Brandon Anderson and Department Assistant Joan Murphy.

**2. APPROVAL OF AGENDA**

Chair Melander asked if there were any changes to the agenda. Hearing none he called for a motion.

Community Development Director Bruce Nordquist introduced Assistant City Engineer Brandon Anderson.

MOTION: Commissioner Burke moved, seconded by Commissioner Scanlan, approving the agenda. Ayes - 4 - Nays - 0.

**3. APPROVAL OF MINUTES APRIL 1, 2015**

Chair Melander asked if there were any changes to the minutes. Hearing none he called for a motion.

MOTION: Commissioner Burke moved, seconded by Commissioner Scanlan, approving the minutes of the meeting of April 1, 2015. Ayes - 4 - Nays - 0.

**4. CONSENT ITEMS**

--NONE--

**5. PUBLIC HEARINGS**

**A. Outlot C/Community Cares Property Rezoning** – Public hearing to consider rezoning of two properties from “A” (Agricultural) to “BP (Business Park) for consistency with 2030 Comprehensive Plan designation of “IND” (Industrial). **(PC15-15-Z)**

LOCATION: Southwest of Energy Way and Pilot Knob Road

PETITIONER: City of Apple Valley

Chair Melander opened the public hearing at 7:01 p.m.

Planner Margaret Dykes stated that in 1994, the Apple Valley Economic Development Authority (EDA) acquired a 28-acre site generally located northwest of the intersection of Pilot Knob and County Road 42 from L.G.S. Concord/ Citizens Utility to facilitate the creation of a business park. This 28-acre parcel, now called Valley Business Park, was platted in 1999. Immediately to the south of Valley Business Park is a 3.54-acre unplatted parcel that had been an old farmstead. The property is now owned by Community Cares, Inc. (5751 - 150th Street W.). Adjacent to the Community Cares site is a 0.18-acre Outlot C owned by the Apple Valley Economic Development Authority. Both properties are guided "IND" (Industrial), but zoned "A" (Agricultural).

State statute (Minn Stat 473.865, Subd. 3) states that if the zoning of a property conflicts with a comprehensive plan as the result of an amendment to the plan, the zoning regulation shall be amended so as to not conflict with the comprehensive plan. The City Attorney has stated that the City should ensure that the zoning of property be consistent with its Comprehensive Plan designation.

The surrounding properties, consisting of approximately 40 acres in total area, are zoned "BP" (Business Park). The City Attorney advised that rezoning the subject properties to "BP" is necessary by state law.

Dale Runkle, representing Community Care and Joe Miller, commented that the property is currently being used for the Community Care food distribution and as long as it does not affect the use of the property they have no issue with the zoning change.

Chair Melander asked Ms. Dykes if that use conflicts with the change in zoning and if there was a provision for grandfathering.

Ms. Dykes answered that if the use operates as a warehouse and storage inside the building then it would be consistent with the zoning. There is no provision for grandfathering.

City Attorney Sharon Hills clarified that the operation on the site is not consistent with Agricultural zoning now.

Ms. Dykes commented that the zoning change to Business Park would bring the operation on the property into conformance.

Chair Melander closed the public hearing at 7:09 p.m.

Ms. Dykes stated this item would come back to the Planning Commission on June 3, 2015.

**B. Cobblestone Lake 7th Addition** – Public hearing to consider subdivision of approximately 3.7 acres of property for the purpose of constructing 37 townhomes; and the completion of a Comprehensive Land Use Map amendment and rezoning. **(PC15-13-ZSB)**

LOCATION: Northeast corner of Eagle Bay Drive and Dodd Boulevard  
PETITIONER: South Shore Development, Inc.

Chair Melander opened the public hearing at 7:10 p.m.

City Planner Tom Lovelace stated the property is currently Comp Plan guided "P" (Parks and Open Space) and "MD" (Medium Density Residential /6 -12 units per acre). In 2005, the petitioner submitted an application requesting a re-designation of this property to "MD" (Medium Density Residential) as part of a 30-unit townhouse development. On June 23, 2005, the City Council approved the submittal of the Comp Plan amendment to the Metropolitan Council for their consideration and on August 1, 2005, the Met Council approved the amendment. No final action by the City Council was taken on the proposed amendment because the petitioner withdrew their request.

Rezoning the property from "A" (Agricultural) to "PD 703 /zone 9" (Planned Development), a new subzone classification that would allow for multi-family townhomes as a permitted use, would be required. This new planned development zone would be part of the Cobblestone Lake development. Approval of this new subzone would require the preparation of ordinance amendments that identify the proposed use as well as the area requirements and performance standards for the future subzone.

The rezoning was also considered in 2005, and the Planning Commission recommended approval to the rezoning to "PD 703 /zone 9 ", conditioned upon approval of the Comp Plan re-designation. 155th Street West, west of Eagle Bay Drive is a four-lane divided roadway with left and right-turn lanes. Just east of the Eagle Bay Drive intersection, the street turns into Dodd Boulevard. The street at that location loses a thru lane each way and no turn lanes have been installed. Because of the volume of traffic, this street carries and loss of lanes east of Eagle Bay Drive, staff is recommending that right turn lanes be installed at the two entrances into the development.

A sidewalk connection should be made along the south side of the northerly intersection to the Dodd Boulevard pathway. Staff is also recommending that a sidewalk connection be made to the pathway located in the Apple Valley East Park.

Staff is recommending that a masonry treatment be added to help add more variety to the exterior. The petitioner also should investigate the incorporation of such things as bay windows, decorative sills and headers, window shutters, and width of the lap siding to help break up the massing of the buildings.

Commissioner Scanlan inquired if with the steepness in grade in the southwest corner if there was an opportunity for a sidewalk to be added as a connection to the lake so this area is not so isolated as it would be a part of the planned development of Cobblestone Lake.

Mr. Lovelace answered that he could talk to the developer.

Chair Melander asked if these sidewalks would be part of a homeowners association that could maintain sidewalks.

Mr. Lovelace answered that since this is a townhouse development it would be part of an established association that would maintain sidewalks, roads and landscaping.

Rob St. Sauver, Tradition Development, commented that the sidewalk could be a challenge because of the grade, property ownership and the gas line easement that runs through there. He said he would follow all guidelines in the Cobblestone Lake area and would work with staff on elevations.

Kay Seelhoff, 15606 Eagle Bay Dr., commented she is feeling impacted by this development. For nine years she has looked at this gorgeous hill and it has an emotional issue for her. She expressed concern for the property that could be graded down to her level. The whole hill would be lost and she would be looking at the back of these houses.

Mr. Lovelace stated the units facing her property would be the front of the buildings not the back.

Mr. St. Sauver commented that the grading would be about 20 feet of elevation change.

Commissioner Scanlan asked if a visual could be available at the next meeting for the residents that would show a rendering coming from the south.

Mr. St. Sauver said he could provide a cross-section.

Beth Lambert, 15610 Early Bird Circle, expressed concern about this proposal with the density. She said she was told by a realtor that this particular land was zoned for green space. She asked what the advantage was to crowding units in there. She would like whoever makes this decision to go to the area and walk the neighborhood. She asked what the process was from here.

Chair Melander answered that the Cobblestone development goes back about 12 years and the original plans were for more density than what is exhibited right now. He said from the Planning Commission standpoint he did not remember saving out an area to be a nice little green park or anything like that. It was planned to be built out long ago.

Ms. Lambert said she may have misspoken. She commented that the realtor told her that if anything was going to be built there it was going to be ecologically sound good single-family homes.

Chair Melander stated the Commission has no control over what a realtor says.

Ms. Lambert said she understands that but questioned if the realtor was not correct that the land was zoned for single-family residences.

Mr. Lovelace commented that part of the request was to rezone the property from Agricultural to this planned development that would allow for townhomes and a portion of this land was already zoned for medium density residential. The Comprehensive Plan designation was medium density

residential already and the other portion was guided for parkland. He stated the Planning Commission makes a recommendation to the City Council and the City Council makes the final decision to approve or deny the project.

Commissioner Scanlan addressed Ms. Lambert's concerns adding that all of Cobblestone has a set of build standards for their community. The standards that her home was built are going to be the same standards that these units are going to have to be built. She can be assured that they will be of similar quality of build that it is not going to be anything less than what her home was already built to the standard.

Chair Melander closed the public hearing at 7:39 p.m.

## 6. LAND USE/ACTION ITEMS

**A. Schesso/Hine Fence Variance** – Request for a variance allowing for increase in fence height from 3.5 feet to 6 feet where a fence is located along a rear property line, which constitutes the side lot line of an abutting lot. **(PC15-12-V)**

LOCATION: 14334 Embry Path

PETITIONER: Troy Schesso and Lisa Hine

Planner Kathy Bodmer stated the applicants, Troy Schesso and Lisa Hine, 14334 Embry Path, are requesting a variance to the maximum height of a fence from 3.5' to 6' within a 17' triangle where a rear yard abuts a neighbor's side yard, based upon the fact that allowing for a 6' tall fence would not impact the neighbor's visibility and is a reasonable use of the property. In addition, the variance would allow the petitioners to preserve one of four mature evergreen trees on the northeast corner of the property adjacent to Ebony Lane.

The owners have two alternatives available to avoid the variance: the first would be to simply reduce the height of the fence and make it 3.5' tall within the 17' triangle. The petitioners state that the fencing is for a dog and that the shorter fence is not an option for them. The second alternative would be to angle the fence so that the 17' sight triangle remains open. The owners state that angling the fence would require the removal of four mature evergreen trees located in the northeast corner of their property. They state that the variance would allow them to preserve one of the existing mature trees, and because the neighbor's visibility is not impacted, it's a reasonable use of the property.

The primary concern the City has regarding fence heights in the 17' sight triangle is ensuring the neighbors have adequate visibility to safely exit their driveway. In the Schesso /Hine case, the increased fence height variance would not impact the neighbor's driveway visibility, as the neighbor's driveway is 51' from the proposed fence location. The existing 20' + trees are a larger obstruction than a 6' tall fence would be. The neighbors have submitted a letter in support of the requested variance.

Two private utility pedestal boxes are located on the northeast corner of the property. Private utility companies have the right to remove any structures in the drainage and utility easement and would not be required to repair or replace the structure.

**MOTION:** Commissioner Scanlan moved, seconded by Commissioner Burke, recommending approval of a variance allowing the maximum height of a fence to increase from 3.5' to 6' within a 17' sight triangle where a rear yard abuts a neighbor's side yard, subject to compliance with all City Codes and the following conditions:

1. The property owner shall construct the fence in a manner that allows a minimum clear access of 3' around the private utility pedestal boxes located on the northeast corner of the property.
2. The property owner shall install a minimum of one new tree to replace any removed trees.

Ayes - 4 - Nays - 0.

**B. Eriksmoen Cottages Driveway/Garage Variance** – Request for a variance to allow for the retention of a second attached garage and driveway as part of a conversion of a twin-home into a single-family dwelling. **(PC15-21-V)**

**LOCATION:** 13980-82 Holyoke Path

**PETITIONER:** Eriksmoen Cottages and Brett Foss

City Planner Tom Lovelace stated a building permit had been issued that would allow for the conversion of an existing two – family home into a single - family home at 13980-82 Holyoke Path. The purpose of the conversion is to allow the structure to operate as a day-care home that would be operated by Eriksmoen Cottages, Ltd., a company that provides in home foster care. More specifically, the operator would provide services to individuals transitioning from institutional and supported living to independent living they may or may not have physical disabilities as well as the need for independent living skills.

Their program allows each individual private space in which they can get used to their independence and communal space where they can work on skills with support from the company's team members who will be present 24/7.

The subject property is currently occupied by a twin-home on a one-acre lot. The property is currently zoned "R -5" (Two- Family Residential), which allows for two-family dwelling and any permitted, conditional or accessory use in the "R", single family districts, as listed in §§ 155.051 through 155.053. This includes one-family detached dwellings and community-based family-care home, day-care home licensed under M.S. § 245.812, or a home for the care of the mentally or physically handicapped licensed by the state.

The conversion of this structure to a single-family dwelling would be allowed by zoning, provided that the newly created single-family residential dwelling have only one attached garage and one driveway approach/driveway. Conversion of this building would require the removal of one of the driveways and the approach as well as alterations to one of the attached garages that would render it unusable for storage of passenger vehicles.

The applicant would like to keep both garages and driveways /approaches and has requested approval of a variance to do so. Their reasons are to "minimize the impact our program may have on the neighborhood in which it resides" and "maximize the access to natural community supports and resources of our participants".

Variations may be granted from the strict application of the provisions of this chapter, and impose conditions and safeguards in the variations so granted, where practical difficulties result from carrying out the strict letter of the regulations of this chapter. Practical difficulties, as used in connection with the granting of a variance, mean that the applicant proposes to use the property in a reasonable manner not permitted by the zoning provisions of this Code; the plight of the applicant is due to circumstances unique to the property not created by the applicant; and the variance, if granted, would not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

The conversion of the two-home residence for the purpose of conducting a 24-hour care result from actions created by the applicant and it does not appear that granting the variance is necessary to alleviate a "practical difficulty" since there are not unique features to the property that would render the use of the property in a "reasonable manner".

Commissioner Burke asked if there was this request in the past.

Brett Foss, owner of the property, said the hardship is when you get to handicapped accessibility and the maneuvering. They have the exact same setup in other jurisdictions and there are ramps put into a garage on one side to allow for the wheelchair accessibility and the other side is for a vehicle to come in or for storage. Parking is the biggest issue. Minnesota has six months of snow. When you have staff or staff turnover, a nurse coming in, case manager, handicap accessibility or van coming in, everyone has to park on the street. To maneuver that is quite a difficulty. Another concern is if you are trying to transport somebody from one side of the duplex or now single-family home that is wheelchair handicapped accessible when it is 20 below in the middle of February and to get them from coming out through the one side exteriorly through a sidewalk because it is difficult to do it interiorly. There are four living arrangements and four people using this as a residence. It is going to single-family because they are opening up a corridor but it is not single-family lifestyle living. There are four separate units of living with the potential that all four could be handicapped accessible. He expressed concern for where their vehicles could be parked. He lived there for 10 years, this was his home. He knows all the neighbors very well. He said he talked to two of the neighbors and they said if he needed a petition signed, they understand what is coming in there from a group home perspective. They also understand that it would look a little bit silly and that is a separate issue. He commented this parking could really create an eyesore for the neighbors. He had both neighbors tell him that directly. He did not say to them anything about what he thought. It is kind of being approached in a multitude of facets. It is multiple hardships separate from what the eyesore to the community is. There is not a financial thing here for them that causes more or less or whatever. 100% are staff people and handicapped accessibility. If you have a van pull in, what are you going to do when you have a staff change and three cars parked there. They are all parked there on the street. When that plow comes by, he is not going to be

happy and that is the biggest concern. It is not to have the other garage to park vehicles in. It is not for that aspect because no one living there would have a vehicle.

Commissioner Scanlan asked how many vehicles would be looking at parked there on an average day.

Mr. Foss answered it is the occasion when there might be a van come up.

Ron Eriksmoen, Eriksmoen Cottages, answered there would be three staff working at this location most of the day, every day. Then possibly two on the overnights and others coming and going like case managers, supervisors, nurses and nursing staff. There is traffic. It is not a cost thing nor a functionally thing. He said if you want us to remove one of the garages, that is fine. It is not going to affect the operation of what we do. Removing the driveway would not affect it either. It will only affect the neighbors. We run other programs in this community and others and the number one thing neighbors do not like about that community residential setting is the traffic. When you have the ability to keep both driveways you keep all the traffic off the street. That is important to them because they do not want to impact the community. If the community can accept what is going on there they can accept the individuals in the home and it creates a better atmosphere for people that are living there. The whole point of their program is to reduce the impact and allow people to access community resources that could not before. Those are a couple reasons why they are asking for this variance. Parking in the garage, they do not need that. If they take the overhead garage door out and turn that space into a community space indoors for individuals, it is going to be a massive wall with a service door in it, facing the street. They will not be putting a lot of windows in dressing it up. It is not going to look the same as the unit right next door. They are identical properties and one will look distinctively different and why. He said those are big issues. The two driveways for the traffic are a huge thing and are an impact on the residents of your community.

Mr. Foss commented that there are also visiting families that come in from time to time. Once again there is a parking issue in the middle of winter. The property is just where the road curves right there. There are literally two spots of parking there or otherwise it is in front of somebody else's house.

Chair Melander asked for clarification if we say no, that rules are rules. Does it still work for you.

Mr. Eriksmoen answered yes, they will make it work. It is not going to stop them from the actual operation but the handicap access for the individuals that would be living there, it is going to be a lot longer route out to the vehicle on the driveway that goes to the street. Where they have other properties that are similar to this have been reclassified as single-family and they were allowed to keep both driveways, one driveway is for parking and one driveway is for access. There is another impact to the individuals that are living there and that is the staff impact. The staff vehicles are in the way. They want the assistance but like to actually feel like they have their own home.

Chair Melander asked Mr. Lovelace if this is different than the U-shaped driveway.

Mr. Lovelace answered he would have to look back at the City Code.

Commissioner Scanlan asked if there were any parking restrictions on this street. Do they allow parking on both sides.

Mr. Lovelace answered that it is a local residential street and parking would be allowed but no overnight parking.

Commissioner Scanlan asked what would be the restrictions of them expanding one of the current driveways to allow for additional staff parking.

Mr. Lovelace said he would have to look at the regulations as to what the maximum width would be related to this property.

Chair Melander inquired if the maximum number of cars parked at a residence is still four cars besides what is in the garage.

City Attorney Sharon Hills answered that is still correct and if they are going to convert to a single family house that they would need to comply with all the ordinances related to parking restrictions.

MOTION: Commissioner Burke moved, seconded by Commissioner Scanlan to continue this request to another meeting. Ayes - 4 - Nays - 0.

## **7. OTHER BUSINESS**

### **A. Review of upcoming schedule and other updates.**

Community Development Director Bruce Nordquist stated that the next Planning Commission meeting would take place Wednesday, May 20, 2015, at 7:00 p.m.

## **8. ADJOURNMENT**

Hearing no further comments from the Planning Staff or Planning Commission, Chair Melander asked for a motion to adjourn.

MOTION: Commissioner Burke moved, seconded by Commissioner Schindler to adjourn the meeting at 8:09 p.m. Ayes - 4 - Nays - 0.

Respectfully Submitted,

/s/ Joan Murphy  
Joan Murphy, Planning Department Assistant

Approved by the Apple Valley Planning Commission on 5/20/15.